

# **DRAFT**

**ORDINANCE AMENDMENT:** Review of Marine Construction

**THE CITY OF ROCKLAND HEREBY ORDAINS THAT CHAPTER 16, Site Plan And Subdivision Review, BE AMENDED AS FOLLOWS:**

**ADD:**

## **ARTICLE III Marine Construction**

### **Sec. 16-301 Purpose.**

The purpose of this Marine Construction Ordinance is to protect the public health, safety, and welfare by providing for the review and regulation of the construction of piers, wharves, floats, and other structures over waters in Rockland Harbor. The City Council finds that marine construction regulations are required so that such structures are located and constructed in such manner as to assure their suitability for the uses they are proposed to serve, their safety for persons and goods on and around them, and their compatibility with surrounding uses and rights of passage.

### **Sec.16-302 Definitions.**

1. Wharf Line: The limit beyond which permanent structures may not be erected, consisting of, where applicable, forty (40) feet from the inner perimeter of the federal channel, as shown on Wharf Line Plan of the Harbor Master adopted by Order of the City Council.

### **Sec. 16-303 Permit Required.**

No piers, wharves, bulkheads, breakwaters, marine railways, floats, pilings, dolphins, or other structure in or projecting on or over Rockland Harbor shall be installed, constructed, reconstructed, or enlarged (hereinafter, "Marine Construction") without first obtaining approval from the City of Rockland Planning Board and a permit therefor (a "Marine Construction Permit") in conformance with the standards and requirements set forth in this Article, and following Harbor Management Commission review and a public hearing.

Notwithstanding anything to the contrary herein, a Marine Construction Permit is not required for routine and emergency maintenance and repair of piers, wharves, bulkheads, breakwaters, marine railways, floats, decking or underpinning, pilings, or dolphins for which a Department of Environmental Protection and/or U.S. Army Corps of Engineers permit or license is not required. The person causing emergency maintenance or repairs shall take photographs of that maintenance or repair both before and after the completion of work. Such photographs shall be

submitted to the Harbor Master and retained in the Code Enforcement Office as a permanent record.

### **Sec. 16-304 Permit Procedure.**

1. Application. Every applicant for a Marine Construction Permit shall submit to the Code Enforcement Office a written application therefor, which shall, at minimum, include the following:

a. Evidence of submission of application for applicable state licenses, permits, and other approvals, including where applicable, a submerged lands lease from the Department of Conservation, and U.S. Army Corps of Engineers licenses, permits, and approvals.

b. A scaled plan with dimensions of the proposed project at a scale no smaller than one inch to 20 feet. This plan should show the entire parcel or a separate plan at another scale could also be submitted that shows the entire parcel. The plan shall depict, as a minimum, the following:

- (1) The length and width of the proposed project;
- (2) Height of the structures in the project above mean high water and above mean low water;
- (3) The Wharf Line, mean high water and mean low water; and
- (4) Side property lines as extended from the upland across the shores and flats.

c. Payment of the application fee, if any, established by Order of the City Council; and

d. Payment of the estimated cost to the City, when applicable, for retaining an engineer, environmental expert, and/or attorney (including the City Attorney) to assist the City in its review of the application. Any such review by consultants retained by the City shall not be a substitution for any of the applicant's required submittals. The City may not charge any applicant fees for such review that exceed the actual cost to the City for retaining third-party consultants, or the fee for City staff review, if any, established by Order of the City Council. The City shall retain applicants' pre-paid costs in an escrow account and reimburse consultants and City Departments therefrom;

2. The Code Enforcement Officer shall review the application for compliance with Subsection 16-304(1) above and the applicable requirements of the City of Rockland Code of Ordinances, and applicable codes adopted by reference therein. The Code Enforcement Officer or his designee shall make a preliminary determination that the application is complete, or incomplete. If the Code Enforcement Officer determines that the application is incomplete, he shall so advise the applicant; in the event any applicant fails to complete its application within sixty (60) days of such notice, the application shall be deemed to have been withdrawn. If the

Code Enforcement Officer finds that the application is complete, he shall submit the application and related plan, studies, and other materials to the Harbor Master for review by and an advisory opinion from, the Harbor Management Commission.

3. The Harbor Management Commission shall review the application at its next regularly-scheduled meeting, or at a special meeting called therefor, but no later than forty-five (45) days following the Code Enforcement Officer's submittal of the application to the Harbor Master. The Harbor Management Commission shall review the application for conformance with the standards set forth in Section 16-305 of this Article; shall render an advisory opinion, in writing, to the Planning Board; and shall forward the same together with the minutes of the Harbor Management Commission meeting to the Code Enforcement Officer within five business days.

4. Upon receipt of the review and comments of the Harbor Management Commission, the Planning Board shall hold a public hearing, and shall either approve, approve with conditions, or disapprove the application, in accordance with the standards set forth in Section 16-305 of this Article and – with respect to parking, traffic and circulation, impact on public infrastructure, any land development associated with the Marine Construction – with the standards set forth in Chapter 16, Article II, Section 16-204.

5. The decision of the Planning Board on an application for a Marine Construction Permit may be appealed to the Superior Court within thirty (30) days of the date of the decision and in accordance with Maine Rule of Civil Procedure 80B.

6. The applicant must submit a completed marine construction permit application as outlined in Section 4-503, together with construction documents for permanent, temporary, or seasonal structures. The Code Enforcement Officer may require that such plan(s) be signed and stamped by a professional engineer, architect, or marine architect. No Marine Construction may begin in the City of Rockland until a building permit has been issued by the Code Enforcement Officer, nor until all applicable state licenses, permits, and approvals and federal licenses, permits, and approvals and local approvals under this section have been received.

7. A Marine Construction Permit shall be void if the marine construction authorized by the permit is not completed within two years from the date of the permit issuance.

### **Sec. 16-305 Marine Construction Review Standards**

Every applicant for a Marine Construction Permit shall have the burden of establishing conformance with the following standards:

The Marine Construction will:

1. Be constructed on soils appropriate for such use, with a plan to control erosion and/or sedimentation to reduce the potential for discharge to the waters or adverse impact to the harbor bottom;

2. Be designed and constructed of durable materials and components not susceptible, due to the natural forces of water, waves and wind, to becoming dislodged in or onto surrounding waters or lands;
3. Be designed and constructed in such a form and structure as to provide, with reasonable maintenance, upkeep and repair, a safe and secure facility for proposed and reasonably foreseeable uses, both on and around the project;
4. Support or house a permitted use or approved conditional land use in the zone from which the project extends;
5. Not encroach into, interfere with, or pose a hazard to navigational channels. In no event may any element of a marine construction project extend to within forty (40) feet of an established channel;
6. Be set back at least 50 feet from structures owned by a person or entity other than the applicant or the applicant's principal, and at least 25 feet from the a line established either as a continuation of property lines of abutting parcels of land, or as the perimeter of the riparian rights of abutting land owners utilizing the Colonial Method, whichever of such lines extends closest to the project. Relief from such set back(s) may be provided where (a) the applicant and affected, abutting property owner(s) reach a mutual, written agreement for reduced setbacks; (b) the resulting project will not interfere with navigation and is consistent with the intent of this Article; and (c) such written agreement is documented with a filing on the Knox County Registry of Deeds so as to provide notice of such agreement to the public and subsequent owners;
7. Not eliminate, displace, or interfere with access to and from existing, public or private mooring or berthing areas for commercial or recreational uses. Lighting shall conform with the performance standards set forth in Ch. 2, Art. III, Subsection 19-316(C);
8. Not interfere with public access to and use of the harbor, including public rights-of-way, and existing or proposed public or private wharves, piers, landings, marinas, launching ramps, put-ins, and similar, water-dependent facilities;
9. Not extend outside of the Wharf Line;
10. Not obscure visibility, display distracting lights, or otherwise be situated, constructed or operated in a manner as to pose a hazard to navigation;
11. Not interfere with existing developed or natural beaches or sensitive vegetated areas or marine life habitat;

12. Not exceed in length or width the necessary dimensions to carry on the activity and be consistent with the character and uses of the area;
13. Has adequate provisions for vehicular loading, unloading, and parking on adjacent land owned by the applicant or his principal as may be required pursuant to Ch. 19, Art. III, Sec. 19-307 for the use(s) for which the Marine Construction is proposed, or provide for satellite parking in accordance with Subsection 19-307(6).

### **Sec. 16-306 Shoreland and Contract / Conditional Zone Permit Applications.**

The Harbor Management Commission shall participate, in an advisory capacity, in the review and approval of the following permit applications for projects to be located on Rockland Harbor outside a Waterfront Zone, as follows:

1. Types of Permits.
  - A. A pier, wharf, bulkhead, breakwater, marine railway, float, piling, dolphin, or other structure in or projecting on, over, or below the normal high water line of a saltwater body or the upland edge of a coastal wetland; and
  - B. Aquaculture Facilities.
2. Review Procedure.

The Harbor Management Commission shall review applications for the above permits in accordance with the procedure for the review of Marine Construction Permit applications set forth in this Article, and shall make an advisory recommendation to the Planning Board regarding the applicant's compliance with standards set forth in Ch. 19, Art. III, Sec. 19-304(20), Shoreland Zone Ordinance, Paragraph 15, Land Use Standards, Subparagraph E.

3. Contract or Conditional Zone Applications.

The Harbor Management Commission shall review and render an advisory recommendation for the projects identified in Section 16-306(1) that are proposed in the form of a contract zone or the conditional rezoning of land in Rockland, in the same manner as is required of the Comprehensive Planning Commission pursuant to Ch. 19, Art. III, Sec. 19-303(1), and applying the standards set forth in Section 16-305 for projects in a Waterfront Zone, and the standards set forth in Subsection 19-304(20)(15)(E) for projects in the Shoreland Zone.

Sponsor:  
Originator: Harbor Master and  
Code Enforcement Office