



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

July 19, 2018

Laurence R. Pizer, Town Clerk
Town of Plymouth
11 Lincoln Street
Plymouth, MA 02360

Re: Plymouth Annual Town Meeting of April 7, 2018 – Case # 8829
Warrant Article # 31 (Zoning)
Warrant Articles # 27 and 28 (General)

Dear Mr. Pizer:

Articles 27 and 28 - We approve Articles 27 and 28 from the April 7, 2018, Plymouth Annual Town Meeting.

Article 31 - The Attorney General's deadline for a decision on Article 31 is extended for an additional 30 days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for a 30-day extension is attached hereto. We will issue our decision on Article 31 on or before **August 21, 2018**.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Mark R. Reich

At a legal meeting of the Annual Town Meeting of the Town of Plymouth held on 7 April 2018, the following business was transacted under Article Twenty-seven.

ARTICLE 27: To see if the Town will vote to amend the General By-Laws, Chapter 81, "HARBOR," as provided below, with strikethrough language to be deleted and bold and underlined language to be inserted:

§81-1. Definitions.

CHANNEL—A navigable route for the passage of vessels, established by customary use or under the authority of federal, state or municipal law.

VESSEL—Watercraft of every description, except a sea plane on the water, used or capable of being used as a means of transportation.

~~§81-3. Water-skiing.~~

~~Water-skiing will not be permitted in posted areas or anchorages.~~

§81-3. Harbor Safety.

- A. **Water-skiing, use of a tow behind device and swimming will not be permitted in posted areas, anchorages, mooring fields or channels. For this section, a tow behind device is defined as any object used in the towing of a person or persons by a motorboat whether the persons ride on the device or hold on to the device.**

§81-10. Mooring applications and permits.

~~C. Said applications shall be date stamped upon receipt by the Harbor Master, who shall consider permit applications in the order of their submission. The Harbor Master shall grant permits in the order of submission of the applications, provided, however. On the basis of the availability of suitable mooring space for the particular boat.~~

C. The Harbormaster shall provide a written procedure for the fair and equitable assignment of vacant or new moorings. Methods for mooring assignment which are appropriate include, but are not limited to, one or more of the following:

1. Date of mooring application;

2. Physical characteristics of vessels, e.g., size and type;

3. Purposes of vessel use, e.g., commercial vs. recreational or public vs.

private;

4. Public or private tidelands.

§81-11. Mooring specifications and Maintenance.

A. Dredged areas.

(1) Hairpins or eyes in blocks must be 25% heavier than chain specification.

Length of Boat (feet)	Cement Block or Equivalent (inches)
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16 to 20	28 x 28 x 18
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21 to 26	32 x 32 x 18
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27 to 32	36 x 36 x 20
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33 to 38	36 x 36 x 24
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39 to 42	42 x 42 x 24
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43 to 55	48 x 48 x 24
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56 and over ————— Subject to ruling by Harbor Master

(2) Chain Size.

Length of Boat (feet) ————— Diameter (inches)

16 to 20 ————— 1/2

21 to 26 ————— 1/2

27 to 32 ————— 5/8

33 to 38 ————— 5/8

39 to 42 ————— 3/4

43 to 55 ————— 7/8

56 and over ————— Subject to ruling by Harbor Master

(3) Pennant diameter.

Length of Boat (feet) ————— Nylon or Equivalent (inches)

16 to 20 ————— 1/2

21 to 26 ————— 5/8

27 to 32 ————— 3/4

33 to 38 ————— 7/8

39 to 42 ————— 1

43 to 55 ————— 1 1/4

56 and over ————— Subject to ruling by Harbor Master

(4) Scope.

(a) Length of chain for flotation buoys; ocean floor to two feet above maximum high water.

(b) Length of pennant: 1/2 length of boat measured in a straight line from extreme bow chock to stern of boat. This method of measurement shall be used with cans, balls or synthetic flotation buoys.

A. Mooring specifications shall remain in compliance with current waterway regulations and inspection standards.

§81-11. Mooring specifications and Maintenance.

B. Nondredged areas (flats).

(1) Block or mushroom.

Length of Boat (feet) ————— Cement Block or Equivalent (inches)

Up to 26 ————— 36 x 36 x 12

(2) Chain Size.

— Length of Boat (feet) ————— Diameter (inches)

— Under 16 ————— 3/8 to 1/2

— 17 to 20 ————— 1/2

— 21 to 26 ————— 1/2

(3) Pennant diameter.

— Length of Boat (feet) ————— Nylon or Equivalent (inches)

— Under 16 ————— 1/2

— 17 to 20 ————— 1/2

— 21 to 26 ————— 5/8

(4) Scope.

— Length of Boat (feet) ————— Scope (feet)

— Under 16 ————— 10

~~— 17 to 20 ————— 10~~

~~— 21 to 26 ————— 12~~

- (5) ~~Boats moored on flats at two feet below mean low level water shall have their moorings completely buried.~~

B. Owners with defective moorings shall be allowed seven days after receiving notice from the Harbormaster to correct defective conditions. If the defect is not corrected after this time, the owner will be subject to penalty in conformance with this chapter.

§81-11. Mooring specifications and Maintenance.

~~C. Special areas: moorings in channels, Hobs Hole, Saquish Head, Goose Point, Cordage Channel or equivalent tidal areas.~~

- ~~(1) Present moorings may stay at existing overall scope. If the harbor conditions in these areas become congested in the future, moorings shall be shortened in these tidal areas with chain two feet above mean high water and the length of the pennant equal to the length of the boat.~~

C. The Harbormaster shall keep a detailed description of all active mooring permits, their locus, the owner's name, home address, contact information and vessel record information.

§81-11. Mooring specifications and Maintenance.

~~D. All areas:~~

- ~~(1) The use of spars or stainless steel floats for chain flotation shall be prohibited. Only cans, balls or styrene type chain flotation shall be used. In all types of chain flotation buoys, other than metal, chain or a metal rod must be passed through the buoy connecting the mooring pennant to the mooring chain.~~
- ~~(2) All chain flotation buoys shall be plainly and clearly visible above any tide level at all times.~~
- ~~(3) The above described moorings shall be painted white with a blue band and must display the owners last name and mooring number on the can or buoy.~~
- ~~(4) All new complete moorings placed or replaced in any location in Plymouth Harbor after April 1, 1963, shall conform to the regulations and will be placed at a locus designated by the Harbor Master.~~
- ~~(5) Winter spars must be installed on all moorings. They shall be painted and identifiable at all times except during ice conditions.~~
- ~~(6) Winter spars or buoys shall not be installed prior to September 1 and must be removed by June 1.~~
- ~~(7) The Harbor Master will inspect all moorings regularly, commencing June 1 through September 1 of each year, for flotation of cans, balls or buoys and notify owners, in writing, by certified mail, if their cans, balls or buoys do not conform to this chapter.~~
- ~~(8) All pennants shall be nylon or equivalent with adequate mooring devices, approved by the Harbor Master, to eliminate the hazard of chafing.~~
- ~~(9) Owners with defective moorings shall be allowed seven days after receiving notice from the Harbor Master to correct the defective conditions. If the defect is not corrected after this time, the owner will be subject to penalty in~~

TOWN OF PLYMOUTH

DEPARTMENT OF MARINE & ENVIRONMENTAL AFFAIRS
11 LINCOLN STREET, PLYMOUTH, MA 02360
PHONE (508) 747-1620, EXTENSION 127

~~conformance with this chapter. The Harbor Master, upon finding a defective mooring, shall properly mark said mooring to show danger or obstruction.~~
(10) ~~The Harbor Master shall keep a detailed description of all moorings, their locus, the owner's name, telephone number and home and business address, date of mooring and length and rig of the boat.~~

- D. **Mooring permit holders shall be in compliance with mooring permit conditions at all times. Failure to comply may result in revocation of the permit, non-renewal of permit, penalties and or removal of the mooring at the owner's expense.**

§81-12. Violations and penalties.

- A. A fine not to exceed \$50 may be imposed for first offense infractions or disobedience of this chapter when state or federal penalties do not apply. All other fines that are applicable are defined in MGL c. 40, §21. **Each day that any violation continues shall constitute and be a separate offense.**

or to take any other action relative thereto.

DEPARTMENT OF MARINE AND ENVIRONMENTAL AFFAIRS

ARTICLE 27:

Mr. Salerno moved that the Town vote to amend the General Bylaws Chapter 81 Harbor, as found in the warrant language on pages 241-243 of the *Annual Town*

Report & Recommendations of the Advisory and Finance



ORANDUM



TO: DAVID GOULD, DIRECTOR DMEA

FROM: CHAD HUNTER, HARBORMASTER

SUBJECT: HARBOR / POND BYLAW CHANGES

DATE: FEBRUARY 7, 2018

Director Gould,

Based on a recent internal audit of the Harbor and Pond Bylaws, we would like to recommend the following changes for Spring Town meeting. Please find the recommended changes below for your review. These changes provide better definition, enhanced public safety and provide better management practices to the current bylaw.

Chapter 81 Harbor

1. Recommend adding the definitions below to provide clarity to the Harbor Bylaw.

VESSEL – Watercraft of every description, except a sea plane on the water, used or capable of being used as a means of transportation

CHANNEL – A navigable route for the passage of vessels, established by customary use or under the authority of federal, state or municipal law.

2. Recommend replacement of 81-3 with the following language. This language includes additional restrictions for waterskiing, other tow behind activities and swimming in areas of restricted visibility and boat traffic enhancing public safety.

81-3. Harbor Safety

A. Water-skiing, use of a tow behind device and swimming will not be permitted in posted areas, anchorages, mooring fields or channels. For this section, a tow behind device is defined as any object used in the towing of a person or persons by a motorboat whether the persons ride on the device or hold on to the device.

3. Recommend replacement of language to fall in line with the Massachusetts Department of Environmental Protection's 310 CMR which defines the means for fair and equitable assignment of mooring permits in Commonwealth waters.

81-10 C.

The Harbormaster shall provide a written procedure for the fair and equitable assignment of vacant or new moorings. Methods for mooring assignment which are appropriate include, but are not limited to, one or more of the following:

- 1. Date of mooring application;*
- 2. Physical characteristics of vessels, e.g., size and type;*
- 3. Purpose of vessel use, e.g., commercial vs recreational or public vs. private.*
- 4. Public or Private tidelands*

4. Recommend the replacement of this section removing the mooring specifications from the bylaw. The mooring specifications will be updated and included in local waterway regulations due to updates in mooring requirements by Army Corp of Engineers and DEP as well as advances in technology not currently recognized in the existing bylaws. Some examples not listed in the bylaw are helical moorings,

eco-friendly moorings to be used in environmentally sensitive areas and elastic rodes as a replacement for chain.

81-11. Mooring Specifications and Maintenance

- A. *Mooring specifications shall remain in compliance with current waterway regulations and inspection standards.*
- B. *Owners with defective moorings shall be allowed seven days after receiving notice from the Harbormaster to correct defective conditions. If the defect is not corrected after this time, the owner will be subject to penalty in conformance of this chapter.*
- C. *The Harbormaster shall keep a detailed description of all active mooring permits, their locus, the owner's name, home address, contact information and vessel of record information.*

- 5. Recommend replacement of language to require mooring permit holders to be in compliance with conditions of the permit. Permit conditions could include conformance to bylaws, waterway regulation, environmental concerns or weather/time of year restrictions.

81-11 D.

- E. *Mooring permit holders shall be in compliance with mooring permit conditions at all times. Failure to comply may result in revocation of the permit, non-renewal of permit, penalties and or removal of the mooring at the owner's expense.*

- 6. Recommend replacing existing language with the following:

81-12 A.

A fine not to exceed \$50 may be imposed for offense infractions or disobedience of this chapter when state or federal penalties do not apply. Each day that any violation continues shall constitute and be a separate offense.

Chapter 134 Ponds

- 1. Recommend the removal of the section below due to LEE PEARSON vs. TOWN OF PLYMOUTH which deemed the bylaw to be invalid and unenforceable.

134-4 Airplanes

LEE PEARSON vs. TOWN OF PLYMOUTH.

44 Mass. App. Ct. 741

February 17, 1998 - May 12, 1998

Plymouth County

Present: BROWN, GILLERMAN, & PORADA, JJ.

A town's by-law, approved in 1977, prohibiting the nonemergency operation of amphibious aircraft on town ponds, was inconsistent with G. L. c. 131, s. 45, as amended by St. 1980, c. 194, which provided that rules and regulations of a town regarding the use of such aircraft on great ponds "shall first be approved by the Massachusetts aeronautics commission," and accordingly the by-law was unenforceable without such approval.
[742-745]

The motion PASSED on a negative roll call with Mr. Parker voting no.

I hereby certify that there was a quorum present at the Annual Town Meeting at which this action was taken.

Witness my hand and seal of the Town of Plymouth this day, July 20, 2018.

Laurence R. Pizer
Town Clerk

At a legal meeting of the Annual Town Meeting of the Town of Plymouth held on 7 April 2018, the following business was transacted under Article Twenty-seven.

ARTICLE 27: To see if the Town will vote to amend the General By-Laws, Chapter 81, "HARBOR," as provided below, with strikethrough language to be deleted and bold and underlined language to be inserted:

§81-1. Definitions.

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VESSEL—**Watercraft of every description, except a sea plane on the water, used or capable of being used as a means of transportation.**

~~§81-3. Water skiing.~~

~~Water skiing will not be permitted in posted areas or anchorages.~~

§81-3. Harbor Safety.

- A. **Water-skiing, use of a tow behind device and swimming will not be permitted in posted areas, anchorages, mooring fields or channels. For this section, a tow behind device is defined as any object used in the towing of a person or persons by a motorboat whether the persons ride on the device or hold on to the device.**

§81-10. Mooring applications and permits.

~~C. Said applications shall be date stamped upon receipt by the Harbor Master, who shall consider permit applications in the order of their submission. The Harbor Master shall grant permits in the order of submission of the applications, provided, however, on the basis of the availability of suitable mooring space for the particular boat.~~

C. The Harbormaster shall provide a written procedure for the fair and equitable assignment of vacant or new moorings. Methods for mooring assignment which are appropriate include, but are not limited to, one or more of the following:

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private;

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§81-11. Mooring specifications and Maintenance.

A. ~~Dredged areas.~~

(1) ~~Hairpins or eyes in blocks must be 25% heavier than chain specification.~~

Length of Boat (feet)	Cement Block or Equivalent (inches)
16 to 20	28 x 28 x 18
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27 to 32	36 x 36 x 20
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39 to 42	42 x 42 x 24
43 to 55	48 x 48 x 24

56 and over Subject to ruling by Harbor Master

(2) Chain Size:

Length of Boat (feet) Diameter (inches)

16 to 20 1/2

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27 to 32 5/8

33 to 38 5/8

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(3) Pennant diameter:

Length of Boat (feet) Nylon or Equivalent (inches)

16 to 20 1/2

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(4) Scope:

(a) Length of chain for flotation buoys; ocean floor to two feet above maximum high water.

(b) Length of pennant: 1/2 length of boat measured in a straight line from extreme bow cheek to stern of boat. This method of measurement shall be used with cans, balls or synthetic flotation buoys.

A. Mooring specifications shall remain in compliance with current waterway regulations and inspection standards.

§81-11. Mooring specifications and Maintenance.

B. Nondredged areas (flats).

(1) Block or mushroom:

Length of Boat (feet) Cement Block or Equivalent (inches)

Up to 26 36 x 36 x 12

(2) Chain Size:

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B. Owners with defective moorings shall be allowed seven days after receiving notice from the Harbormaster to correct defective conditions. If the defect is not corrected after this time, the owner will be subject to penalty in conformance with this chapter.

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- (1) ~~The use of spars or stainless steel floats for chain flotation shall be prohibited. Only cans, balls or styrene type chain flotation shall be used. In all types of chain flotation buoys, other than metal, chain or a metal rod must be passed through the buoy connecting the mooring pennant to the mooring chain.~~
- (2) ~~All chain flotation buoys shall be plainly and clearly visible above any tide level at all times.~~
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DEPARTMENT OF MARINE AND ENVIRONMENTAL AFFAIRS

ARTICLE 27:

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TO: DAVID GOULD, DIRECTOR DMEA

FROM: CHAD HUNTER, HARBORMASTER

SUBJECT: HARBOR / POND BYLAW CHANGES

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4. Recommend the replacement of this section removing the mooring specifications from the bylaw. The mooring specifications will be updated and included in local waterway regulations due to updates in mooring requirements by Army Corp of Engineers and DEP as well as advances in technology not currently recognized in the existing bylaws. Some examples not listed in the bylaw are helical moorings,

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134-4 Airplanes

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44 Mass. App. Ct. 741

February 17, 1998 - May 12, 1998

Plymouth County

Present: BROWN, GILLERMAN, & PORADA, JJ.

A town's by-law, approved in 1977, prohibiting the nonemergency operation of amphibious aircraft on town ponds, was inconsistent with G. L. c. 131, s. 45, as amended by St. 1980, c. 194, which provided that rules and regulations of a town regarding the use of such aircraft on great ponds "shall first be approved by the Massachusetts aeronautics commission," and accordingly the by-law was unenforceable without such approval.
[742-745]

The motion PASSED on a negative roll call with Mr. Parker voting no.

I hereby certify that there was a quorum present at the Annual Town Meeting at which this action was taken.

Witness my hand and seal of the Town of Plymouth this day, July 20, 2018.

Laurence R. Pizer
Town Clerk

At a legal meeting of the Annual Town Meeting of the Town of Plymouth held on 7 April 2018, the following business was transacted under Article Twenty-eight.

ARTICLE 28: To see if the Town will vote to amend the General By-Laws, Chapter 134, Ponds, by deleting Section 134-4 in its entirety, which currently reads as set forth below:

§134-4. Airplanes.

No airplane adapted to land on water shall be allowed to operate from or upon any pond in Plymouth except upon an emergency basis.

or to take any other action relative thereto.

DEPARTMENT OF MARINE AND ENVIRONMENTAL AFFAIRS

ARTICLE 28:

Mr. Salerno moved that the Town vote to amend the General Bylaws by striking Section 4 of Chapter 134 Ponds – Airplanes in its entirety.

The motion PASSED unanimously.

I hereby certify that there was a quorum present at the Annual Town Meeting at which this action was taken.

Witness my hand and seal of the Town of Plymouth this day, July 20, 2018.

Laurence R. Pizer
Town Clerk

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DEPARTMENT OF MARINE AND ENVIRONMENTAL AFFAIRS

ARTICLE 28:

Mr. Salerno moved that the Town vote to amend the General Bylaws by striking Section 4 of Chapter 134 Ponds – Airplanes in its entirety.

The motion PASSED unanimously.

I hereby certify that there was a quorum present at the Annual Town Meeting at which this action was taken.

Witness my hand and seal of the Town of Plymouth this day, July 20, 2018.

Laurence R. Pizer
Town Clerk

Bylaw changes adopted by Fall Annual Town Meeting, October 21, 2017 and approved by the Attorney General of the Commonwealth

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of this posting.

Copies of the bylaws are available for examination and may be obtained at the Town Clerk's Office.