

Tisbury Massachusetts

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VINEYARD HAVEN HARBOR DISTRICT OF CRITICAL PLANNING CONCERN (DCPC) REGULATIONS

APPROVED AT THE SPECIAL TOWN MEETING

Tuesday, October 24, 2000

APPROVAL BY ATTORNEY GENERAL NOT REQUIRED

entered April 27, 2006

Acting on amended Article 1, the Town voted unanimously to adopt, pursuant to its authority under Ch.831 of the Acts 1977 as amended, the following Vineyard Haven Harbor District of Critical Planning Concern Regulations as approved by the Martha's Vineyard Commission on September 14, 2000.

REGULATIONS FOR VINEYARD HAVEN HARBOR DCPC #18

.00 SCOPE and AUTHORITY

(a) The Vineyard Haven Harbor District was created under the designation authority of Chapter 831 of the Acts of 1977 as amended.

(b) The provisions of this Section shall apply to the Vineyard Haven Harbor District, as defined below.

(c) All permits, construction, development and other activity connected with compliance by Tisbury (the "Town") with the Second Modified Final Judgment or other agreements with or requirements of the Commonwealth of Massachusetts concerning wastewater collection, treatment and disposal shall be specifically exempted from the provisions of this Section.

.01 PURPOSE

The purpose of these regulations is to maintain and enhance the cultural heritage and economic vitality of the Vineyard Haven Harbor and waterfront, and to protect the health, safety and well-being of Town residents and visitors. Specifically, these regulations seek to maintain the Vineyard Haven Harbor as a year-round working waterfront with facilities for loading and unloading bulk cargo; to promote the Town's longstanding tradition of marine industries, services and maritime hospitality including ship design, building, and repair, traditional sail training and sailing yacht charters, and the provision of necessary services to visiting mariners; to enhance and protect views of the harbor and pedestrian access along the waterfront by discouraging waterfront development and by maintaining the beaches in their natural, unimpeded and unimproved condition; to protect fish, shellfish and wildlife habitats and improve water quality; to provide residents with opportunities for marine recreation; and to promote harbor safety, avoid harbor congestion and prudently manage the limited navigational resources of the harbor.

.02 DEFINITIONS

(a) The "Vineyard Haven Harbor District" ("District") includes the waters and lands beginning at the northeasterly tip of the Eastville Beach Jetty, so-called, and running southeasterly along the Tisbury-Oak Bluffs Town Line to the center point of the drawbridge over the entrance to the Lagoon Pond, then southwesterly to the northeasterly corner of the sea wall along Beach Road (a.k.a. Massachusetts State Highway) and hence along a line of 90 degrees to the southeast across Beach Road to the mean low water mark of Lagoon Pond, and hence southwesterly along said mean low water line to the northeast boundary of Lot 2, Map 10-B, and hence northwesterly along said boundary to Beach Road, and hence southwesterly and then northwesterly along the center line of Beach Road to Water Street, and hence northerly along the center line of Water Street to its intersection with Lot 14, Map 7-D, and hence westerly and then northerly and then easterly along the boundary of said Lot 14, Map 7-D, and hence to the mean high water line of Vineyard Haven Harbor and hence along the shore at the mean high water mark to the intersection of the said mean high water mark and Horton Lane and hence turning south-southeasterly in a straight line across the harbor waters to the point of beginning. The District includes the sub-areas defined in the following subsections (b) through (l).

(b) The "Main Channel" is the 180 foot wide channel marked by a U.S. Coast Guard buoy/ATN system, beginning at #2 lighted red gong buoy in Nantucket Sound and running north and south the length of the Vineyard Haven Harbor to the end of Union Wharf.

(c) The "Southeast Channel" is the channel which begins east of the Main Channel adjacent to Nun Buoy 6 and curves around the eastern and southern perimeters of the Large Vessel Mooring Area to a point off the Union Wharf where it joins the Main Channel.

(d) The "Breakwater Back Channel" is the channel which begins off Union Wharf and runs around the western edge of the Inner Harbor Mooring Area, off the head of Owen Park Pier, between the main breakwater and the shore, and then continues on a east-northeast heading 500 yards.

(e) The "Lagoon Pond Entrance Channel" is the channel which connects Lagoon Pond with Vineyard Haven Harbor's Main Channel.

(f) The "Large Vessel Mooring Area" is the area east of the Main Channel and north and west of the Southeast Channel.

(g) The "Inner Harbor Mooring Area" is the area south of the main breakwater and west of the Main Channel.

(h) The "Owen Little Way Mooring Area" is the area north of the main breakwater, and west of the northern end of the Breakwater Back Channel.

(i) The "Outer Harbor West Anchorage" is the area of the harbor lying seaward of the main breakwater and east of the Breakwater back Channel, and west of the Main Channel.

(j) The "Outer Harbor East Anchorage" is the area of the harbor lying seaward of the Large Vessel Mooring Area and east of the Main Channel, excluding the Lagoon Pond Entrance Channel.

(k) The "Working Waterfront Area" is all of the land area contained within the District which lies between the Fish Pier and Union Wharf.

(l) The "West Beach Area" is all of the land area contained within the District which lies west of Union Wharf.

(m) "Owen Park Pier" is the Town-owned pier located at Owen Park.

(n) "Person" means any individual, corporation, governmental agency, business, trust, estate, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(o) A "ferry" is any vessel running on a scheduled route from a point outside the District to a point within the District which carries freight or passengers for hire.

(p) "Charter boating" means the operation of an unscheduled vessel which is carrying passengers for hire, but the term excludes "commercial launches" which are unscheduled vessels of less than 30 feet in length which carry passengers for hire between points on the shore and other vessels, or "water taxis" which are unscheduled vessels of less than 30 feet in length which carry passengers between two points on the shore. "Charter fishing" means the operation of an unscheduled vessel which is carrying passengers for hire primarily for the purpose of sportfishing.

(q) A "water-dependent use or activity" shall mean and refer to a use or activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to a water body, and which involves, as an integral part of such use or activity, the use of the water body. Without limitation of the foregoing, marinas, boatyards, dry docks, boat storage areas, waterborne passenger transportation facilities and facilities for loading and unloading bulk cargo shall be considered water-dependent uses and activities.

(r) An "accessory use" is a use associated with and necessary to accommodate a principal water-dependent use, and is integral to the function or operation of the water-dependent use or provides related goods and services primarily to persons (.02(n)) engaged in such use, and is commensurate in scale with the operation of the principal water dependent use. Without limitation of the foregoing, chandleries and sail lofts may be considered accessory uses to boatyards, and laundromats may be considered accessory uses to marinas.

(s) A "bulkhead" is a coastal engineering structure placed parallel to the shore, intended to prevent or alleviate storm damage, tidal action, wave action or erosion. For the sake of brevity, within these regulations it can also mean riprap, seawall or revetment.

(t) A "commercial purpose" shall mean operated for profit, or when used by other than the owner, the owner's family or private non-paying guests, when sited on the same premises where a business is conducted; or when used in any manner, directly or indirectly, for the promotion or advertising of a business or services.

(u) A "use of land or structures" shall mean and refer to continued or habitual utilization, occupation or employment of a particular parcel of land, with or without buildings or equipment thereon, or of a particular, permanent structure, for a specific purpose.

(v) A "water-related activity" shall mean and refer to an occasional or itinerant enterprise, action or pursuit, whether occurring on land or water, which is not dependent upon a fixed or semi-fixed location.

.03 USE OF THE CHANNELS, MOORING AREAS AND ANCHORAGES

a) Subject to the requirements of subsection .09 below, and provided they are not interfering with or impeding navigation or creating a health or safety hazard, all persons (.02(n)) may use the Main Channel, the Southeast Channel, the Breakwater Back Channel and the Lagoon Pond Entrance Channel, the Inner Mooring Area, the Large Vessel Mooring Area, the Owen Little Way Mooring Area, the Outer Harbor West Anchorage, and the Outer Harbor East Anchorage, by right for:

- i) swimming, snorkeling, scuba diving, boating and their instruction;
- ii) fishing, shellfishing, and shellfish propagation;
- iii) charter boating and charter fishing;
- iv) marine-related services to moorings, vessels, and to persons (.02(n)) aboard vessels and sales incidental to those services which are initiated from a land-based business or facility;
- v) commercial navigation with the exception of those types of commercial navigation which require a HARBOR USE PERMIT pursuant to subsection .03(b) below or which are prohibited in the District by subsection .06 below;
- vi) Coast Guard-approved Federal and State aids to navigation;
- vii) Mooring in areas designated as mooring areas; and
- viii) Anchoring in areas designated as anchorages.

b) Subject to the requirements of subsection .09 below, provided they are not interfering with or impeding navigation or creating a health or safety hazard, and provided that they have applied for and received a HARBOR USE PERMIT ("Permit") in accordance with the requirements of subsection .07 below, all persons (.02(n)) may use the Main Channel, the Southeast Channel, the Breakwater Back Channel and the Lagoon Pond Entrance Channel for:

- i) Marine biological and oceanographic research;
- ii) Freight or ferry service;
- iii) Water taxi or commercial launch service;
- iv) Seaplane or floatplane service;
- v) The sale of goods from a boat except as allowed in subsection .03 (a) (iv). when those sales are incidental to a commercial launch;
- vi) Dredging;
- vii) The laying of underwater cables;
- viii) Coast Guard approved private aids to navigation.

c) All uses or activities not specifically allowed in the Main Channel, the Southeast Channel, the Breakwater Back Channel and the Lagoon Pond Entrance Channel, the Inner Mooring Area, the Large Vessel Mooring Area, the Owen Little Way Mooring Area, the Outer Harbor West Anchorage, and the Outer Harbor East Anchorage are specifically prohibited in those areas except in the case of an emergency where the prohibited use is reasonably necessary to avert immediate danger to life or property.

.04 USE OF PIERS

Public piers used for public purposes are permitted by right. Persons (.02(n)) owning piers located within the District shall not allow them to be used for any commercial purpose unless they have applied for and received a HARBOR USE PERMIT for that specific commercial use. Every such permit application shall clearly state the amount of foot, automobile or vessel traffic or cargo for which the permit is requested, and each such permit granted shall be limited to that amount of traffic or cargo or to any other amount which the Board of Selectmen feel is appropriate to effectuate the purposes of this section. If any such specially permitted use increases beyond the amount of traffic or cargo allowed in the permit, or substantially alters its impact on the District for any reason whatsoever including without limitation the size, noise, odor, visual effect or mode of operation of the vessels involved, then the Permit holder shall be required to reapply for a new HARBOR USE PERMIT specifically incorporating the increased use or impact.

.05 USE OF THE LAND AREAS

(a) Provided they are not interfering with or impeding navigation or creating a health or safety hazard or blocking lateral pedestrian access to the waterfront, the Working Waterfront Area and the West Beach Area may be used for all private, non-commercial recreational activities.

(b) Provided they are not interfering with or impeding navigation or creating a health or safety hazard or blocking pedestrian access to the waterfront, all persons (02(n)) may by right use the West Beach Area for any purpose permitted in the Tisbury Zoning By-Laws.

(c) Provided they are reasonably preserving a pedestrian view of the water and height restrictions already in Zoning By-Laws and regulated by the Planning Board and are not interfering with or impeding navigation or creating a health or safety hazard or blocking pedestrian access to the waterfront, all persons (.02(n)) may by right use the Working Waterfront Area for any use required to be permitted by Chapter 40A of the General Laws, or for any year round water dependent use or accessory use.

(d) All uses not specifically allowed hereunder by HARBOR USE PERMIT or by right in the Working Waterfront Area or the West Beach Area are specifically prohibited, except in the case of an emergency where the prohibited use is reasonably necessary to avert immediate danger to life or property or except as otherwise permitted by Federal or State Law.

.06 PROHIBITED USES AND ACTIVITIES

The following uses and activities shall be specifically prohibited within the District except in the case of an emergency where the prohibited use is reasonably necessary to avert immediate danger to life or property:

(a) The taking on or off-loading of passengers for hire from a pier or beach, either directly or by launch, from any vessel on which gambling or games of chance are operated as a principal activity;

(b) The taking on or off-loading of passengers for hire from a pier or beach, either directly or by launch, from any motor vessel of more than 100 ft. or which is inspected to carry more than 50 persons, with the exception of traditional sailing vessels with or without auxiliary engines and of ferries operating pursuant to valid HARBOR USE PERMITS.

(c) Maneuvering a ferry of more than 150 feet in length in an arc of 180 degrees or more within the District;

(d) Disturbing any archaeological site that is older than 100 years or valued at more than \$5000 (a violation of MGL Ch. 6, s.180, and MGL Ch. 91, s. 63.)

(e) Personal watercraft rentals from a boat or a shore-based facility which is wholly or partially within the Working Waterfront Area;

(f) The construction or installation of new bulkheads from the westerly boundary of Assessors Map Parcel #9-C-12, westward to the northerly boundary of Steamship Authority property, Assessors Map Parcel #7-E-1.

(g) The construction of new private piers or the construction of additions to existing private piers, except in the Working Waterfront Area. In the Working Waterfront Area, any such construction shall require a HARBOR USE PERMIT;

(h) The construction, installation, placement or maintenance of any structure or object which blocks pedestrian passage along the waterfront in the District;

(i) Discharge of treated and untreated sewage, septage, wastewater, oil, solvents or any other materials in conformance with a Federal No Discharge Zone Designation whose discharge is prohibited by a Federally Designated No Discharge Zone.

.07 HARBOR USE PERMITS

- a) Any person (.02(n)) desiring a HARBOR USE PERMIT ("Permit") shall apply in writing to the Board of Selectmen who shall immediately transmit the application to the Harbor Management Committee for a recommendation. In the case of Permits to operate ferry service, the application must specify with particularity the proposed schedule and the equipment to be used.
- b) The Harbor Management Committee shall make a recommendation within 21 days of transmittal.
- c) If the Committee fails to make a recommendation to the Selectmen on an application for a Harbor Use Permit within 21 days, the Selectmen will proceed without the recommendation by the Committee.
- d) The Board of Selectmen shall then hold a public hearing within 30 days of receipt of application to invite comment on the Permit application, and shall carefully consider the impact of the proposed use or activities in light of the purposes of this Section.
- e) If the Board of Selectmen determines that the proposed use or activity is consistent with the purpose of this by-law and with the Vineyard Haven Harbor Plan, the Permit shall be granted subject to such conditions and time limitations as the Selectmen in their discretion may grant, and such permit shall be valid for as long as the permitted use or activity is carried on by the Permit holder.

.08 EXEMPTIONS

(a) Uses and Structures

Notwithstanding anything to the contrary contained herein, the provisions of sections .04, .05, .06 and .07 shall not apply to a use of land or structure which was lawfully in existence on August 11, 2000, as long as any such use continues without substantial change, extension or modification, and without interruption, except for customary and historical seasonal closings, nor shall said provisions apply to any structure which was lawfully in existence or for which construction was lawfully begun prior to August 11, 2000, as long as such structure continues to be used for a lawful use in accordance with these regulations, without alterations or expansion. In order to qualify for this exemption, the owner or operator of a lawfully existing use or lawfully existing or begun structure must apply to the Building Inspector within six months of the date upon which these Regulations are adopted by Town Meeting for a certificate of exempt status under these regulations, which certificate shall describe in detail the nature and extent of the use and/or structure exempted hereunder.

(b) Water-Related Activities

These Regulations shall not apply to any water-related activity which is being lawfully conducted pursuant to a permit or license duly issued by governmental authority prior to August 11, 2000, as long as such activity is conducted by the permittee or licensee as of August 11, 2000, and further provided that there is no change in the manner in which such activity is conducted except to conform with these regulations. Non-use of the permit or license for longer than nine (9) months, suspension or revocation of the license or permit, or expiration of the permit or license without renewal, shall terminate this exemption.

.09 OTHER AUTHORITIES

- (a) All uses and activities hereunder shall be subject to the Rules and Regulations issued by the Vineyard Haven Harbormaster pursuant to MGL Ch. 90B, 91 and 102.
- (b) All uses and activities hereunder shall be subject to local, State and Federal Law and to the granting of any necessary licenses and permits required by the Town, State or Federal boards or agencies, including without limitation the applicable Coast Guard regulations.

.10 ENFORCEMENT AND PENALTIES

- (a) All duly authorized enforcement officials in the Town of Tisbury may issue a citation to any person (.02(n)) who is in violation of any provision hereof. Such citation shall state the date of the violation, the provision of this Section which has been violated, and a description of the nature of the violation.
- (b) A copy of any such citation shall be served personally or by mail upon the violator.
- (c) No more than one citation per calendar day shall be issued for each violation of any single provision hereof.
- (d) A fine of not less than \$50 and not more than \$100 shall be payable to the Town of Tisbury with respect to each

violation of the provisions of this Section. In addition to any fine imposed, violation of any provision hereof by any Person (.02(n)) may be sufficient cause for the Harbormaster to refuse that Person (.02(n)) or a vessel belonging to that person (.02(n)) the use of Town-owned Harbor facilities for such a period of time as may be determined by the Harbormaster and the Board of Selectmen.

VOTED: UNANIMOUSLY IN FAVOR