

<b>Topic:</b>	Coastal Protection; Wetlands & Watercourse Protection
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Brookhaven
<b>Year (adopted, written, etc.):</b>	1987-2001
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Brookhaven, Chapter 8: Bay and Harbor Bottoms
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### ***Abstract***

This ordinance is designed to prevent conflicts of use and provide for the safe navigation of waters within the Town. It provides definitions of those assets and land affected by the ordinance and then sets forth the different permitted uses and forbidden acts in regards to the area. In particular, a permit policy is established and punishments prescribed for the breaking of the ordinance.

### ***Resource***

Town of Brookhaven NY Bay and Harbor Bottoms

Code of the Town of Brookhaven NY  
Chapter 8: Bay and Harbor Bottoms

General Code

[http://www.e-codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=0012%2D008%2Ehtm&cn=78&n=\[1\]\[2\]\[1269\]\[1228\]\[1237\]\[990\]\[2089\]\[2092\]\[78\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D008%2Ehtm&cn=78&n=[1][2][1269][1228][1237][990][2089][2092][78])

HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987; amended in its entirety 3-17-1998 by L.L. No. 6-1998, effective 3-20-1998. Subsequent amendments noted where applicable.]

#### **§ 8-1. Legislative intent.**

The bay and harbor bottoms of the Town of Brookhaven are an important natural resource which supports a diverse assemblage of benthic fauna. The commercial and recreational harvesting of shellfish continues to provide a livelihood and a means of recreation to the residents of the Town of Brookhaven. In recent years, there has been a dramatic increase in the number of boat moorings placed on Town-owned underwater lands. The unregulated, unplanned, and uncontrolled placement of moorings has resulted in use conflicts between

the baymen, some recreational boaters and the mooring owners. By virtue of the Town of Brookhaven's ownership of the lands underwater, it is the intent of this chapter to regulate the placement of boat moorings to avoid use conflicts and provide for safe navigation and the protection of existing natural resources, public health and welfare, and to ensure that areas for water-dependent recreational activities are available to the residents of the Town of Brookhaven.

## **§ 8-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**BOAT or VESSEL** — Any watercraft or other contrivance used on or capable of being used as a means of transportation in water.

**DESIGNATED MOORING AREA** — See “mooring area.”

**DIRECTOR** — The Director of the Division of Environmental Protection.

**FLOATING HOME** — Any vessel in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation which functions substantially as a land structure while the same is moored or docked within the municipal limits of the Town of Brookhaven, whether or not such vessel is self-propelled.

**MOORING** — Any anchorage system which by design and/or construction is not capable of or is not normally retrieved when a vessel or boat leaves its anchorage, or is used to semipermanently secure in place any boat, barge, floating home, scow, raft, float, or any other vessel or floating object. A mooring includes, but is not restricted to, an anchorage system consisting of an anchor or weight attached to a length of chain and/or line secured to a mooring buoy or float.

**MOORING AREA** (also “designated mooring area”) — Any Town-owned bay or harbor bottom, or other underwater lands, so designated by the Trustees of the Freeholders and Commonalty of the Town of Brookhaven as such, where mooring may occur without a mooring permit as required by this chapter.

**MOORING PERMIT** — That form of written Town approval required to place a mooring on Town-owned underwater lands as specified under this chapter.

**MOORING TACKLE** — Any assemblage of hardware, rope, line, wire or chain which is used to attach a mooring anchor or weight to a float or buoy.

**MOUNT SINAI HARBOR MOORING AREA** — All that area of land underwater depicted by a map entitled "MOUNT SINAI HARBOR MOORING AREA" as "Mooring Areas - Permit Required" and those lands indicated on said map as "Leased and/or Licensed Underwater Lands No Public Mooring" and further described as located north of the tidal marsh islands and excluding the areas: within the navigational channel; all areas within 100 feet of the apparent low water mark of the shoreline of Mount Sinai Harbor; all areas within 100 feet of any marsh island as measured by the seaward limit of the *Spartina alterniflora* vegetation; all areas within 100 feet of any Town dock, commercial or private dock, launching ramp or Town-leased and/or -licensed underwater lands.

NAVIGATION LANES — Those channels so designated and identified on federal navigation charts and those channels in common use for local navigation and so identified by navigational buoys or markers.

PERSON — Any firm, partnership, corporation, association or individual.

PORT JEFFERSON COMPLEX MOORING AREA — All that area situate within the area 100 feet east of the main navigational channel and south of the line drawn 1,500 feet north of the existing location of the green navigational "7" buoy to a point of land located at the northernmost point of the bulkhead located at the end of Motts Hollow Road, excluding those areas within 200 feet of the apparent low water mark of any shoreline, within 500 feet of any recreational or commercial dock or pier or within 1,500 feet of the northernmost tip of the Bridgeport-Port Jefferson ferry terminal dock; all that area known as "Setauket Harbor" and located west and south of an imaginary line extending west into the harbor from the intersection of Van Brunt Manor Road and Tinker Lane in Poquott and excluding all areas within one hundred 100 feet of the apparent low water mark of the shoreline, and those areas known as "Little Bay" and "Scott's Cove."

PORT JEFFERSON HARBOR COMPLEX — The surface waters of Port Jefferson Harbor, Setauket Harbor, Lithe Bay, Conscience Bay, the Narrows and 1,500 feet north of Mount Misery extending west following the shoreline to 1,500 feet northwest of Old Field Point, also known as the "Harbor Complex." **[Added 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**

TOWN MOORING AREA — A mooring area designated by the Town Board pursuant to § 10-29D(2) of the Brookhaven Town Code, and any amendments thereto. **[Added 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**

TOWN-OWNED UNDERWATER LANDS — The bottom of any bay, creek, harbor or tidal wetland over which the tide ebbs and flows, the title to which is vested in the Trustees of the Freeholders and Commonalty of the Town of Brookhaven or in the Town of Brookhaven.

### **§ 8-3. Uses restricted.**

- A. No person shall place or cause to be placed a mooring on any underwater lands within the Town of Brookhaven without first obtaining a mooring permit from the Town of Brookhaven's Division of Environmental Protection. **[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**
- B. No person shall tie to or secure any boat, vessel, floating home, barge, scow, raft, float or any other object to any mooring which has not first received a mooring permit from the Town of Brookhaven's Division of Environmental Protection. **[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**
- C. Exceptions. The requirements of this chapter shall not be applicable to the following uses:
  - (1) Temporary mooring installed to facilitate work on projects for which a valid wetlands and waterways permit has been issued by Town of Brookhaven;

- (2) Temporary mooring installed to facilitate work on projects financed or undertaken by the government of the United States of America, the State of New York, or any political subdivision thereof, the County of Suffolk, or the Town of Brookhaven; and
- (3) Moorings located within a Town mooring area as defined in and regulated under Chapter 10 of the Town Code of the Town of Brookhaven. Moorings placed or installed within a Town mooring area shall require a mooring permit pursuant to Chapter 10 of the Town Code of the Town of Brookhaven and any amendments thereto. **[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**
- (4) Moorings located within the Port Jefferson Harbor Complex as defined and regulated under Chapter 74 of the Brookhaven Town Code. Moorings placed or installed within the Port Jefferson Harbor Complex shall require a mooring permit pursuant to Chapter 74 of the Town Code of the Town of Brookhaven, and any amendments thereto. **[Added 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**

**§ 8-4. Application for mooring permit. [Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]**

Any person proposing to place or cause to be placed a mooring upon any underwater lands within the Town of Brookhaven shall file a permit application with the Division of Environmental Protection, on such forms as promulgated by the Director and shall include:

- A. A statement of authority from the applicant for any agent making application;
- B. The exact location of the mooring placed on a navigation chart with either the longitude and latitude or distances to at least two permanent landmarks indicated;
- C. An accurate description of the mooring system to be employed indicating the type and weight of the anchor, the length of the chain, and the size and type of the mooring buoy;
- D. A notarized affidavit signed by the applicant which indemnifies and holds harmless the Town of Brookhaven from any liability claims, in such form as shall be approved by the Town Attorney;
- E. A copy of the current registration, title, and/or documentation papers of the boat or vessel if applicable;
- F. Other factual information as the Director deems necessary and/or appropriate; and
- G. Payment of a fee as otherwise required by the Code.

**§ 8-5. Granting, denying or limiting mooring permits.**

- A. In granting, denying or limiting any mooring permit, the Division of Environmental Protection shall consider: navigation, public access to water-dependent recreational activities, shellfishing and other natural resources, public health and welfare, the potential impact of the mooring on the access of the waterway by local waterfront property owners, and access to the mooring from the adjacent upland or shoreline.
- B. The Division of Environmental Protection shall give preference to those mooring applications which are:

- (1) For the sole use of a property owner lessee of nearby waterfront property; or
- (2) For sole use of residents of the Town of Brookhaven or for the sole use of a locally based property owner's association, yacht club or the like;
- (3) For proposed locations outside of certified shellfishing areas; and
- (4) For proposed locations which are outside of normal navigational lanes.

**§ 8-6. Duration of mooring season.**

After issuance of a mooring permit, moorings may be placed from March 1 through November 30. For just cause and at the discretion of the Director, mooring permits may be issued with no seasonal restrictions.

**§ 8-7. Permit expiration.**

A mooring permit shall be valid for one mooring season as defined herein.

**§ 8-8. Display of permit number.**

Any holder of a mooring permit must display the permit number, in numbers not less than three inches in height, on the buoy or float attached to the mooring tackle.

**§ 8-9. Fee.**

The Town Board shall reserve the right to require an application fee for all mooring permit applications.

**§ 8-10. Appeals of decisions regarding mooring permits.**

Any person or applicant may appeal any decision regarding a mooring permit to the Town Board of the Town of Brookhaven. Said appeal must be taken within 30 days of the denial by the Director, and made to the Town Clerk upon such forms promulgated by the Town Clerk. Any person or applicant may appeal the Town Board determination pursuant to Article 78 of the Civil Practice Law and Rules.

**§ 8-11. Penalties for offenses.**

A violation of the foregoing shall be an offense punishable by a fine of not less than \$100 and not exceeding \$250. Each violation shall be a separate and distinct offense. Each day's continued violation shall constitute a separate and additional violation.

**§ 8-12. Severability.**

The various parts, sections and clauses of this chapter are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.