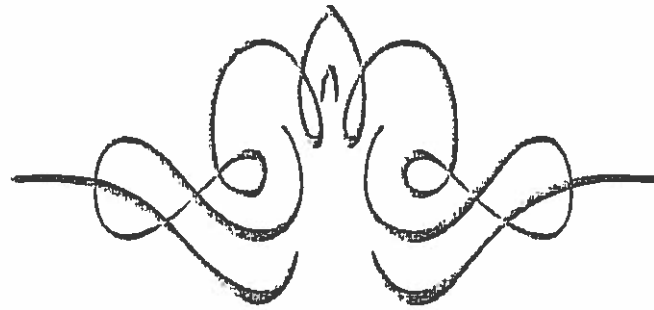


TOWN OF KENNEBUNKPORT, MAINE

— INCORPORATED 1653 —

**Board of Selectmen Agenda
Town Hall- 6 Elm Street
August 23, 2018 – 9:00 AM**

1. Call to Order.
2. Approve the August 9, 2018, selectmen meeting minutes.
3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.).
4. Award the bid for three effluent pumps for the Wastewater Department.
5. Award the bid for a police cruiser.
6. Award the bid for boiler replacements for the police department and public health buildings.
7. Accept the bids for kitchen cabinets and countertops for the parks and recreation building.
8. Award the sale for the 2009 John Deere 310J Backhoe with attachments.
9. Authorize the Town Treasurer to carry forward \$45,000 of FY 2018 contingency funds for professional planning services.
10. Review Waterfront Ordinance amendments for the November ballot.
11. Other business.
 - a. Sledding hill project update.
12. Approve the August 23, 2018, Treasurer's Warrant.
13. Executive Session pursuant to 1 M.R.S.A. Section 405 (6)(c) regarding discussion or consideration of the acquisition of real property.
14. Adjournment.



Agenda Item Divider



**Board of Selectmen Meeting
Town Hall- 6 Elm Street
August 9, 2018 – 6:00 PM**

Minutes of the Selectmen's Meeting of August 9, 2018

Selectmen Attending: Stuart Barwise, Patrick Briggs, Allen Daggett, Edward Hutchins, Sheila Matthews-Bull

Others: Mike Claus, Lydia Elwell, Duke Harrington, Deb and Dan Jantzen, Norman Lamb, Jen Lord, Bob McDermott, Kendra O'Roak, Judy Phillips, David Powell, Ann Sanders, Laurie Smith, Arlene McMurray and others

1. Call to Order.

Chair Hutchins called the meeting to order at 6 PM.

2. Approve the July 26, 2018, meeting minutes.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to approve the July 26, 2018, meeting minutes. **Vote:** 5-0.

3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.).

Judy Phillips asked the Board to reconsider placing acceptance of Reid Lane on the town meeting ballot. She said it is a safety factor because in the winter, residents cannot get in or get out due to snow pile up.

Norman Lamb seconded Judy's comment and added that they do a lot of volunteer work in town and can't get in or out.

4. Proposed ordinance changes for the November Town Meeting ballot.

a. Victualer's Ordinance

Town Manager Laurie Smith said this revision includes enforcement and the town attorney added more housekeeping changes.

See Exhibit A

b. Telecommunications Ordinance

Director of Planning and Development Werner Gilliam said the ordinance revisions makes it more current with the new technology since it hasn't been revised since 1999.

c. Medical Marijuana storefront moratorium

Mr. Gilliam reiterated what he spoke about at the previous meetings about patient recycling. He said a moratorium would give the town 180 days to prepare for any ordinance changes.

See Exhibit C

d. Waterfront Ordinance amendments

See Exhibit D

Police Chief Craig Sanford said the amendments clear up definitions.

5. Consideration of Special Town Meeting regarding a conditional gift to the Town of Kennebunkport for the benefit of American Legion Post 159.

Town Manager Laurie Smith explained that the WJJ Gordon Trust would like to donate \$4,000 to the American Legion, but the Legion does not have 501(c)03 status. The trust would like to donate the funds to the town with the understanding that the town would then give the funds to the American Legion. The town would have to accept a conditional gift at town meeting.

The Board decided to wait until November, unless the American Legion needs the money sooner, in which case there would be a special town meeting.

6. Presentation by town interns Lydia Elwell and Kendra O'Roak.

Lydia spoke about her experiences working with the Cemetery Committee.

Ann Sanders from the Cemetery Committee commented that Lydia was very helpful, and her work brought them into the 21st century. She also researched veterans. She thanked the Board and Budget Board for expending the funds to hire her.

Kendra O'Roak talked about the Healthy Maine Beaches water quality testing and working with the Conservation Commission with the study of pesticide ordinances. She said they will be inspecting septic systems within a 500-foot radius of the shoreland.

Public Health Nurse Alisson Kenneway added that she could not have done all the water testing without Kendra's help. She said Kendra was very busy.

7. Consider memorandum of understanding with State of Maine regarding the establishment of a closed point of dispensary (POD).

Bob McDermott, a firefighter who is working on bioterrorism in Portland, explained the points of dispensary (POD).

The town was asked to consider partnering with the state to become a closed POD for medical supplies for the town's population in the event there is a public health emergency. With a closed POD, town residents and visitors would get their needed medications quickly.

After reviewing locations and considering traffic problems, it was decided that the Conservation Trust would be a good location to host a POD. The Trust is agreeable to the use of their building.

Ms. Smith asked if the Board would consider authorizing her to sign a Memorandum of Understanding Between the Department of Health and Human Services, Maine Center for Disease Control and Prevention, and the Town of Kennebunkport.

Motion by Selectman Barwise, seconded by Selectman Briggs to authorize the town manager to sign the Memorandum of Understanding Between the Department of Health and Human Services, Maine Center for Disease Control and Prevention, and the Town of Kennebunkport. **Vote:** 5-0.

8. Consider amendments to Solid Waste Rules and Regulations.

Ms. Smith explained that the Solid Waste Rules and Regulations needed revisions because it states asbestos siding is an acceptable waste, which it isn't.

9. Consider purchase of 13 Barnes pumps for the Wastewater Department.

Ms. Smith said the Wastewater Department would like to continue purchasing Barnes pumps from the sole vendor Williams New England Motor Service Corp. The cost for 13 pumps is \$24,895.00.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to purchase 13 Barnes pumps from Williams New England Motor Service Corp at a cost of \$24,895. **Vote:** 5-0.

Item 11 was addressed next.

11. Consider draft Road Acceptance Policy.

Ms. Smith explained that at the last meeting, the Board directed staff to develop criteria and a policy for public acceptance of future roads. See Exhibit E.

Dan Jantzen, a resident of Reid Lane, asked the Board several questions.

Chair Hutchins and other Board members explained that the town is not equipped to handle too many more public roads. It would mean adding more personnel along with another truck which would increase the cost to approximately \$300,000.

The Board would like to move forward with this policy and have the town attorney review it.

Item 10 was addressed next.

10. Consider proposal for engineering work to replace the Ocean Avenue Village Seawall from Fairfield Creek to the Nonantum Hotel.

Motion by Selectman Briggs, seconded by Selectman Daggett, to approve the sole source vendor Woodard and Curran for engineering work to replace the Ocean Avenue Village Seawall from Fairfield Creek to the Nonantum Hotel at a cost of \$58,000. **Vote:** 5-0.

12. Consider street opening permit for Ben and Rebecca Thompson, 3 Temple Street, to tie into the storm drain for a sump pump line.

Motion by Selectman Daggett, seconded by Selectman Briggs, to approve the street opening permit for Ben and Rebecca Thompson, 3 Temple Street, to tie into the storm drain for a sump pump line. **Vote:** 5-0.

13. Consider a request for use of FY 2018 contingency account.

Treasure Jen Lord explained the request to use \$14,125.77 from the contingency account.

Motion by Selectman Daggett, seconded by Selectman Barwise, to approve the use of \$14,125.77 from the contingency account. **Vote:** 5-0.

14. Consider a request for FY 2018 carry forwards.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to approve the request to carry forward \$259,439.50 for FY 2018. **Vote:** 5-0.

15. Authorize Treasurer to write off taxes in the amount of \$129.33 for foreclosed property located at map 27, block 2, lot 16, Guinea Road.

Motion by Selectman Daggett, seconded by Selectman Briggs, to authorize Treasurer to write off taxes in the amount of \$129.33 for foreclosed property located at map 27, block 2, lot 16, Guinea Road. **Vote:** 5-0.

16. Authorize the Town Manager to enter into a six-month agreement with the Town of Kennebunk for a shared Animal Control Officer.

See Exhibit F.

Motion by Selectman Barwise, seconded by Selectman Matthews-Bull, to authorize the Town Manager to enter into a six-month agreement with the Town of Kennebunk for a shared animal control officer. **Vote:** 5-0.

17. Reappoint members to the Lighting Committee.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to reappoint Robert Fairbanks and Jim Stockman to the Lighting Committee for terms expiring in July 2020. **Vote:** 5-0.

Motion by Selectman Briggs, seconded by Selectman Daggett, to reappoint Jule Gerrish to the Lighting Committee for a term expiring in July 2021. **Vote:** 5-0.

18. Consider proclamation to designate September as Childhood Cancer Awareness month.

Chair Hutchins read the proclamation.

Motion by Selectman Daggett, seconded by Selectman Barwise, to approve the proclamation to designate September as Childhood Cancer Awareness month.

19. Accept the \$1,000 donation from the Kennebunk Portside Rotary for the emergency fuel fund.

Motion by Selectman Matthews-Bull, seconded by Selectman Barwise, to accept the \$1,000 donation from the Kennebunk Portside Rotary for the emergency fuel fund. **Vote:** 5-0.

20. Other business.

a. Vote for MMA Vice-President and three Executive Committee members.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to vote for the whole slate: Christine Landes for a one-year term as Vice-President of MMA and Elaine Aloes, William Bridgeo, and Melissa Doane for three-year terms on the MMA Executive Committee. **Vote:** 5-0.

b. Sign the Assessors Return for county taxes.

Selectman Matthews-Bull asked if anyone has ever tried to negotiate with the county because it is a lot of money and Kennebunkport has their own police and fire and is paying for other towns that don't have it.

Ms. Smith said in her experience these arguments have already been fought and it is based on valuation.

David James added that this is always a sore point at the York County Budget Meeting. He said for the most part, the county does try to contract with those small towns, and those towns pay for the cops that come into town. The County Commissioners try to do what they can, but there are some very small towns that just don't have the money, and the county assumes some responsibility.

Selectman Briggs announced that Town Manager Laurie Smith received a leadership award at the Maine Town and City Manager's Association Meeting. He said it is the municipal world's way of showing recognition for an outstanding job.

Ms. Smith announced the opportunity to enroll in the 2018 Citizen Police Academy Program. It is a 12-week program held on Thursdays, beginning from August 30 to November 15, from 3:00 PM to 5:00 PM.

Ms. Smith also announced that she received a letter regarding raising the floor for minimum/low receivership school districts. The Board will discuss this at the next meeting.

21. Approve the August 9, 2018, Treasurer's Warrant.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to approve the August 9, 2018, Treasurer's Warrant. **Vote:** 5-0.

22. Executive Session pursuant to 1 M.R.S.A. Section 405 (6)(c) regarding discussion or consideration of the acquisition of real property.

Motion by Selectman Daggett, seconded by Selectman Barwise, to go into executive session pursuant to 1 M.R.S.A. Section 405 (6)(c) regarding discussion or consideration of the acquisition of real property. **Vote:** 5-0.

The Board went into executive session at 7:20 PM and came out at 8 PM.

There was no action taken.

23. Adjournment.

Motion by Selectman Daggett, seconded by Selectman Barwise, to adjourn. **Vote:** 5-0.

The meeting adjourned at 8 PM.

Submitted by Arlene McMurray
Administrative Assistant

TOWN OF KENNEBUNKPORT VICTUALER'S LICENSING ORDINANCE

Section 1 Purpose, Authority, License Required, Word Usage and Definitions

A. Purpose; Authority – The purpose of this Ordinance is to ensure that establishments serving food or drink within the Town of Kennebunkport (hereafter, the "Town") and intended for consumption by the public prepare their food and drink in a safe and sanitary environment. This Ordinance is adopted pursuant to the authority granted by 30-A M.R.S.A. § 3812 *et seq.*, 30-A M.R.S.A. § 3001, and the Home Rule provisions of the Constitution of the State of Maine.

A.B. License Required – Any establishment that serves food or drink prepared for consumption by the public within the Town shall be required to annually apply for and be granted a victualer's license. A license shall be specific to the premises and entity which is requesting the license. ~~Unless otherwise defined herein or in the text, all words used in this Ordinance shall have their common meanings.~~

B. Definitions – ~~Unless otherwise defined herein or in the text, all words used in this Ordinance shall have their common meanings.~~ As used in this Ordinance, the following terms shall have the meanings indicated:

PERSON – Any individual, person, firm, corporation, association, partnership, ~~or~~ organization, or legal entity.

VICTUALER – Any person who serves food or drink prepared for consumption on the premises by the public.

TOWN – The ~~term Town shall mean the~~ Town of Kennebunkport.

Section 2 Licensing Board and Meetings

A. **Licensing Board** – The Licensing Board shall be the Town of Kennebunkport Board of Selectmen.

B. **Meetings** – The Licensing Board shall meet as provided in this subsection:

(1) It shall meet annually during the month of May on a date, time and place ~~in the Town that it determines~~ determined by the Board of Selectmen.

(2) At least seven (7) days before the meeting, ~~it the~~ the Licensing Board must post notices stating the purpose of the meeting in at least two (2) public places in the Town.

- (3) The Licensing Board may meet at any other time at a meeting specially called and with public notice as provided in ~~paragraph (1)~~ Section 2.B.(2) above.

Section 3 License Issuance, Renewal, Suspension and Revocation

- A. Issuance, Renewal, Suspension and Revocation of Licenses - At any meeting held under ~~sub~~Section 2.B. above, the Licensing Board may do the following:

- (1) **License** - The Licensing Board may license as many persons of good moral character to be innkeepers, victualers and tavern keepers in the Town as it considers necessary. in accordance with the requirements set forth herein.

- (a) In determining whether to issue or deny an application, the Licensing Board shall consider (i) whether the applicant has failed any part of a state inspection or local health inspection; (ii) whether the applicant has failed to provide sufficient evidence of compliance with applicable local, state or federal laws and regulations; (iii) whether the applicant is of good moral character, considering the applicant's criminal record, if any, and all evidence presented; (iv) the applicant's failure to pay an outstanding fine, penalty or tax owed to the Town; and (v) the Town's need for additional innkeepers, victualer's and tavern keepers. The License must specify the building in which the business will be conducted.

- (b) The Licensing Board may issue the license under any conditions or restrictions ~~and regulations~~ that it deems necessary and reasonably designed to promote the health, safety or welfare of the public.

- (c) The premises must be inspected by the Code Enforcement Officer and Fire Inspector for compliance with local ordinances and state statutes, prior to the issuance of the license. Such inspections shall be noticed to the Licensing Board.

- (d) The license must specify the building in which the business will be conducted.

- (e) The license must specify an issue date and an expiration date.

- (2) **Renewal** – Renewal applications from persons having obtained a victualer's license under Section 3.A.(1) above, along with applicable fees, must be submitted to the Town Clerk on or before April 30th of each year. The Licensing Board shall annually review all renewal applications for the purpose of determining the status of the victualer's prior conformance and likelihood of continued conformance with the requirements of this

Ordinance, including the requirements of Section 3.A.(1)(a) above and any conditions or restrictions of the license, and at such time shall make a decision to either approve or deny the renewal application.

- (23) **Suspension** – A victualer's license may be suspended by the Licensing Board for any period of time that it considers proper after investigation, notice and hearing if the Licensing Board determines that the licensee has violated any codes, ordinances, conditions or restrictions imposed by the Licensing Board. The Licensing Board shall serve written notice of ~~the-a~~ hearing on suspension on the licensee or leave it at the licensed premises at least three (3) days before the time set for hearing. At the hearing, the licensee must be given an opportunity to hear the evidence in support of the charge against the licensee, to be heard in the licensee's own defense and to cross-examine, alone or through counsel, ~~the-any~~ witnesses. ~~If the Licensing Board is satisfied that the licensee has violated any codes, ordinances or restrictions imposed by the Licensing Board, the Licensing Board may suspend a license for any period of time that it considers proper.~~
- (34) **Revocation** - A victualer's license may be revoked by the Licensing Board after investigation, notice and hearing if the Licensing Board determines that the licensee is unfit to hold a license. The Licensing Board, ~~after serving shall serve~~ written notice of ~~the-a~~ hearing on revocation on the licensee or leave ~~ing~~ it at the licensed premises at least three (3) days before the time set for hearing. At the hearing, the licensee must be given an opportunity to hear the evidence in support of the charge against the licensee, to be heard in the licensee's own defense and to cross-examine, alone or through counsel, ~~the-any~~ witnesses. ~~The Licensing Board may revoke a license upon conducting a hearing at any regularly scheduled meeting of the Licensing Board as conducted in accordance with Section 2 B.(3) referenced above.~~

Section 4 Term of License

The term of a victualer's license shall run from May June 1 to May 31 of the following year.

Section 5 Fees

The Licensing Board shall set fees by order for the following categories of victualer's licenses:

- A. Victualer without on-site consumption of liquor.
- B. Victualer with on-site consumption of liquor.
- C. Nonprofit Organization.

- D. Failure to obtain a license, either renewal or a new license, may subject the licensee to additional late filing fees, ~~and~~ publication of notice expenses, ~~and/or penalties pursuant to Section 6, below,~~ as may be determined by the Licensing Board.

Section 6 Violations

Any violation of this Ordinance, including but not limited to failure to submit an annual renewal application by the deadline provided, shall be punishable by a fine of not less than \$100 for the first offense and not less than \$200 for the second and subsequent offense. Each day that such unlawful act or violation continues shall be considered a separate offense. In addition, the Town may seek recovery of costs and any other legal and equitable remedies as may be available to the Town.

Section 67 Appeals

An appeal from any final decision of the Licensing Board ~~shall~~ may be taken by any aggrieved party to the Superior Court ~~within thirty (30) days from the date of the decision~~ in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

Adopted March 24, 1998. Amended March 21, 2000. Amended, 2018.

Wireless Telecommunications Ordinance PROPOSED AMENDMENT

Contents

- **Section 1: Title**
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 - **6.8: Building Permit Required**
- **Section 7: Standards of Review**
 - **7.1: CEO Approval Standards**
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- **Section 8: Amendment to an Approved Application**
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- **Section 11: Administration and Enforcement**
- **Section 12: Penalties**
- **Section 13: Conflict and Severability**
 - **13.1: Conflicts with other Ordinances**
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- **Section 14: Definitions**
- **Section 15: Effective Date**

Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of Kennebunkport, Maine (hereinafter referred to as the "ordinance").

Section 2. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A., Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A., Section 4312 et seq.

Section 3. Purpose

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

- Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- Allow competition in telecommunications service;
- Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Kennebunkport;
- Permit and manage reasonable access to the public rights of way of Kennebunkport for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within Kennebunkport comply with the ordinances of Kennebunkport;
- Ensure that Kennebunkport can continue to fairly and responsibly protect the public health, safety and welfare;
- Encourage the colocation of wireless telecommunications facilities and alternative technologies, thus helping to minimize adverse visual impacts on the community;
- Enable Kennebunkport to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses; and
- Protect the scenic and visual character of the community; and
- Comply with the 2012 Spectrum Act and the Telecommunications Act of 1996 as each is amended.

Section 4. Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

4.1 Exemptions: The following are exempt from the provisions of this ordinance:

- A. ***Emergency Wireless Telecommunications Facility.*** Wireless communication facilities for emergency communications by public officials or any municipal or quasi-municipal organization currently served by the Town of

Kennebunkports Communications Department including, without limitation, the KK&W Water District and colocation by any person or firm, public or private, on any tower owned or operated by the KK&W Water District provided colocation by any private person or firm shall be subject to site plan approval by the Planning Board in addition to other applicable provisions of this ordinance.

- B. ***Amateur (ham) radio stations.*** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. ***Parabolic antenna.*** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- D. ***Maintenance or repair.*** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- E. ***Temporary wireless telecommunications facility.*** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.

~~F. ***Antennas as Accessory Uses.*** An antenna that is an accessory use to a residential dwelling unit.~~

Section 5. Review and Approval Authority

5.1 Approval Required: No person shall construct or expand a wireless telecommunication facility without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

- A. ***Expansion of an Existing Facility and Colocation.*** Approval by the CEO and issuance of a building permit is required for (1) any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; (2) accessory use of an existing wireless telecommunications facility; or (3) collocation on an existing wireless telecommunications facility or alternative tower structure; or (4) installation of small cell facilities on existing utility poles.
- B. ***New Construction.*** Approval of the Planning Board and issuance of a building permit is required for construction of all new wireless telecommunications facilities; and any expansions or substantial modifications of ~~an~~ existing wireless telecommunications facilities such as, but not limited to, that increases in the height of the facility by more than 20 feet or new disturbed area or equipment cabinets outside the area occupied by the existing facility.

5.2 Approval Authority

In accordance with Section 5.1 above, the CEO or Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

Section 6. Approval Process

6.1 Pre-Application Conference: All persons seeking approval of the CEO or the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting, the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

6.2 Application: All persons seeking approval of the CEO or the Planning Board under this ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

A. *Application for CEO Approval.* Applications for permit approval by the CEO must include the following materials and information:

1. Documentation of the applicants right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.
2. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
3. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
4. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.
- 4.5. For a proposed small cell facility: (a) name and address of the owner(s) of the utility pole; (b) utility pole number; (c) address of nearest property; and (d) structural analysis, signed by a Maine registered professional engineer, attesting to the ability integrity of the utility pole to support the small cell facility without any impact to the structural integrity of the utility pole or network of poles.
- 5.6. For proposed expansion of an existing facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:
 1. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 2. negotiate in good faith for shared use by third parties;
 3. allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;
 4. require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration,

land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

B. ***Application for Planning Board Approval.*** An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following information:

1. Documentation of the applicants right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
2. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
3. A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the Town. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
4. A site plan:
 1. prepared and certified by a Maine registered professional engineer ~~registered in Maine~~ indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 2. certification by the applicant that the proposed facility complies with all FCC standards for radio frequency emissions is required; and
 3. a boundary survey for the project performed by a land surveyor licensed by the State of Maine.
5. A scenic assessment, consisting of the following:
 1. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 2. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
 3. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date

taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

4. A narrative discussing:
 - i. the extent to which the proposed facility would be visible from or within a designated scenic resource,
 - ii. the tree line elevation of vegetation within 100 feet of the facility, and
 - iii. the distance to the proposed facility from the designated scenic resources noted viewpoints.
6. A written description of how the proposed facility fits into the applicants telecommunications network. This submission requirement does not require disclosure of confidential business information.
7. Evidence demonstrating that no existing building, site, or structure can accommodate the applicants proposed facility, the evidence for which may consist of any one or more of the following:
 1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicants engineering requirements,
 2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicants engineering requirements,
 3. Evidence that existing facilities do not have sufficient structural strength to support applicants proposed antenna and related equipment. Specifically:
 - i. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - ii. The applicants proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicants proposed antenna.
 - iii. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
4. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

5. Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access.
8. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
9. A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to :
 1. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 2. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 3. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
 4. require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
10. A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.
11. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

6.3 Submission Waiver: The CEO or Planning Board, as appropriate, may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

6.4 Fees:

A. CEO Application Fee. An application for CEO approval shall include payment of an application fee as determined annually by the Board of Selectmen. ~~of \$250.~~ The application shall not be considered complete until this fee is paid.

~~The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town to review the application.~~

B. **Planning Board Application Fee.** An application for Planning Board approval shall include payment of an application fee as determined annually by the Board of Selectmen. of \$500. The application shall not be considered complete until this fee is paid. ~~An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town to review the application.~~

C. **Planning Board Review Fee.** An applicant for approval by the Planning Board shall pay all reasonable and customary fees incurred by the Town that are necessary to review the application, including, without limitation, independent engineering, planning, legal or similar professional consulting services. Such review fee shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application. The review fee shall be paid in full prior to the start of construction. No building permit may be issued until all review fees have been paid in full.

That portion of the review fee not used shall be returned to the applicant within ~~fourteen (14) days~~ a reasonable period time after of the Planning Boards decision, once it has been determined that all associated costs have been paid.

6.5 Notice of Complete Application: Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the CEO shall review the application and determine if the application meets the submission requirements. The CEO or Planning Board, as appropriate, shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the CEO shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board, Code Enforcement Office, Police Department and Fire Department.

If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Board review, the CEO shall notify all abutters to the site as shown on the Assessors records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

6.6 Public Hearing: For applications for Planning Board approval under Section 5.1(B), a public hearing shall be held within 30 days of the notice of the complete application.

6.7 6.7 Approval:

A. CEO Approval. Within thirty (30) days of receiving a complete application for approval under section 5.1(A), the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. With the exception of applications for installation of a small cell facility, ~~the~~ the CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 7.1 of this ordinance.

For a small cell facility, the CEO shall approve the application if the CEO finds the following:

(a) the small cell facility does not interfere with the safety and convenience of travel over the public right of way; other existing uses of the utility right of way, and shall not interfere with municipal emergency service communication equipment;

B. (b) the small cell facility is not located within fifty (50) feet of a residence or sensitive population (including but not limited to schools, hospitals, nursing facilities etc.) If a small cell facility is proposed to be located within fifty (50) feet of a residence or sensitive population then the approval process outlined in 6.7D Planning Board Approval shall be followed.

(b);

(c) The small cell facility is camouflaged such that it is visually unobtrusive as compared to the preexisting condition of the utility pole or nearby utility poles, including color and scale;

(d) The dimensions of the antenna does not exceed three (3) feet in height or two (e2) feet in width and associated equipment has a maximum square footage of ten (10) square feet and height of two (2) feet;

(e) No part of the small cell facility projects from the utility pole further than four (4) feet from its existing height and two (2) feet from its existing width

C. The small cell facility is proposed by a licensed provider who agrees to comply with all local ordinance, state and federal laws;

A. The entity seeking approval for the small cell facility submits a written commitment to notify the Town within thirty days of cessation of use of the facility and to remove that facility within ninety (90) days of termination of use.

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The CEO shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the

applicant and the CEO.

B-D. Planning Board Approval. Within ninety (90) days of receiving a complete application for approval under section 5.1(BA) or one hundred fifty (150) days of receiving a complete application for approval under section 5.1(B), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ~~ninety (90) day time~~ period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

6.8 Building Permit Required: No wireless telecommunications facility shall be constructed or expanded without a building permit therefore issued by the CEO.

6.9 Zoning: Notwithstanding any provision in any municipal ordinance to the contrary, small cell facilities and colocated wireless telecommunications facilities or antennas installed on alternative tower structures shall be a permitted use in all zoning districts.

Section 7. Standards of Review

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

7.1 CEO Approval Standards: An application for approval by the CEO under Section 5.1(A) must meet the following standards.

- A. The proposed facility is an expansion, accessory use, or colocation to a conforming structure legally existing at the time the application is submitted.
- B. The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C. The proposed facility increases the height of the existing structure by no more than twenty (20) feet.
- D. The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.
- E. The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

7.2 Planning Board Approval Standards: An application for approval by the Planning Board under Section 5.1(B) must meet the following standards.

- A. **Location.** New wireless telecommunications facilities installed on new towers may be permitted only in the following district as designated in the Kennebunkport Zoning Ordinance: Free Enterprise Zone.
- B. **Siting on Municipal Property.** If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on Town property, the applicant must show the following:
 1. The proposed location complies with applicable municipal policies and ordinances.
 2. The proposed facility will not interfere with the intended purpose of the property.
 3. The applicant has adequate liability insurance and a lease agreement with the Town that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.
- C. **Design for Colocation.** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.
- D. **Height.** A new wireless telecommunications facility must be no more than 200 feet in height.
- E. **Setbacks.** A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:
 1. The setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
 2. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.
 - ~~2-3.~~ This setback does not apply to the installation of colocated wireless telecommunication facilities or small cell facilities on alternative tower structures.
- F. **Landscaping.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

- G. **Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
- H. **Lighting.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.
- I. **Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- J. **Structural Standards.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
- K. **Visual Impact.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the Towns Comprehensive Plan, or by a State or federal agency.
1. In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
 1. The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
 2. The type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
 3. The extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
 4. The amount of vegetative screening;
 5. The distance of the proposed facility from the viewpoint and the ~~facilitys~~ facility's location within the designated scenic resource; and
 6. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- L. **Noise.** During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.
- M. **Historic & Archaeological Properties.** The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic

district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

7.3 Standard Conditions of Approval: The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

1. The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 1. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 2. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 3. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
 4. require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
2. Upon request by the Town, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

Section 8. Amendment to an Approved Application

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 5.

Section 9. Abandonment

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

ADDITIONAL AMENDMENTS TO LAND USE ORDINANCE

Amend Article 2, Section 2.2 as follows:

Alternative Tower Structure: Clock towers, bell steeples, light poles, water towers, electrical transmission line towers, smokestacks, existing buildings, and similar mounting structures that camouflage, or conceal or support the presence of an Antenna(s).

Antenna/Antenna Array: A system of one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals. These include, but are not limited to, omnidirectional antennas (whips or rods), directional antennas (panels) and parabolic antennas (dish or disc).

Small Cell Facility: An antenna, radio, power source and meter, disconnect switch, fiber optic cable, and supporting equipment, if any, installed on a utility pole owned by a regulated public utility and installed within the public right of way.

Wireless Telecommunications Facility: A facility that transmits, receives, distributes, provides or offers telecommunications services, radio or television signals, or any other spectrum-based transmissions/receptions, together, with the facility's associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightning rods, electronics and other types of equipment for the transmission, receipt, distribution or offering of such signals; wireless communication towers, antenna support structures, and other structures supporting said equipment and any attachments to those structures including guy wires and anchors, equipment buildings, generators, parking areas, utility services, driveways and roads and other accessory features.

Wireless Telecommunications Facility—Colocated: A Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new tower structure.

EXHIBIT C - 8-9-2018

MORATORIUM ORDINANCE
REGARDING RETAIL MEDICAL MARIJUANA CAREGIVER STOREFRONTS

TOWN OF KENNEBUNKPORT, MAINE

The Town of Kennebunkport, Maine, hereby adopts a Moratorium Ordinance as follows:

WHEREAS, the legislative body of the Town of Kennebunkport, Maine (the "Town") makes the following findings:

- (1) The Maine Medical Use of Marijuana Act, codified at 22 M.R.S. §§ 2421 to 2430-B, (the "Medical Act") authorizes the possession, cultivation, and furnishing of medical marijuana to qualifying patients by caregivers, as those terms are defined in 22 M.R.S. § 2422; and
- (2) Section 2423-A(14) of the Medical Act authorizes municipalities pursuant to home rule authority to regulate, among other uses, registered primary caregivers; and
- (3) Section 401 of the Marijuana Legalization Act, codified at 28-B M.R.S. ch. 1 (the "Adult Use Act") authorizes municipalities pursuant to home rule authority to regulate adult use marijuana establishments, including cultivation facilities, products manufacturing facilities, testing facilities, and marijuana stores, as those terms are defined in 28-B M.R.S. § 102; and
- (4) Neither the Medical Act nor the Adult Use Act nor any state agency rules promulgated thereunder expressly authorize the operation of retail stores by registered caregivers for the purpose of selling medical marijuana to qualifying patients; and
- (5) In July of 2018, the Maine Legislature enacted LD 1539, "An Act to Amend Maine's Medical Marijuana Law," which, upon its effective date, will amend the Medical Act to expressly authorize the operation of such retail stores so long as the legislative body of the municipality votes to adopt a new ordinance, amend an existing ordinance, or approve a warrant article allowing this type of marijuana establishment; and
- (6) No specific regulations governing such retail stores currently exist under the Town's Ordinances; and
- (7) The Town's Ordinances are insufficient to prevent serious public harm that could result from the unregulated siting and operation of such retail stores within the Town; and
- (8) The unregulated siting and operation of such retail stores within the Town raises legitimate and substantial questions about the impact of such retail stores and related uses and activities on the Town, including questions as to compatibility of such retail stores with existing and permitted land uses in the Town; potential adverse health and safety effects on the community; the adequacy of the Town's infrastructure to accommodate such retail stores; and the possibility of unlawful sale of medical marijuana and medical marijuana products; and

- (9) As a result of the foregoing issues, the siting and operation of such retail stores and related uses and activities within the Town has potentially serious implications for the health, safety, and welfare of the Town and its residents and visitors; and
- (10) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of such retail stores and related uses and activities located and operated in the Town; and
- (11) The Town needs time to understand the disposition of LD 1539 and any State department rules promulgated pursuant to the Medical Act or the Adult Use Act in relation to its own Ordinances and to evaluate the effects of such retail stores and related uses and activities in order to prepare reasonable ordinance provisions governing the siting and operation of such retail stores and related uses and activities; and
- (12) The Town, with professional assistance from the Planning Board, Code Enforcement Officer, and other departments, intends to study the Town's Ordinances to determine the land use and other regulatory implications of such retail stores and related uses and activities, and to consider what locations, approvals, and performance standards, if any, might be appropriate to avoid or minimize impacts on the health, safety, and welfare of the Town and its residents and visitors; and
- (13) It is anticipated that such a study, review, and development of recommended ordinance amendments will take at least 180 days from the date the Town enacts this Moratorium Ordinance; and
- (14) In the judgment of the legislative body of the Town, the foregoing findings constitute a necessity within the meaning of 30-A M.R.S. § 4356.

NOW, THEREFORE, pursuant to 30-A M.R.S. § 4356, be it ordained by the voters of the Town of Kennebunkport as follows:

1. Moratorium. The Town does hereby declare a moratorium on the siting, operation, or licensing of any Retail Medical Marijuana Caregiver Storefront within the Town.

For purposes of this Ordinance, "Retail Medical Marijuana Caregiver Storefront" is defined as a retail store, a retail business, or an establishment that resembles a retail storefront in terms of signage, hours of operation, and accessibility to patrons (including without limitation a commercial use or retail business, as those terms are defined in the Town's Land Use Ordinance) that furnishes or sells marijuana or marijuana products by licensed caregivers to qualifying patients, as those terms are defined in 22 M.R.S. § 2422.

No person or organization shall locate or operate a Retail Medical Marijuana Caregiver Storefront within the Town on or after the Date of Applicability of this Ordinance. During the time this Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, conditional use permit, any other type of land use approval or permit, or any other permit or license related to a Retail Medical Marijuana Caregiver Storefront.

2. Date of Applicability. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, and regardless of the Effective Date, this Ordinance shall govern and apply to all proceedings and applications for a Retail Medical Marijuana Caregiver Storefront that were or are pending before the Code Enforcement Officer or the Planning Board on or any time after _____ and, to the extent allowed by 30-A M.R.S. § 3007(6), shall nullify the issuance of any final approval of the Code Enforcement Officer or the Planning Board made on or at any time after _____ that authorizes the operation of a Retail Medical Marijuana Caregiver Storefront (the “Date of Applicability”).
3. Effective Date. This Ordinance shall become effective immediately upon its adoption (the “Effective Date”) and shall remain in full force and effect for a period of 180 days, unless extended, repealed, or modified in accordance with applicable law.
4. Conflicts; Savings Clause. Any provisions of the Town’s ordinances that are inconsistent with or conflict with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.
5. Violations. If any Retail Medical Marijuana Caregiver Storefront is located or operated in the Town, in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance and the Town shall be entitled to all rights available to it pursuant to 30-A M.R.S. § 4452, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney’s fees and costs in prosecuting any such violations.

Given under our hands this ____ day of _____, 2018.

A Majority of the Board of Selectmen of the Town of Kennebunkport.

Attest: A true copy of an ordinance entitled, "Town of Kennebunkport, Maine, Moratorium Ordinance Regarding Retail Medical Marijuana Caregiver Storefronts," as certified to me by the municipal officers of the Town of Kennebunkport, Maine, on the ____ day of _____, 2018.

Tracey O'Roak, Town Clerk
Town of Kennebunkport, Maine

WATERFRONT ORDINANCE

1. GENERAL PROVISIONS

1.1 TITLE

This ordinance shall be known as the "Waterfront Ordinance of the Town of Kennebunkport, Maine". It shall be referred to herein as the "Ordinance".

1.2 AUTHORITY

This ordinance is adopted pursuant to the authority granted by Title 38 M.R.S.A., Chapter 1, as amended, Title 30-A M.R.S.A., §§ 3001, 3007, 3009 and 4452, as amended and the Home Rule provisions of the Constitution of the State of Maine with additions and deletions.

1.3 PURPOSE

Kennebunkport's waterfront is a limited and valuable resource. The demands on this resource have been increasing for both commercial and recreational uses; therefore, this Ordinance is adopted for the following purposes:

1.3.1 Ensure that there will always be adequate and usable mooring space for the Kennebunkport Commercial Fishing Fleet.

1.3.2 Preserve the working waterfront, which includes commercial fishing, marine related businesses and recreational boating.

1.3.3 Provide Ordinance guidelines and authority for the Harbormaster to administer mooring space and to resolve any conflicts.

1.3.4 Address dangerous and unsuitable mooring placements.

1.3.5 Ensure consistency with the policies set by the state of Maine and the US Army Corps of Engineers.

1.3.6 Plan, establish and maintain the arrangement and utilization of Mooring areas, public landings, boat ramps, harbor channels and other related properties in Kennebunkport Waters.

1.4 APPLICABILITY

The provisions of this ordinance shall apply to all tidal water areas located within the municipal boundaries of Kennebunkport, Maine, with the exception of the Kennebunk River, hereinafter referred to as Kennebunkport Waters.

1.5 SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unenforceable by any Court, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

1.6 CONFLICT

Whenever any section, subsection, sentence, clause, phrase or portion of this ordinance is deemed to be in conflict with any existing state law and/or federal rule(s), then the stricter provision shall apply, unless preempted by federal law.

1.7 EFFECTIVE DATE

This ordinance shall become effective immediately upon adoption.

2. DEFINITIONS

For the purpose of interpreting this Ordinance, the following terms, phrases and words shall be defined as set forth below.

COMMERCIAL FISHERIES BUSINESS: An enterprise, as defined in Title 12 M.R.S. Section 6001(6-A), which is directly or indirectly concerned with the commercial harvest of wild or aquacultured marine organisms, whose primary source of income is derived from these activities. "Commercial fisheries business" includes, but is not limited to:

- A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;
- B. Persons providing direct services to commercial fishermen, aquaculturists or fishermen's cooperatives, as long as provision of these direct services requires the use of working waterfront property; and
- C. Municipal and private piers and wharves operated to provide waterfront access to commercial fishermen, aquaculturists or fishermen's cooperatives.

COMMERCIAL FISHING VESSEL: A vessel used in furtherance of the purposes of a commercial fisheries business, including vessels rigged to engage in the commercial harvest, processing or transport of wild or aquacultured marine organisms as well as supporting vessels such as lobster, crab and shellfish cars.

FEE: A charge for the use of Town owned waterfront facilities; all fees described herein are set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting.

FINE: A civil penalty for a violation of this Ordinance; all fines are set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting.

HARBOR MASTER: A person appointed pursuant to Title 38 M.R.S.A. § 1 and this Ordinance; all references to the Harbor Master shall include any Deputy Harbor Master.

KENNEBUNKPORT WATERS: Has the meaning defined by Section 1.4.

MOORING: The Means of securing a vessel to a particular location in Kennebunkport Waters, other than temporarily by anchor for a period of no more than 72 hours. Dock, pier, wharf or float tie-ups are not moorings. There are three classes of moorings, Commercial, Recreational and Transient, which are defined below.

Commercial: A Mooring issued to and utilized by a Commercial Fisheries Business for the purpose of mooring a Commercial Fishing Vessel. In Cape Porpoise, the Mooring permit holder must either be a Cape Porpoise pier member in good standing or a Shorefront Owner.

Recreational: A Mooring other than a commercial mooring that is permitted for the purpose of mooring a specific Vessel. In Cape Porpoise, the Mooring permit holder must either be a Cape Porpoise pier member in good standing or a Shorefront Owner.

Transient: A Mooring set aside for temporary (7 days or less) use by Vessels cruising along the coast.

MOORING PERMIT: An annual permit that is issued by the Harbor Master to a Mooring Permittee, authorizing the placement of a specific class of Mooring at a specific Mooring Site and which expires on May 31 of the year following its issue.

MOORING PERMITTEE: A person granted a Mooring Permit.

MOORING PERMIT WAITING LIST: A list of persons desiring a Mooring Permit as described in Section 4.3.2.

MOORING RELOCATION WAITING LIST: A list of Mooring Permittees desiring relocation of a Mooring Site as described in Section 4.3.2.

MOORING SITE: A specific location assigned by the Kennebunkport Harbor Master for placement of a Mooring, defined by GPS coordinates where practicable.

PERSON: An individual, a corporation, a firm, partnership, an association or any other entity.

SHIP CHANNELS: Ship channels as described herein and depicted on the NOAA nautical chart and other such channels designated by the Harbor Master which shall be kept open for the passage of watercraft. These channels are maintained by the US Army Corps of Engineers and are depicted on the Corps Condition Survey for Cape Porpoise and the Kennebunk River.

SHOREFRONT OWNER: A person who owns Kennebunkport shorefront property with a minimum 100 feet of shore frontage on Kennebunkport Waters who can demonstrate that a Mooring Site fronting their property is both practicable and safe.

VESSEL: Any type of watercraft, including a ship, boat, barge, float or craft, other than a seaplane, used or capable of being used as a means of transportation on water. For purposes of this Ordinance, floating docks including commercial work floats and lobster, crab and shellfish cars are vessels.

VESSEL OWNER: The person who can demonstrate the controlling interest in a Vessel and who is named on the boat registration or the person identified as the managing owner on the U.S.C.G. Certificate of Documentation.

3. HARBOR MASTER

3.1 APPOINTMENT AND COMPENSATION

Pursuant to the Kennebunkport Administrative Code, Article III, the Board of Selectmen shall annually appoint a Harbor Master who shall be subject to all the duties and liabilities of that office as prescribed by state law, regulations adopted by the municipal officers and municipal ordinances. Pursuant to the Kennebunkport Administrative Code, Article II, the Town Manager shall establish compensation and may remove the Harbor Master for cause after notice and hearing and appoint another instead.

3.2 POWERS AND DUTIES

3.2.1 Removal of Vessels

The Harbor Master, upon complaint from the master, owner or agent of any Vessel, shall cause any other Vessel or Vessels obstructing the free movement or safe anchorage of that Vessel to be removed to a position as designated by the Harbor Master and may, without any complaint being made, cause any Vessels anchoring within the ship channels to be removed to such anchorage as the Harbor Master may designate. If that Vessel has no crew on board or if the master or other person in charge neglects or refuses to move such Vessel as directed by the Harbor Master, the Harbor Master may put a suitable crew on board and move that Vessel to a suitable berth at a wharf or anchorage at the expense and risk of the owner(s) of the Vessel and shall charge a Vessel Removal Fee plus expenses, to be paid to the Town of Kennebunkport by the master or owner of that Vessel.

Once a Vessel has been removed by the Harbor Master the owner of record shall be notified in writing and mailed a notice via US Mail certified return receipt. Such notice shall give the owner 30 calendar days to relocate the Vessel to a suitable location and pay a Vessel Removal Fee as set by the Board of Selectmen. Should the Vessel not be relocated within the set time period a fine of up to \$100 per day

may be assessed until the Vessel is relocated. After 60 calendar days the Vessel may be declared abandoned. Abandoned Vessels may be disposed of at the direction of the Harbor Master.

3.2.2 Mooring Removal or Replacement

In case of neglect or refusal of the Mooring Permittee to remove a Mooring or to replace it by one of a different character when so directed by the Harbor Master, the Harbor Master shall cause the entire Mooring to be removed or shall make such change in the character of the Mooring as required and shall charge a Mooring Removal/Replacement Fee, plus expenses, to be paid to the Town of Kennebunkport by the Mooring Permittee for either of those services rendered. Before removing a Mooring, the Harbor Master shall notify the Mooring Permittee by first class mail, at the address on the current Mooring Application, of the action desired, the fact that the Mooring will be removed, and the amount of the Mooring Removal/Replacement Fee. If the matter is not settled to the Harbor Master's satisfaction within 14 days, the Harbor Master may take any action provided for in this section.

The Harbor Master is authorized to remove any unmarked and/or unauthorized moorings. The Harbor Master may remove the mooring immediately and shall charge a Mooring Removal Fee, plus expenses to be paid to the Town of Kennebunkport by the owner of the unmarked and/or unauthorized mooring.

3.2.3 Training

The Harbor Master shall complete training as required by Title 38 M.R.S.A. §1-A, as amended. In addition the Harbormaster shall be required to attend the annual Harbormaster training by the Maine Harbormasters Association.

4. MOORINGS

4.1 ANCHORAGES

No person shall place or allow to anchor or to lay any Vessel in any position in Kennebunkport Waters for more than 72 hours unless written permission has been granted by the Harbormaster. The Harbormaster may designate a specific area available as a general anchoring area.

4.2 DESIGNATION OF MOORING SITES

The Harbor Master shall designate Mooring Sites in accordance with Title 38 M.R.S.A., § 3, as amended. Mooring Sites shall be permitted for the sole use of the Vessel indicated on the application. Any change in the Vessel using the Mooring Site must be in accordance with this ordinance and state law and have the written approval of the Harbor Master.

The Harbor Master shall have the authority to determine the total number of allowed moorings based on available Mooring Sites. The Harbor Master may

consult with the Board of Selectmen and any other appropriate authority to determine mooring areas and their capacity. Commercial Moorings shall comprise at least 60% of the total number of Mooring Sites within Cape Porpoise Harbor. If an existing Commercial Mooring becomes available within Cape Porpoise Harbor, it may not be assigned for use as a Recreational or Transient Mooring if such assignment would cause the number of Commercial Moorings to constitute less than 60% of the total number of available mooring sites within Cape Porpoise Harbor. Mooring Sites outside of Cape Porpoise Harbor may be designated commercial, recreational, or transient at the discretion of the Harbor Master.

The Harbor Master may change the location of assigned Mooring Sites when the crowded condition of the harbor, the need to conform with Title 38 M.R.S.A., §§ 3, 7-A, or other conditions render the change desirable.

4.3 MOORING PERMIT

4.3.1 Application

Application for a Mooring Permit shall be made annually and shall contain the information set forth on the application. The applicant must demonstrate that the applicant is the Vessel Owner of the Vessel associated with the Mooring. An application will not be processed unless it is complete, the payment of required fees, including excise taxes or other taxes or charges owed to the Town of Kennebunkport, or its agent, are made prior to May 1st and there be a current Mooring Inspection Certification on file with the Harbor Master. At the time of each annual review of Mooring Permits, existing Mooring Permittees shall be given priority over other applications for a Mooring.

The Harbor Master shall deny any application where incorrect information is submitted, where outstanding Kennebunkport pier use fees or fuel fees are owed to the Town, or where an applicant is not in compliance with this ordinance.

4.3.2 Waiting List

The Harbor Master shall maintain a Mooring Permit Waiting List and a Mooring Relocation Waiting List each of which shall be available for inspection at the Harbor Master's office. The operation of all waiting lists shall conform to Title 38 M.R.S.A., § 7-A as amended.

All persons desiring mooring space in Kennebunkport Waters shall place their name and the type of mooring desired on the Mooring Permit Waiting List. All Mooring Permittees desiring a different Mooring Site shall place their names and their desired mooring location on the Mooring Relocation Waiting List. A fee may be charged to be placed on the Mooring Permit Waiting List which shall be applied against the mooring permit fee as a

credit the year the mooring is placed. The Mooring Permit Waiting List will be operated on a first come first serve basis, priority being given as stated below:

1. Commercial fishing vessel owners.
2. Shorefront property owners.
3. Recreational vessel owners.
4. Transient moorings to be operated by the Town of Kennebunkport.
5. Transient moorings to be operated by any other person. The Mooring Relocation Waiting List will be operated on a first come first serve basis. The Harbor Master shall attempt to accommodate any request for a relocated Mooring Site when, in the Harbor Master's discretion, conditions do not render the relocation undesirable, and the relocation is consistent with Section 4.2.

4.3.3 To Whom Issued

A Recreational Mooring Permit shall only be issued to the Vessel Owner and a Commercial Mooring Permit shall only be issued to an officer or principal of the Commercial Fisheries Business. A Transient Mooring Permit shall be issued to the person who will maintain and operate the Transient Mooring.

4.3.4 Conversion

A Mooring shall not be converted from the class of Mooring originally permitted if such conversion would be inconsistent with Section 4.2.

4.4 MOORING IDENTIFICATION

All Moorings shall have the number of the Mooring Permittee indicated on the float or buoy above the water line for the purposes of identification. Such number and name shall be displayed in at least three (3) inch letters and be legible at all times. Mooring buoys shall be white with a single blue horizontal band clearly visible above the water line.

4.5 PLACEMENT OF MOORINGS

No person shall place a Mooring of any type within the boundaries of Kennebunkport Waters without a Mooring Permit issued by the Town of Kennebunkport's Harbor Master.

4.6 SIZE AND CONSTRUCTION

All Moorings shall be of a suitable size and construction for the Vessel. Mushroom or pyramid anchors are recommended, unless the owner can demonstrate holding power adequate for his boat. Blocks are permitted however they may only be granite; concrete or cement blocks are not allowed. The weight of the Mooring anchor shall conform to the requirements of either the chart or formulas below. Chain size shall conform to the chart below, regardless of whether the weight conforms to the chart or formulas below.

Length of Boat (Feet)	Weight of Mooring Anchor (Pounds)	Chain Size (Minimum)
20' Or Less	500	1/2"
20' To 30'	1000	1"
30' To 40'	1500	1 1/4"
40' To 60'	2000	1 1/2"

Mooring weight: To determine the minimum weight of a mushroom or pyramid anchor, multiply the length on deck (ft.) by the beam (ft.) by 1.5. The product is the minimum mooring weight in pounds.

Example: Boat length 31 ft., beam 10 ft.
 $31 \times 10 \times 1.5 = 465$ lbs. minimum weight.
Round up to the next even mooring size.

Shallow water (restricted) moorings: are set in less than less than 6 feet of water at high tide for boats twenty (20) feet or less. Minimum Requirements shall be length x beam = anchor weight for mushroom or pyramid anchors (minimum weight 50 pounds). _____

Dead weight anchors length x beam x 1.5 x 2 = dead weight.

4.7 INSPECTION OF MOORINGS

The Board of Selectmen shall have the authority to approve regulations to establish a program requiring the inspection of moorings.

4.8 DENIAL

The Harbor Master may deny the replacement or use of a Mooring if in the judgment of the Harbor Master, the Vessel is:

4.8.1 Structurally unsafe;

4.8.2 Emitting obnoxious fumes, oils, or any other substance detrimental to the safety or comfort of others, including any pollution of its waters, shores and flats;

4.8.3 Of inappropriate size for the Mooring; or

4.8.4 Causing damage to Town owned waterfront facilities.

4.9 NON-USE OF MOORINGS

If a Mooring Permittee fails to use the assigned Mooring Site or Mooring for the Vessel listed on the current Mooring Permit during the term (June 1 to May 31) of that permit, the Mooring Permit shall not be renewed. A Mooring Permittee may appeal such non-renewal to the Board of Selectmen pursuant to Section 10 of this Ordinance.

4.10 MOORING ASSIGNMENTS

4.10.1 There shall be no transfer of a Mooring Permit or an assigned Mooring Site and no renting of a Recreational or Commercial Mooring, except for good cause with the prior written approval of the Harbor Master and, if otherwise required by law, the Army Corps of Engineers, or as otherwise noted in this ordinance. Municipal and Commercial Transient moorings are permitted to be rented.

4.10.2 A Mooring Permittee shall promptly notify the Harbor Master of a proposed change of Vessel on a Recreational or Commercial Mooring. Such change of Vessel shall be permitted only with the prior written approval of the Harbor Master.

4.10.3 Any assigned Mooring Site used for commercial fishing purposes may be transferred only at the request or death of the Permittee, and only to a member of the Permittee's family and only if the mooring assignment will continue to be used for commercial purposes. For the purpose of this section, "member of the permittee's family" means a Permittee's parent, child, or sibling, by birth or by adoption including a relation of the half blood or an assignee's spouse.

4.10.4 As of the effective date of this Ordinance a vessel may only be assigned to a single mooring site.

5. FEES AND FINES

The Board of Selectmen shall establish and provide for the collection of Fees including but not limited to Fees for Mooring Permits and the Mooring Permit Waiting List, and may establish and provide for the collection of Fees for the inspection of moorings. The Board of Selectmen may establish and provide for the collection of Fines for violations of this Ordinance. Such Fees may be a flat amount or vary according to the size of the Vessel. Fines may be a flat amount or vary according to the infraction or violation. The Vessel Removal Fee and Mooring Removal/Replacement Fee shall be consistent with Title 38 M.R.S.A. §§ 4.5. A schedule of the Fees and Fines established under this section shall be available at the Town Office and from the Harbor Master. Fees and Fines shall be set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting. If a Fee and Fine is not paid in the prescribed time, after billing, the Mooring Permit will be void and the Mooring Site reassigned to the next eligible individual on the Mooring Permit Waiting List.

6. ABANDONMENT

No person shall cause to be abandoned any Vessel, floating device, cradle, or any other obstruction on the shore within Kennebunkport Waters. Any such object left within the confines of Kennebunkport Waters and which has been unattended for a period of ninety (90) days shall be deemed to be abandoned. The Harbor Master shall then order the last owner of any such abandoned Vessel, floating device, cradle or other obstruction, if such owner is ascertainable, to remove same within thirty (30) days. Upon refusal or failure to do so, the Harbor Master shall cause its removal or destruction at the cost of the said last ascertainable owner. Any violation of the above shall be considered a Class E crime pursuant to Title 38 M.R.S.A. § 9, and further punishable as set forth in this Ordinance.

7. POLLUTION

Except in case of emergency imperiling life or property or unavoidable accident, collision, or stranding, no person shall discharge, or suffer, or permit the discharge of sewage, garbage, trash or other refuse of any kind, by any method, means, or manner into or upon Town wharves or docks or Kennebunkport Waters.

8. RULES AND REGULATIONS

The Harbor Master shall recommend to the Board of Selectmen for adoption such rules and regulations as shall be necessary to implement the intent of this ordinance.

9. ENFORCEMENT

9.1 ENFORCEMENT BY THE HARBOR MASTER

It is the duty of the Harbor Master to enforce the provisions of this Ordinance. No person shall fail to observe any lawful order of the Harbor Master with reference to the navigation and disposition of Vessels or Moorings within Kennebunkport Waters. If, after investigation, the Harbor Master finds that any provision of this Ordinance is being violated, he or she shall give written notice delivered by hand, if the owner agrees to sign a receipt for the notice, or by certified mail, return receipt requested, to the person responsible for such violation, and/or to the owner and/or to the operator of such Vessel. The notice shall indicate the nature of the violation and order the action necessary to correct it, including discontinuance of illegal use of moorings, or work being done, removal of illegal moorings, fishing equipment and abatement of nuisance conditions. The notice shall demand that the violation be abated within some designated reasonable time. If after such notice, the violation is not abated within the time specified, the Harbor Master shall take appropriate measures to enforce this Ordinance including notifying the Selectmen of the need to institute appropriate action in the name of the Town of Kennebunkport to prevent, enjoin, restrain or abate any violation of this Ordinance. A copy of each such notice of violation shall be submitted to the Board of Selectmen and be maintained as a permanent record.

9.2 ENFORCEMENT BY LAW ENFORCEMENT OFFICERS

In addition to the Harbor Master, any law enforcement officer vested with the authority to carry a weapon and make an arrest shall have the authority to enforce the provisions of this Ordinance.

9.3 MISDEMEANOR FINES; SEPARATE VIOLATIONS

Any person who violates any provision of this Ordinance or a lawful order of the Harbor Master shall be subject to a Fine. Each day that a violation continues, without action to effect abatement after receipt of notification by the Harbor Master, shall be considered a separate violation for purposes of this section. Pursuant to 38 M.R.S.A. § 13, an intentionally, knowingly, or recklessly failing to obey any lawful order of the harbormaster is a Class E Crime.

9.4. LEGAL ACTION

The Harbor Master may impose Fines as approved by the Board of Selectmen as may be appropriate to enforce any provision of this Ordinance. The Board of Selectmen, upon notice from the Harbor Master, are hereby authorized and directed to institute any and all action and proceedings, either legal and/or equitable, including seeking injunctions of violations and the collection of Fees or Fines as may be appropriate or necessary to enforce the provisions of this ordinance in the name of the Town. In any such action in which the town prevails, the town shall be awarded reasonable attorney's fees and the cost of suit in addition to any other relief to which it may be entitled.

10. APPEALS

The Board of Selectmen shall hear and decide appeals alleging error by the Harbor Master in the administration of this ordinance. The aggrieved person must make a written appeal within thirty (30) days of the date of the decision being appealed and the Board of Selectmen shall hold a public hearing within thirty (30) days from the date of receipt of the appeal. The Board may establish additional rules and procedures for such hearings. A party aggrieved by the decision of the Board may appeal it to Superior Court within thirty (30) days from the date of the original decision pursuant to Maine Rules of Civil Procedure, Rule 80B.

ROAD ACCEPTANCE POLICY

PURPOSE

The Kennebunkport Board of Selectmen hereby finds and determines that an interconnected street system is necessary in order to protect the public health, safety, and welfare in order to ensure that streets will function in an interdependent manner, to provide adequate access for emergency and service vehicles, to connect neighborhoods, to promote walking and biking, to reduce miles of travel that result in lower air emissions and wear on the roadway, and to provide continuous and comprehensible traffic routes.

I. ROAD ACCEPTANCE REQUIREMENTS:

A street may only be brought forward for a Town vote by the Board of Selectmen if it provides sufficient public benefit to justify perpetual public maintenance. A street shall be considered to provide sufficient public benefit if it meets or exceeds the public service need, pedestrian accommodation, and connectivity requirements. The following categories shall be used by the Board to classify ways proposed for acceptance:

- a. Lead to a public facility;
- b. Road connects to other streets or is a thoroughfare;
- c. Other public benefit

II. ROAD ACCEPTANCE PROCEDURE

It shall be determined early in the Planning Board approval process, whether a road or street shall be a public or private way.

1. If a proposed street is determined to be a private street, for the use of only the residents on the street, then the developer shall ensure that the Town road specifications are met as required in the subdivision regulations.
2. If a proposed street is determined to be a public street, for the use of the general public and to be maintained by the Town, the developer shall require that the road meet Town road specifications as required in the subdivision regulations, and
 - a. The road must meet the public benefit criteria established in Section II.
 - b. the developer submits the road layout and construction criteria for Town review. The Town will submit the road documentation to the Town's engineering firm and Town staff for review and recommendations.
 - c. The recommendations and request for Town acceptance will be submitted to the Board of Selectmen for review of public benefit.
 - d. Recommendations from Town Staff, Town Engineer and Board of Selectmen will be submitted to the Developer and Planning Board as part of the subdivision review process.
 - e. Once a road is approved by the Planning Board it may be scheduled for a town acceptance vote, after it is fully constructed and 75% of the lots within the subdivision have been constructed.

**EMPLOYEE WAGES AND BENEFITS REIMBURSEMENT AGREEMENT FOR
SHARED ANIMAL CONTROL OFFICER**

WHEREAS, the Town of Kennebunk and the Town of Kennebunkport desire to share the services of one Municipal Animal Control Officer (ACO); and

WHEREAS, the Town of Kennebunkport seeks to contract with the Town of Kennebunk for Kennebunk to employ the ACO and pay all necessary wages and benefits for his/her services; and

WHEREAS, Kennebunk finds it to be advantageous to employ the ACO and contract with the Town of Kennebunkport for a fair share of his/her professional services, time, expertise, and certification:

NOW, THEREFORE, be it agreed as follows:

A. KENNEBUNK AGREES:

1. The Town of Kennebunk shall employ an ACO for 40 hours per week and provide wages and benefits as provided generally for full time municipal salaried staff and in particular as provided in Attachment A hereto, which is hereby incorporated as part of this Agreement.
2. The Town of Kennebunk agrees to adjust the salary, wages and benefit package for the ACO from time-to-time in the same manner and degree as would otherwise be generally applicable to full-time employees of the Town of Kennebunk of similar professional status and training, longevity, and job performance; and to make such other compensation adjustments as may be mutually agreeable between the Town Managers of Kennebunk and Kennebunkport.
3. Kennebunk further agrees that the ACO shall devote approximately 10% of his/her work time, efforts, and attentions to the duties and responsibilities of the Animal Control and regulatory administration-related functions of the ACO office on behalf of the Town of Kennebunkport, including time spent at meetings, required appearances in court, providing information and advice to citizens and municipal officials, State agencies, vendors, and other persons with interests and activities pertaining to the Animal Control functions of the Town of Kennebunkport.

B. KENNEBUNKPORT AGREES:

1. The Town of Kennebunkport agrees to reimburse the Town of Kennebunk on a monthly basis for its fair share of the employee benefits and indirect costs paid by the Town of Kennebunk on behalf of the ACO as provided in Attachment A, hereto.
2. Kennebunkport agrees that Attachment A may be amended from time to time as provided in Section A (2) of this agreement and that Kennebunkport shall adjust its monthly reimbursement payments to the Town of Kennebunk accordingly.
3. Kennebunkport further agrees that the ACO shall devote **approximately 90%** of his/her work time, efforts, and attentions to the duties and responsibilities of Animal Control and regulatory administration related functions of the ACO office on behalf of the Town of Kennebunk, including time spent at meetings, required appearances in court, providing information and advice to citizens and municipal officials, State agencies, vendors, and other persons with interests and activities pertaining to the Animal Control functions of the Town of Kennebunk.
4. To provide, at its sole expense, either through local staffing or other outside agency back-up for the ACO for times of unavailability.
5. Dead Animal shall be counted toward the ACO response time. Large animals, such as deer, shall be handled by Kennebunkport. Road kill type animals may be included in this agreement but shall be included as hours worked. Kennebunkport may choose not to have this service included in the agreement or can delete this call-out at any time in the future.

C. BOTH TOWNS AGREE AS FOLLOWS:

1. Town of Kennebunk as Employer of ACO

Both Towns agree that the ACO shall be an employee of the Town of Kennebunk for all payroll purposes but shall act separately as the agent of each municipality in the discharge of his/her duties and responsibilities as Animal Control Officer in each Town. Each municipality shall independently qualify and appoint the ACO for the purposes of statutory and local ordinance authorization, which appointment shall be made subject to the terms of this Agreement. An appeal or any other cause of action taken under the ordinance of either town on an action or decision of the ACO acting as an agent or as ACO in that community shall not be a cause of action or basis of appeal in the other community.

2. Administrative Support

Each Town shall be individually responsible for providing office space, furniture, equipment and support, legal counsel and defense costs, mapping and publication of codes, ordinances, decisions, notices of hearings and appeal procedures. Each Town shall individually provide such additional support for mapping, computer systems, printing, mailing, and other necessary resources and functions as that Town shall deem necessary and prudent for the proper administration of the Animal Control in its community.

3. Hours of Work

Hours of work will be determined by the Town of Kennebunk, to include the allowance of vacation within the 52-week schedule. The Police Chief in each Town will track and log the hours of work in that Town.

4. Liability Insurance

Both Towns agree they will cause their insurers to communicate and determine that insurances are adequate, coordinated and leave no gaps in coverage. Each Town shall accept liability for ACO services performed within their respective jurisdiction.

5. Termination of Agreement

It is agreed that the initial term of this Agreement shall be for the period of July 1, 2018 thru December 31, 2018. At least thirty days prior to the expiration of this initial term, the Kennebunk and Kennebunkport Town Managers agree to meet to evaluate this Shared Service Agreement and determine if an extension to the initial engagement terms is desired. Either Town may terminate this Agreement by giving advance written notice to the other Town in accordance with the following schedule:

- a. If the position of ACO is vacant at the time the notice is given, written notice of termination shall be given not less than 2 weeks in advance of the effective date of the termination.
- b. If the position of ACO is not vacant at the time the notice of termination is given, written notice shall be a minimum of 21 days- in advance of the effective date of the termination.

In the event of a termination under this section, neither Town shall have any ongoing obligation to the other after the effective date of the termination. Each Town shall remain responsible for its share of costs accrued prior to the effective date of termination.

This Agreement constitutes the entire agreement between the Towns. If any clause, section, or provision is held to be invalid or unenforceable, that shall not affect the entire agreement and the two Towns agree to meet and negotiate a new clause, section, provision or agreement.

Dated this _____ day of _____, 2018.

By: _____
Laurie A. Smith, Town Manager
Town of Kennebunkport

By: _____
Michael W. Pardue, Town Manager
Town of Kennebunk

**EMPLOYEE WAGES AND BENEFITS REIMBURSEMENT AGREEMENT FOR SHARED
ANIMAL CONTROL OFFICER**

APPENDIX A

FY 2018-2019

ACO annual wage, excluding any overtime is: \$42,640

The Town's portion of her benefits is: \$17,664 per annum

Fully loaded annual wage package of \$60,304 per annum

For the discussed 6-month trial period, ACO wage package will be: \$30,152. With Kennebunk's initial estimate of needing 10% of the ACO'S time, Kennebunkport will be responsible for \$3,015 of those dollars.

It is also agreed, to estimate vehicle expenses at the rate of 75 miles weekly, reimbursed at the current prevailing IRS mileage reimbursement rate of .545 p/mile = \$40.88 p/wk. Assuming a 26-week period, vehicle expenses for Kennebunkport services are estimated at **\$1,063 (rounded)**

Wages \$3,015

Exp. \$1,063

TOTAL: \$4,078

For the period of July 1, 2018 thru December 31, 2018, Kennebunk will invoice Kennebunkport on a monthly basis in the amount of \$679.66

Town of Kennebunk
Payroll Taxes & Benefits
Police - Animal Control Officer
FY18-19

	Total FY18-19	
Salary/Wages & Stipends	42,640	100.0%
	42,640	
Health Insurance (ER's portion - includes HRA)	10,000	23.45%
FICA - 7.65%	3,262	7.65%
Retirement (401a)	2,772	6.50%
Workers Comp Insurance	1,492	3.50%
Unemployment Insurance	138	0.32%
Total Taxes & Benefits	17,664	41.4%
Total Direct Expenses (with PR Taxes & Benefits)	60,304	141.4%

Health Insurance:

Med Ins:

Monthly premium

7/1/18 - 12/31/18	862.52	4,243.60	82% Employer (assumes employee-only coverage)
1/1/19 - 6/30/19 (Estimated -> 5% increase)	905.65	4,455.78	82% Employer (assumes employee-only coverage)
7/1/18-6/30/19 Health Reimbursement Account	83.33	1,000.00	\$2,000 at 50% usage

Dental

7/1/18 - 12/31/18	43.36	130.08	50% Employer
1/1/19 - 6/30/19 (Estimated)	45.53	136.58	50% Employer

Vision

7/1/18 - 12/31/18	5.58	16.74	50% Employer
1/1/19 - 6/30/19 (Estimated)	5.86	17.58	50% Employer

10,000.36



Agenda Item Divider



2/

Date: 8/14/18

To: Laurie Smith

From: Paul J Jessel

Re: Purchase Order Effluent Pumps

If you agree with the bond fund projects please place this item on the Selectmen meeting agenda requesting their approval during the August 23rd Selectmen's meeting.

The Effluent Pumps requirements were sent to three vendors with Williamson Pump & Motor as the lowest bid. See attachments. If you agree this purchase order would total \$75,250. Williamson was the only vendor who submitted a total price to include freight. Adding Williamson freight to the other two bids Williamson is the lowest vendor.

The table below represent the current SRF Bond unexpended balance along with all projects that Wastewater determine as priority projects. At this time we are requesting a purchase orders that will be funded under the current SRW Sewer Bond Fund for the Effluent Pumps.

We are looking for approval from the Selectmen during the August 23rd Selectmen's meeting for the same so that the order can be placed immediately following.

Thank you,


Paul J Jessel

Chief Operator



25 Griffin Way, Chelsea MA 02150
 PH: 617-884-9200 FX: 617-884-3144
 WEB: www.weco-group.com

Contact

Customer Number

KEN400

Quote Date

7/30/2018

Quote

MCSXW

Quote Number

SQ109583

Quote To:

TOWN OF KENNEBUNKPORT
 PO BOX 1038
 KENNEBUNKPORT, ME 04046
 (207) 967-2245x

Ship To:

Plant Effluent Pump
 Attn: Ron Taylor
 Town of Kennebunkport WWTF
 25 R School St
 KENNEBUNKPORT, ME 04046

Ship Via

OUR TRUCK

Terms

SEE COMMENTS

Quoted By

Larry Mills

Customer RFQ

Customer PO

Product ID	Qty	Description	Sales Price		Total
PUMP	3	GICON CANNED TURBINE PUMP WITH GOULDS HYDRAULICS - LESS MOTOR (RE-USING EXISTING MOTOR) - 11CHC-2 STAGE PRODUCT LUBE BOWL ASSEMBLY COMPLETE WITH 316SS IMPELLERS, BRONZE BEARINGS, 416SS COLLETS, CAST IRON ENAMEL LINE BOWL, CAST IRON SUCTION BELL, DUAL WEAR RINGS, 304SS BOLTING, NON WITNESSED PERFORMANCE TEST, COLUMN ADAPTER PLATE, CAST IRON CL HEAD COMPLETE, 16" x 48" FABRICATED CAN W/ 8" SUCTION	19,250.00		57,750.00
MOTOR	3	40HP US 480/3PH/1800/NRR/PREM EFF/INV DUTY MOTOR	4,500.00		13,500.00
COMMENTS	0	OPTIONAL ITEMS - TNE MEC Series N-141/21 Modified Polyamine Epoxy NSF-81, two coats, 8 mils thick - Coat OD of pump, ID/OD of column, head & can - \$3200 Per Pump - Spare Impeller \$375 - 416SS Pump Shaft & LS Coupling \$325 - Bowl Bearings (2 Int, 1 Suct, 1 Disch) \$275 - Wear Rings (2 Bowl, 2 Impeller) \$500 - Collet Hammer \$650 Dedicated Truck Shipment - Adder to Fri Quoted \$1500	0.00		0.00
Comment	0	WE'LL BEAT ANY PRICE ON COMPARIBLE EQUIPMENT AND SERVICES.	0.00		0.00
Comment	0	TERMS ARE NEGOTIABLE, BUT A DEPOSIT WILL BE REQUIRED. ALL EQUIPMENT MUST BE INVOICED WHEN DELIVERED, AND EXPECTED TO BE PAID WITHIN 30 DAYS.	0.00		0.00

3% Service charge above \$5000.00 on C. C.
 We accept all major Credit Cards!
 All returns are subject to a restocking fee
 PLEASE REMIT PAYMENTS TO:
 PO BOX 8285
 CHELSEA, MA 02150

Subtotal:	71,250.00
Freight:	4,000.00
Other:	0.00
0.0000 % Sales Tax 1:	0.00
0.0000 % Sales Tax 2:	0.00
Total:	75,250.00

Thank You

Page 1 of 1

SIGNATURE: _____

DATE: _____

PO# (IF NOT ALREADY ISSUED): _____

QUOTATION

Quote From:
Hayes Pump, Inc. (01-WC)
66 Old Powder Mill Road
Concord MA 01742
US

Quote Number	Quote Date	Payment Terms	FOB
00116726	2/9/2018	NET 30 DAYS	Shipping point

Sell Loc 01

Cost PO QUOTE JDL

Mark #:

ORDER BY

RON TAYLOR
KENNEBUNKPORT SEWER DEPT
25 SCHOOL ST
PO BOX 1038
KENNEBUNKPORT ME 04046
US

SHIP TO

KENNEBUNKPORT SEWER DEPT
25 SCHOOL ST
PO BOX 1038
KENNEBUNKPORT ME 04046
US

Phone: 207-967-2245

Fax: 207-967-5372

TERMS

FOB, Shipping Point.

Freight: INCLUDED

Estimated Shipment: 6 to 10 Weeks ARO

Estimated Shipping Weight 2 100 LBS

Quotation is valid 30 days

LINE	ITEM / DESCRIPTION	QUANTITY UOM	UNIT PRICE DISCOUNT	NET UNIT PRICE EXTENDED PRICE
0010	VIC-FLTM 11CHC 2-STG (116726) GOULDS CANNED VERTICAL TURBINE PUMP Per attached configuration data sheets. Fabricated discharge head and can constructed to match existing critical dimensions. 40 HP WPI vertical hollow shaft motor for inverter duty and includes non-reverse ratchet mechanism and shaft steady bushing. Factory performance test and freight charges also included. Design Conditions 980 GPM @ 115 FT TDH @ 1770 RPM	1.00 EA	24,700.0000	24,700.0000 24,700.00
			Total Price	24,700.00

Payment terms are subject to Credit Approval.

The parties agree that this quote and any order arising from it are expressly subject to and incorporate by reference Hayes' Terms of Sale which are available at <http://hayespump.com/Terms.pdf>. Customer's acceptance of this quotation is expressly conditional on Customer's assent to such incorporated Terms of Sale

Please send a copy of your tax exempt certificate when placing your order.

Email the tax certificate to tmackenzie@hayespump.com or fax to 978-369-8461.

Sales Rep(s) Steve Thayer

Questions? Phone 978 369-8800 Josh Lapointe - jlapointe@hayespump.com Fax 978 369-8461



52 U.S. Route 1 Scarborough, ME 04074 - (800) 257-1535ph - (207) 759-1033fax



Agenda Item Divider





MEMORANDUM

To: Laurie Smith, Town Manager
Fr: Craig Sanford, Chief of Police
Re: Cruiser Purchase
Dt: August 16, 2018

The police department has completed the bid process for the purchase of a new 2019 Ford Explorer to replace the supervisor's vehicle. We sent out requests to eight dealerships in Maine and New Hampshire and received three bids back.

I am recommending we accept the bid from Arundel Ford of \$ 29,599.00. Arundel Ford was the cheapest bid. I have attached the other bids for your review.

We will also be keeping the old vehicle to add to our fleet to allow adequate transportation for the school resource officers. I expect change over costs to be between \$5,500.00 and \$6,000.00 with possible unforeseen minor costs associated with our saltwater environment. All costs should be covered by our current capital budget of \$37,000.00. Should you have any other questions, please contact me.



207-985-7171

800-889-7171

FAX 207-985-7173

1561 PORTLAND RD

U.S. ROUTE 1

ARUNDEL, ME 04046

August 7, 2018

Town of Kennebunkport

To: Chief Craig Sanford

Please find our bid for 2019 Ford Sport Utility Interceptor per the specs provided.

All Emergency lighting is red and blue

It is NOT all Blue Lighting

Price: \$29,599.00

Any questions please feel to contact me, Cell phone number is below.

Thank you for your time and consideration,

A handwritten signature in black ink that reads "Rodney Brackett".

Rodney Brackett

Fleet Manager, Arundel Ford

207-590-9019





KEY FORD OF YORK

PROUD MEMBER OF THE  Auto Group

PHONE 1-207-363-2483
FAX 1-207-363-3547

422 US Route One
P.O. Box 37
York, Maine 03909-0037
www.keyford.net

AUGUST 2, 2018
CHIEF CRAIG A SANFORD
KENNEBUNKPORT POLICE DEPARTMENT
101 MAIN STREET
KENNEBUNKPORT, ME 04046

DEAR SIR;


KEY FORD OF YORK, LLC. SUBMITS THE FOLLOWING BID

FOR ONE (1) 2019 FORD EXPLORER POLICE SEDAN.

AS QUOTED FOR THE KENNEBUNKPORT POLICE DEPARTMENT:

PRICE OF ONE (1) 2019 FORD EXPLORER SEDAN \$30,280.00

SINCERELY,


ROB BERRY

ENC: 2

DELIVERY TIME AS DICTATED BY MANUFACTURER



Rowe Ford Lincoln
91 Main Street, Westbrook, Maine, 040924791
Office: 207-854-2555
Fax: 207-845-5171

Customer Proposal

Prepared for:

Mr. Craig Sanford
Chief of Police, Kennebunkport Police

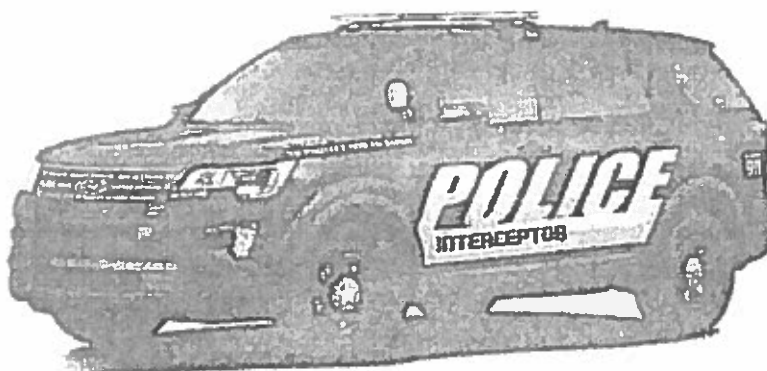
Prepared by:

Tim Caron
Office: 207-856-7493
Email: tcaron@roweford.com

Date: 08/02/2018

Vehicle: 2019 Police Interceptor Utility Base
AWD

Quote ID: kport





Rowe Ford Lincoln
91 Main Street, Westbrook, Maine, 040924791
Office: 207-854-2555
Fax: 207-845-5171

Mr. Craig Sanford
Chief of Police, Kennebunkport Police

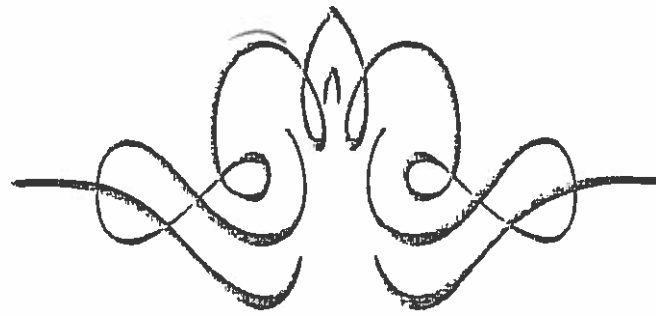
Re: Vehicle Proposal

Dear Mr. Sanford,

Thank you for the opportunity to bid on the Utility Interceptor. With your price concession Your price will be \$31,157. I enclosed specs on the vehicle.

Sincerely,

Tim Caron
Commercial Account Manager
207-856-7493
tcaron@roweford.com



Agenda Item Divider



6

MEMORANDUM

To: Laurie Smith, Town Manager
Fr: Craig Sanford, Chief of Police
Re: Furnace Replacement
Dt: August 16, 2018

The police department and public health building need to replace the heating/boiler elements in the building. The current boilers are original and are currently rotting and leaking. We were able to get through last winter but will need to make the replacement before the next heating cycle. I have obtained three bids from local contractors:

1. Jim Godbout base price \$14,900.00
2. Superior Energy Solutions base price \$13,648.54
3. Garret Pillsbury base price \$ 11,614.00

In looking at the bids as well as speaking with the contractors, I feel we would be best served by going with Garret Pillsbury of \$ 14,014.00. Their quote included an option to replace original circulator pumps as well as adding a small fin heater to prevent water pipes from freezing. This quote changes our current configuration of two boilers to just one that can supply heat to both buildings. This change will reduce operating and maintenance costs. The cost associated with the boiler replacement will come from the Picavet Trust fund balance.

Should there be questions, please feel free to contact me.



To: Kennebunkport Police Station Attn Craig Sanford

From: Garrett Pillsbury Plumbing & Heating

RE: Boiler Replacement at Station House

Date: 8/16/18

This Price includes the following:

1. Disconnect and remove the existing boilers in the main basement and in the crawlspace under the rental area
2. Install a new Viessmann CU3A-35, propane fired, floor mounted, modulating, condensing, high efficiency boiler. This boiler is sized to handle the heating loads of both areas
3. The new boiler will be direct vented through the existing hole in the wall
4. New accessories at the boiler including
 - a. Backflow preventer/ feed valve
 - b. Air scoop with hy vent
 - c. Expansion tank
5. The existing supply and return manifolds, circulator pumps, relays, and isolation/purge valves will be reused. (See Option 1)
6. We will add a new zone at the new boiler location and pipe over to the rental area to supply the baseboard there
7. We will add 16 ft of heating fin on the baseboard piping in the crawlspace to help protect the pipes from freezing
8. Gas piping connections as necessary to the new boiler
9. Condensate from the new boiler will be neutralized and pumped over to the existing sump hole
10. Connection to existing piping in boiler area
11. Wiring and set up of new system

PRICE..... 11,914.00

**Option 1: Replace the existing circulator pumps, relays, and isolation/purge valves. The existing supply and return manifolds will still be reused.
For this option add..... 2,100.00**

Tim L'Heureux
Sales
Garrett Pillsbury Plumbing & Heating
119 York Street

Jim Godbout Plumbing & Heating Inc.

P.O. Box 365

48 Elm st.

Biddeford, Maine 04005

207-283-1200 fax 207-283-2739

www.jimgodbout.com

January 26, 2018

Kennebunkport Police Department

C/O Craig Sanford

101 Main Street

Kennebunkport, Maine csanford@kennebunkportme.gov 967-2454

Gas boiler change proposal-

Remove and dispose of two Weil McClain gas boilers. One GV6 (leaking) in police dept. cellar and one GV3 located in public health crawl space.

Install Viessmann Vitocrossal CU3A-57 direct vent high efficiency condensing propane gas boiler.

http://www.viessmann-us.com/en/Residential/Products/gas/Vitocrossal_300_CU3A.html

This boiler is equipped with Viessmann matrix radiant dome burner.

This will be floor mounted in same location as existing GV6 in police department basement and side walled vented.

We shall install new board on building to vent boiler through and seal.

We shall not touch hot water which is a separate system.

Consideration should be given to a separate electric heater for Public Health area.

We shall install new #60 extrol tank and boiler feeder for system.

Install piping to existing heat piping of police department four zones without changing existing circulators and relays., we shall not touch thermostats and heat emitters.

Install additional 5th heating zone off boiler to serve Public Health area complete with new circulator, relay, valves and piping. We shall insulate the approximate 80' run of piping through police basement before it enters Public Health crawl through pass-through. We shall connect to existing Public Health piping in crawl on one zone with new thermostat and thermostat wiring---insulate new piping in crawl.

We shall not touch existing baseboard heaters.

Reinstall gas line to boiler.

System works on heating curve modulating boiler water on outside reset control.

We are responsible for all line and low voltage wiring.

Install condensate to building drain located in basement.

All work to conform to state and local codes.

Total heating system proposal as specified \$14,900.00

E HTP BLR

SES
SUPERIOR ENERGY SOLUTIONS
FOR MAINE
SESFORME.COM

Job Address
Craig Sanford
101 Main St
Kennebunkport, ME 04046-6712

Project Mngr	CIIRIS
SR #	

Qty	Description	Total
1	<p>INSTALL HTP ELITE BOILER PACKAGE</p> <ul style="list-style-type: none"> - NEW HTP ELITE PEP150LP CONDENSING BOILER - NEW CIRCULATOR CONTROL RE-WORK ELECTRICAL - NEW EXPANSION TANK - NEW WATER FEEDER - NEW AIR SEPARATOR - GAS CONNECTION - BRING ALL ELECTRICAL AND FUEL DELIVERY SYSTEM UP TO LOCAL AND STATE CODE. - ADD QUICK CARE NURSES STATION ON TO BOILER. SHUT DOWN BOILER FOR NURSES STATION AND ISOLATE GAS PIPING. BRING THERMOSTAT CONTROLS BACK TO NEW CONTROL ON NEW BOILER. - INSTALLATION OF EQUIPMENT - TEST NEW EQUIPMENT - COMMISSION NEW EQUIPMENT TO SERVICE <p>CLEAN UP AND REMOVE ALL OLD EQUIPMENT</p> <ul style="list-style-type: none"> - REMOVE AND DISPOSE OF OLD BOILER, AND COMPONENTS <p>- FOR WARRANTY SPECIFIC TO HTP BOILERS SEE THE LIMITED WARRANTY FOR HTP BOILERS.</p> <p>Sales Tax</p>	<p>12,937.00</p> <p>711.54</p>

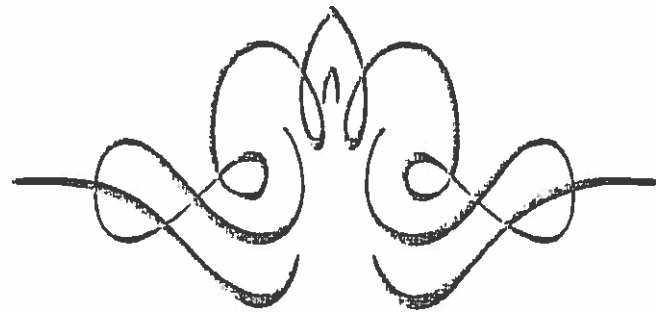
Total	\$13,648.54
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NOTE: This estimate may be withdrawn by us if not accepted within 15 days.

Signature:

E-mail Chris@SESI-ORME.COM

REMIT ALL PAYMENTS TO
195 White Oak Hill Rd Poland, ME 04274



Agenda Item Divider





KENNEBUNKPORT WASTEWATER DEPARTMENT

Date: 8/15/18
To: Laurie Smith
From: Chris Simeoni
Re: 2009 John Deere 310J Backhoe bid acceptance

The bid period for the Town's 2009 John Deere 310J Backhoe closed today, 8/15/18, at 2:00 PM. We received a total of three bids. They are as follows:

Labbe Excavating Inc.- \$22,551.00
Whitmore Contracting- \$27,850.00
Town of Lyman- \$34,600.00

After speaking with Deputy Director Mike Claus, we would like to have consideration for acceptance of the highest bid, Town of Lyman \$34,600.00, placed on the agenda for the August 23rd Selectmen's meeting to authorize the sale of the backhoe. Attached are the three bid proposals for your review.

Thank you,
Christopher Simeoni
Christopher Simeoni
Deputy Director Public Works

Town of Kennebunkport

August 14th 2018

RE: 2009 John Deere 310J Backhoe bid

Bid from Labbe Excavating Inc

Bid for 2009 John Deere 310J Backhoe with attachments. Two backhoe buckets, one front loader bucket & one set of pallet forks.

Total bid proposal by Labbe Excavating Inc is, Twenty Two Thousand Five Hundred and Fifty One dollars and no cents - \$22,551.00

Please contact Phil Labbe @ Labbe Excavating
Cell # 207-468-7574
Office # 207-282-1426

Please note: Bid has 5% Deposit of \$1,127.55 to be deducted from bid amount if bid is won by Labbe Excavating or returned if not successful bidder.

Whitmore Contracting

16 Timber Lane

Holden, ME 04429

989-2385/356-0668

Bid for backhoe

\$27,850.⁰⁰



Town of Lyman
Select Board Office
11 So. Waterboro Road
Lyman, Me. 04002

Town of Lyman hereby submit
a bid on 2009 J.D. 310 J series
backhoe with advertised accessories
and spare knuckle rebuild kits in the
amount of Thirty Four Thousand six
hundred dollars (34,600).

Select board

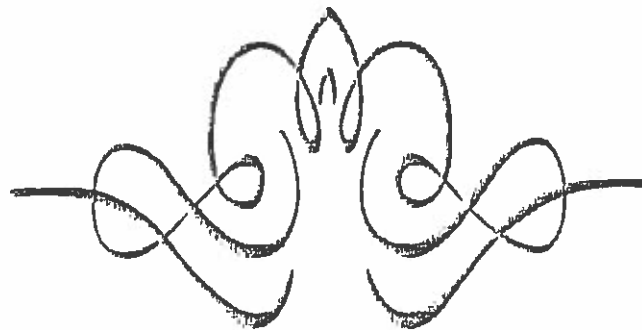
David L. Dulong

Thomas A. Guillemette

Ralph A. Blackington III



Agenda Item Divider



10

MEMORANDUM

To: Board of Selectmen

Fr: Laurie Smith, Town Manager

Re: waterfront ordinance amendments

Dt: August 20, 2018

We have one more change to the Waterfront ordinance amendments. As you know, the current amendment would require a Cape Porpoise mooring holder to be a member of the pier in good standing or a shorefront owner. It was brought to our attention from residents that they consider themselves part of "Cape Porpoise"; however, they only have "mud moorings" in Turbat's Creek, Paddy Creek, Langsford Road, and Land's End. They wanted to know whether the new amendment would impact them as well. The intent by staff was not to include those sections of Cape Porpoise, hence we have attempted to clarify that with the newest version.

WATERFRONT ORDINANCE

1. GENERAL PROVISIONS

1.1 TITLE

This ordinance shall be known as the "Waterfront Ordinance of the Town of Kennebunkport, Maine". It shall be referred to herein as the "Ordinance".

1.2 AUTHORITY

This ordinance is adopted pursuant to the authority granted by Title 38 M.R.S.A., Chapter 1, as amended, Title 30-A M.R.S.A., §§ 3001, 3007, 3009 and 4452, as amended and the Home Rule provisions of the Constitution of the State of Maine with additions and deletions.

1.3 PURPOSE

Kennebunkport's waterfront is a limited and valuable resource. The demands on this resource have been increasing for both commercial and recreational uses; therefore, this Ordinance is adopted for the following purposes:

- 1.3.1** Ensure that there will always be adequate and usable mooring space for the Kennebunkport Commercial Fishing Fleet.
- 1.3.2** Preserve the working waterfront, which includes commercial fishing, marine related businesses and recreational boating.
- 1.3.3** Provide Ordinance guidelines and authority for the Harbormaster to administer mooring space and to resolve any conflicts.
- 1.3.4** Address dangerous and unsuitable mooring placements.
- 1.3.5** Ensure consistency with the policies set by the state of Maine and the US Army Corps of Engineers.
- 1.3.6** Plan, establish and maintain the arrangement and utilization of Mooring areas, public landings, boat ramps, harbor channels and other related properties in Kennebunkport Waters.

1.4 APPLICABILITY

The provisions of this ordinance shall apply to all tidal water areas located within the municipal boundaries of Kennebunkport, Maine, with the exception of the Kennebunk River, hereinafter referred to as Kennebunkport Waters.

1.5 SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unenforceable by any Court, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

1.6 CONFLICT

Whenever any section, subsection, sentence, cause, phrase or portion of this ordinance is deemed to be in conflict with any existing state law and/or federal rule(s), then the stricter provision shall apply, unless preempted by federal law.

1.7 EFFECTIVE DATE

This ordinance shall become effective immediately upon adoption.

2. DEFINITIONS

For the purpose of interpreting this Ordinance, the following terms, phrases and words shall be defined as set forth below.

COMMERCIAL FISHERIES BUSINESS: An enterprise, as defined in Title 12 M.R.S. Section 6001(6-A), which is directly or indirectly concerned with the commercial harvest of wild or aquacultured marine organisms, whose primary source of income is derived from these activities. "Commercial fisheries business" includes, but is not limited to:

- A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;
- B. Persons providing direct services to commercial fishermen, aquaculturists or fishermen's cooperatives, as long as provision of these direct services requires the use of working waterfront property; and
- C. Municipal and private piers and wharves operated to provide waterfront access to commercial fishermen, aquaculturists or fishermen's cooperatives.

COMMERCIAL FISHING VESSEL: A vessel used in furtherance of the purposes of a commercial fisheries business, including vessels rigged to engage in the commercial harvest, processing or transport of wild or aquacultured marine organisms as well as supporting vessels such as lobster, crab and shellfish cars.

FEE: A charge for the use of Town owned waterfront facilities; all fees described herein are set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting.

FINE: A civil penalty for a violation of this Ordinance; all fines are set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting.

HARBOR MASTER: A person appointed pursuant to Title 38 M.R.S.A. § 1 and this Ordinance; all references to the Harbor Master shall include any Deputy Harbor Master.

KENNEBUNKPORT WATERS: Has the meaning defined by Section 1.4.

MOORING: The Means of securing a vessel to a particular location in Kennebunkport Waters, other than temporarily by anchor for a period of no more than 72 hours. Dock, pier, wharf or float tie-ups are not moorings. There are three classes of moorings, Commercial, Recreational and Transient, which are defined below.

Commercial: A Mooring issued to and utilized by a Commercial Fisheries Business for the purpose of mooring a Commercial Fishing Vessel. In Cape Porpoise, the mooring permit holder must either be a Cape Porpoise Pier member in good standing or a shorefront owner. This excludes moorings in Paddy Creek, Turbats Creek, Land's End and Langsford Road, as noted by their mooring designation.

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Recreational: A Mooring other than a commercial mooring that is permitted for the purpose of mooring a specific Vessel. In Cape Porpoise, the mooring permit holder must either be a Cape Porpoise Pier member in good standing or a shorefront owner. This excludes moorings in Paddy Creek, Turbats Creek, Land's End and Langsford Road, as noted by their mooring designation.

Transient: A Mooring set aside for temporary (7 days or less) use by Vessels cruising along the coast.

MOORING PERMIT: An annual permit that is issued by the Harbor Master to a Mooring Permittee, authorizing the placement of a specific class of Mooring at a specific Mooring Site and which expires on May 31 of the year following its issue.

MOORING PERMITTEE: A person granted a Mooring Permit.

MOORING PERMIT WAITING LIST: A list of persons desiring a Mooring Permit as described in Section 4.3.2.

MOORING RELOCATION WAITING LIST: A list of Mooring Permittees desiring relocation of a Mooring Site as described in Section 4.3.2.

MOORING SITE: A specific location assigned by the Kennebunkport Harbor Master for placement of a Mooring, defined by GPS coordinates where practicable.

PERSON: An individual, a corporation, a firm, partnership, an association or any other entity.

SHIP CHANNELS: Ship channels as described herein and depicted on the NOAA nautical chart and other such channels designated by the Harbor Master which shall be

kept open for the passage of watercraft. These channels are maintained by the US Army Corps of Engineers and are depicted on the Corps Condition Survey for Cape Porpoise and the Kennebunk River.

SHOREFRONT OWNER: A person who owns Kennebunkport shorefront property with a minimum 100 feet of shore frontage on Kennebunkport Waters who can demonstrate that a Mooring Site fronting their property is both practicable and safe.

VESSEL: Any type of watercraft, including a ship, boat, barge, float or craft, other than a seaplane, used or capable of being used as a means of transportation on water. For purposes of this Ordinance, floating docks including commercial work floats and lobster, crab and shellfish cars are vessels.

VESSEL OWNER: The person who can demonstrate the controlling interest in a Vessel and who is named on the boat registration or the person identified as the managing owner on the U.S.C.G. Certificate of Documentation.

3. HARBOR MASTER

3.1 APPOINTMENT AND COMPENSATION

Pursuant to the Kennebunkport Administrative Code, Article III, the Board of Selectmen shall annually appoint a Harbor Master who shall be subject to all the duties and liabilities of that office as prescribed by state law, regulations adopted by the municipal officers and municipal ordinances. Pursuant to the Kennebunkport Administrative Code, Article II, the Town Manager shall establish compensation and may remove the Harbor Master for cause after notice and hearing and appoint another instead.

3.2 POWERS AND DUTIES

3.2.1 Removal of Vessels

The Harbor Master, upon complaint from the master, owner or agent of any Vessel, shall cause any other Vessel or Vessels obstructing the free movement or safe anchorage of that Vessel to be removed to a position as designated by the Harbor Master and may, without any complaint being made, cause any Vessels anchoring within the ship channels to be removed to such anchorage as the Harbor Master may designate. If that Vessel has no crew on board or if the master or other person in charge neglects or refuses to move such Vessel as directed by the Harbor Master, the Harbor Master may put a suitable crew on board and move that Vessel to a suitable berth at a wharf or anchorage at the expense and risk of the owner(s) of the Vessel and shall charge a Vessel Removal Fee plus expenses, to be paid to the Town of Kennebunkport by the master or owner of that Vessel.

Once a Vessel has been removed by the Harbor Master the owner of record shall

be notified in writing and mailed a notice via US Mail certified return receipt. Such notice shall give the owner 30 calendar days to relocate the Vessel to a suitable location and pay a Vessel Removal Fee as set by the Board of Selectmen. Should the Vessel not be relocated within the set time period a fine of up to \$100 per day may be assessed until the Vessel is relocated. After 60 calendar days the Vessel may be declared abandoned. Abandoned Vessels may be disposed of at the direction of the Harbor Master.

3.2.2 Mooring Removal or Replacement

In case of neglect or refusal of the Mooring Permittee to remove a Mooring or to replace it by one of a different character when so directed by the Harbor Master, the Harbor Master shall cause the entire Mooring to be removed or shall make such change in the character of the Mooring as required and shall charge a Mooring Removal/Replacement Fee, plus expenses, to be paid to the Town of Kennebunkport by the Mooring Permittee for either of those services rendered. Before removing a Mooring, the Harbor Master shall notify the Mooring Permittee by first class mail, at the address on the current Mooring Application, of the action desired, the fact that the Mooring will be removed, and the amount of the Mooring Removal/Replacement Fee. If the matter is not settled to the Harbor Master's satisfaction within 14 days, the Harbor Master may take any action provided for in this section.

The Harbor Master is authorized to remove any unmarked and/or unauthorized moorings. The Harbor Master may remove the mooring immediately and shall charge a Mooring Removal Fee, plus expenses to be paid to the Town of Kennebunkport by the owner of the unmarked and/or unauthorized mooring.

3.2.3 Training

The Harbor Master shall complete training as required by Title 38 M.R.S.A. §1-A, as amended. In addition the Harbormaster shall be required to attend the annual Harbormaster training by the Maine Harbormasters Association.

4. MOORINGS

4.1 ANCHORAGES

No person shall place or allow to anchor or to lay any Vessel in any position in Kennebunkport Waters for more than 72 hours unless written permission has been granted by the Harbormaster. The Harbormaster may designate a specific area available as a general anchoring area.

4.2 DESIGNATION OF MOORING SITES

The Harbor Master shall designate Mooring Sites in accordance with Title 38 M.R.S.A., § 3, as amended. Mooring Sites shall be permitted for the sole use of the Vessel indicated on the application. Any change in the Vessel using the Mooring Site must be in accordance with this ordinance and state law and have

the written approval of the Harbor Master.

The Harbor Master shall have the authority to determine the total number of allowed moorings based on available Mooring Sites. The Harbor Master may consult with the Board of Selectmen and any other appropriate authority to determine mooring areas and their capacity. Commercial Moorings shall comprise at least 60% of the total number of Mooring Sites within Cape Porpoise Harbor. If an existing Commercial Mooring becomes available within Cape Porpoise Harbor, it may not be assigned for use as a Recreational or Transient Mooring if such assignment would cause the number of Commercial Moorings to constitute less than 60% of the total number of available mooring sites within Cape Porpoise Harbor. Mooring Sites outside of Cape Porpoise Harbor may be designated commercial, recreational, or transient at the discretion of the Harbor Master.

The Harbor Master may change the location of assigned Mooring Sites when the crowded condition of the harbor, the need to conform with Title 38 M.R.S.A., §§ 3, 7-A, or other conditions render the change desirable.

4.3 MOORING PERMIT

4.3.1 Application

Application for a Mooring Permit shall be made annually and shall contain the information set forth on the application. The applicant must demonstrate that the applicant is the Vessel Owner of the Vessel associated with the Mooring. An application will not be processed unless it is complete, the payment of required fees, including excise taxes or other taxes or charges owed to the Town of Kennebunkport, or its agent, are made prior to May 1st and there be a current Mooring Inspection Certification on file with the Harbor Master. At the time of each annual review of Mooring Permits, existing Mooring Permittees shall be given priority over other applications for a Mooring.

The Harbor Master shall deny any application where incorrect information is submitted, where outstanding Kennebunkport pier use fees or fuel fees are owed to the Town, or where an applicant is not in compliance with this ordinance.

4.3.2 Waiting List

The Harbor Master shall maintain a Mooring Permit Waiting List and a Mooring Relocation Waiting List each of which shall be available for inspection at the Harbor Master's office. The operation of all waiting lists shall conform to Title 38 M.R.S.A., § 7-A as amended.

All persons desiring mooring space in Kennebunkport Waters shall place their name and the type of mooring desired on the Mooring Permit Waiting

List. All Mooring Permittees desiring a different Mooring Site shall place their names and their desired mooring location on the Mooring Relocation Waiting List. A fee may be charged to be placed on the Mooring Permit Waiting List which shall be applied against the mooring permit fee as a credit the year the mooring is placed. The Mooring Permit Waiting List will be operated on a first come first serve basis, priority being given as stated below:

1. Commercial fishing vessel owners.
2. Shorefront property owners.
3. Recreational vessel owners.
4. Transient moorings to be operated by the Town of Kennebunkport.
5. Transient moorings to be operated by any other person. The Mooring Relocation Waiting List will be operated on a first come first serve basis. The Harbor Master shall attempt to accommodate any request for a relocated Mooring Site when, in the Harbor Master's discretion, conditions do not render the relocation undesirable, and the relocation is consistent with Section 4.2.

4.3.3 To Whom Issued

A Recreational Mooring Permit shall only be issued to the Vessel Owner and a Commercial Mooring Permit shall only be issued to an officer or principal of the Commercial Fisheries Business. A Transient Mooring Permit shall be issued to the person who will maintain and operate the Transient Mooring.

4.3.4 Conversion

A Mooring shall not be converted from the class of Mooring originally permitted if such conversion would be inconsistent with Section 4.2.

4.4 MOORING IDENTIFICATION

All Moorings shall have the number of the Mooring Permittee indicated on the float or buoy above the water line for the purposes of identification. Such number and name shall be displayed in at least three (3) inch letters and be legible at all times. Mooring buoys shall be white with a single blue horizontal band clearly visible above the water line.

4.5 PLACEMENT OF MOORINGS

No person shall place a Mooring of any type within the boundaries of Kennebunkport Waters without a Mooring Permit issued by the Town of Kennebunkport's Harbor Master.

4.6 SIZE AND CONSTRUCTION

All Moorings shall be of a suitable size and construction for the Vessel. Mushroom or pyramid anchors are recommended, unless the owner can demonstrate holding power adequate for his boat. Blocks are permitted however they may only be granite; concrete or cement blocks are not allowed. The weight of the Mooring anchor shall conform to the requirements of either the chart or formulas below. Chain size shall conform to the chart below, regardless of whether the weight conforms to the chart or formulas below.

Length of Boat (Feet)	Weight of Mooring Anchor (Pounds)	Chain Size (Minimum)
20' Or Less	500	1/2"
20' To 30'	1000	1"
30' To 40'	1500	1 1/4"
40' To 60'	2000	1 1/2"

Mooring weight: To determine the minimum weight of a mushroom or pyramid anchor, multiply the length on deck (ft.) by the beam (ft.) by 1.5. The product is the minimum mooring weight in pounds.

Example: Boat length 31 ft., beam 10 ft.
 $31 \times 10 \times 1.5 = 465$ lbs. minimum weight.
Round up to the next even mooring size.

Shallow water (restricted) moorings: are set in less than less than 6 feet of water at high tide for boats twenty (20) feet or less. Minimum Requirements shall be length x beam = anchor weight for mushroom or pyramid anchors (minimum weight 50 pounds). _____

Dead weight anchors length x beam x
 $1.5 \times 2 =$ dead weight.

4.7 INSPECTION OF MOORINGS

The Board of Selectmen shall have the authority to approve regulations to establish a program requiring the inspection of moorings.

4.8 DENIAL

The Harbor Master may deny the replacement or use of a Mooring if in the judgment of the Harbor Master, the Vessel is:

4.8.1 Structurally unsafe;

4.8.2 Emitting obnoxious fumes, oils, or any other substance detrimental to the safety or comfort of others, including any pollution of its waters, shores and flats;

4.8.3 Of inappropriate size for the Mooring; or

4.8.4 Causing damage to Town owned waterfront facilities.

4.9 NON-USE OF MOORINGS

If a Mooring Permittee fails to use the assigned Mooring Site or Mooring for the Vessel listed on the current Mooring Permit during the term (June 1 to May 31) of that permit, the Mooring Permit shall not be renewed. A Mooring Permittee may appeal such non-renewal to the Board of Selectmen pursuant to Section 10 of this Ordinance.

4.10 MOORING ASSIGNMENTS

4.10.1 There shall be no transfer of a Mooring Permit or an assigned Mooring Site and no renting of a Recreational or Commercial Mooring, except for good cause with the prior written approval of the Harbor Master and, if otherwise required by law, the Army Corps of Engineers, or as otherwise noted in this ordinance. Municipal and Commercial Transient moorings are permitted to be rented.

4.10.2 A Mooring Permittee shall promptly notify the Harbor Master of a proposed change of Vessel on a Recreational or Commercial Mooring. Such change of Vessel shall be permitted only with the prior written approval of the Harbor Master.

4.10.3 Any assigned Mooring Site used for commercial fishing purposes may be transferred only at the request or death of the Permittee, and only to a member of the Permittee's family and only if the mooring assignment will continue to be used for commercial purposes. For the purpose of this section, "member of the permittee's family" means a Permittee's parent, child, or sibling, by birth or by adoption including a relation of the half blood or an assignee's spouse.

4.10.4 As of the effective date of this Ordinance a vessel may only be assigned to a single mooring site.

5. FEES AND FINES

The Board of Selectmen shall establish and provide for the collection of Fees including but not limited to Fees for Mooring Permits and the Mooring Permit Waiting List, and may establish and provide for the collection of Fees for the inspection of moorings. The Board of Selectmen may establish and provide for the collection of Fines for violations of this Ordinance. Such Fees may be a flat amount or vary according to the size of the Vessel. Fines may be a flat amount or vary according to the infraction or violation. The Vessel Removal Fee and Mooring Removal/Replacement Fee shall be consistent with Title 38 M.R.S.A. §§ 4.5. A schedule of the Fees and Fines established under this section shall be available at the Town Office and from the Harbor Master. Fees and Fines shall be set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting. If a Fee and Fine is not paid in the prescribed time, after billing, the Mooring Permit will be void and the Mooring Site reassigned to the next eligible individual on the Mooring Permit Waiting List.

6. ABANDONMENT

No person shall cause to be abandoned any Vessel, floating device, cradle, or any other obstruction on the shore within Kennebunkport Waters. Any such object left within the confines of Kennebunkport Waters and which has been unattended for a period of ninety (90) days shall be deemed to be abandoned. The Harbor Master shall then order the last owner of any such abandoned Vessel, floating device, cradle or other obstruction, if such owner is ascertainable, to remove same within thirty (30) days. Upon refusal or failure to do so, the Harbor Master shall cause its removal or destruction at the cost of the said last ascertainable owner. Any violation of the above shall be considered a Class E crime pursuant to Title 38 M.R.S.A. § 9, and further punishable as set forth in this Ordinance.

7. POLLUTION

Except in case of emergency imperiling life or property or unavoidable accident, collision, or stranding, no person shall discharge, or suffer, or permit the discharge of sewage, garbage, trash or other refuse of any kind, by any method, means, or manner into or upon Town wharves or docks or Kennebunkport Waters.

8. RULES AND REGULATIONS

The Harbor Master shall recommend to the Board of Selectmen for adoption such rules and regulations as shall be necessary to implement the intent of this ordinance.

9. ENFORCEMENT

9.1 ENFORCEMENT BY THE HARBOR MASTER

It is the duty of the Harbor Master to enforce the provisions of this Ordinance. No person shall fail to observe any lawful order of the Harbor Master with reference to the navigation and disposition of Vessels or Moorings within Kennebunkport Waters. If, after investigation, the Harbor Master finds that any provision of this Ordinance is being violated, he or she shall give written notice delivered by hand, if the owner agrees to sign a receipt for the notice, or by certified mail, return receipt requested, to the person responsible for such violation, and/or to the owner and/or to the operator of such Vessel. The notice shall indicate the nature of the violation and order the action necessary to correct it, including discontinuance of illegal use of moorings, or work being done, removal of illegal moorings, fishing equipment and abatement of nuisance conditions. The notice shall demand that the violation be abated within some designated reasonable time. If after such notice, the violation is not abated within the time specified, the Harbor Master shall take appropriate measures to enforce this Ordinance including notifying the Selectmen of the need to institute appropriate action in the name of the Town of Kennebunkport to prevent, enjoin, restrain or abate any violation of this Ordinance. A copy of each such notice of violation shall be submitted to the Board of Selectmen and be maintained as a permanent record.

9.2 ENFORCEMENT BY LAW ENFORCEMENT OFFICERS

In addition to the Harbor Master, any law enforcement officer vested with the authority to carry a weapon and make an arrest shall have the authority to enforce the provisions of this Ordinance.

9.3 MISDEMEANOR FINES; SEPARATE VIOLATIONS

Any person who violates any provision of this Ordinance or a lawful order of the Harbor Master shall be subject to a Fine. Each day that a violation continues, without action to effect abatement after receipt of notification by the Harbor Master, shall be considered a separate violation for purposes of this section. Pursuant to 38 M.R.S.A. § 13, an intentionally, knowingly, or recklessly failing to obey any lawful order of the harbormaster is a Class E Crime.

9.4. LEGAL ACTION

The Harbor Master may impose Fines as approved by the Board of Selectmen as may be appropriate to enforce any provision of this Ordinance. The Board of Selectmen, upon notice from the Harbor Master, are hereby authorized and directed to institute any and all action and proceedings, either legal and/or equitable, including seeking injunctions of violations and the collection of Fees or Fines as may be appropriate or necessary to enforce the provisions of this ordinance in the name of the Town. In any such action in which the town prevails, the town shall be awarded reasonable attorney's fees and the cost of suit in addition to any other relief to which it may be entitled.

10. APPEALS

The Board of Selectmen shall hear and decide appeals alleging error by the Harbor Master in the administration of this ordinance. The aggrieved person must make a written appeal within thirty (30) days of the date of the decision being appealed and the Board of Selectmen shall hold a public hearing within thirty (30) days from the date of receipt of the appeal. The Board may establish additional rules and procedures for such hearings. A party aggrieved by the decision of the Board may appeal it to Superior Court within thirty (30) days from the date of the original decision pursuant to Maine Rules of Civil Procedure, Rule 80B.