

**LITTLE OSSIPEE LAKE WATER LEVEL MANAGEMENT ORDINANCE
OF THE TOWN OF WATERBORO, MAINE**

(Initial version approved July 25, 2017 and amended August 2 2017 per DEP requested edits with underlined text being added and ~~strikethrough~~ text being deleted from initial version)

This Ordinance is enacted in accordance with 30-A M.R.S.A. § 4454 and 30-A M.R.S.A. § 4455 et seq. relating to home rule authority to regulate water levels.

ARTICLE I- ESTABLISHMENT AND LEGAL AUTHORITY

ESTABLISHMENT:

This ordinance shall be known as the “Little Ossipee Lake Water Level Management Ordinance of the Town of Waterboro, Maine” and shall be referred herein as the “Ordinance”. This Ordinance shall apply only to Little Ossipee Lake and to no other body of water located in the Town of Waterboro.

LEGAL AUTHORITY

This Ordinance is adopted pursuant to Home Rule Powers as provided in Article VIII-A of the Maine Constitution and 30-A M.R.S.A. § 3001 and pursuant to 30-A M.R.S.A. §4454.

ARTICLE II-DELEGATION OF POWERS

The Board of Selectmen shall have the authority to appoint a Dam Monitor, who shall have the responsibility for operating and maintaining the Dam including the right to take any actions in the name of the Town which is necessary in order to comply with the requirements of this Ordinance, any rules or regulations promulgated under the provisions of this Ordinance or applicable provisions of State law. The Monitor’s powers shall include, but not be limited to, the authority to enter upon the land and structure to operate the machinery and equipment which is physically part of or attached to the Dam as may be necessary to operate or repair the Dam and to ensure the structural and operational integrity of the dam. The Dam Monitor will follow the same rules and regulations as the Dam Controller appointments beginning in 1996, as may be amended by the Board of Selectmen from time to time. In no event shall the Dam Monitor expend any funds or enter into any financial obligations in the discharge of his or her duties, except as expressly authorized by the appropriate vote of the Board of Selectmen or the Town Meeting.

ARTICLE III-OPERATION OF THE DAM

Unless otherwise determined under Article V of this Ordinance, the water level of Little Ossipee Lake during the summer until October 15th of each year will be maintained at six feet, six inches (6' 6") at which time the gate will be adjusted to obtain a four feet, six inches (4' 6") level until ice out in the spring.

The winter level will be lowered another foot to the 3'6" level every five (5) years starting with the year 2000 to allow shoreline repairs. On these years, the lowering will start October 1st. On the following January 1st, the gate will be adjusted to obtain the four feet, six inches (4' 6") level until ice out in the spring.

ARTICLE IV-RULES AND REGULATIONS

The Board of Selectmen may adopt rules and regulations governing the operation and use of the Dam.

ARTICLE V-HEARINGS

1. **Subject matter of hearing; persons who may seek hearing.** Any municipality located downstream of the impoundment area, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources or the Commissioner of the Department of Environmental Protection shall have the right to petition the Town for an adjudicatory hearing. A petition may also be submitted by the lesser of at least 25% or 50 of the littoral or riparian property owners. In the event that such a petition is received, the Board of Selectmen shall appoint a board of five members, all of them being registered voter residents of Waterboro to serve as the adjudicatory hearing board. The ~~Board of Selectmen adjudicatory hearing board~~ should include, if available, an Ossipee Lake Association member. At the hearing, the adjudicatory hearing board shall solicit and receive testimony for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. Testimony must be limited to:

- a. The water levels necessary to maintain the public rights of access to and uses of the water for navigation, fishing, fowling, recreation and other public uses;
- b. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public;
- c. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality;
- d. The water levels necessary to prevent the excessive erosion of shoreline;
- e. The water levels necessary to accommodate precipitation and run off of waters;
- f. The water levels necessary to maintain public and private water supplies;

g. The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydro mechanical power; and

h. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water.

Notwithstanding the provisions of this Article, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to [this Article 3V](#), the Town is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the Lake in response to a petition from littoral or riparian proprietors unless the adjudicatory hearing board determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in this Section since the order was issued.

2. **Notice of hearing.** Notice of any hearing under this Ordinance shall be given by mail to the person filing the petition for hearing and the Commissioner of the Department of Environmental Protection, if not the petitioner, at least fourteen (14) days in advance of the hearing. In addition, the Town shall cause notice of the hearing to be published in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing and to be posted in the Town Office at least seven (7) days prior to the hearing. Failure of a person to receive notice that was mailed shall not require a new hearing. The notice shall include the name of the petitioner, the date, time and place of the hearing, a statement that the hearing will be held under the provisions of this Ordinance, and a brief description of the action sought by the petitioner.

3. **Hearing procedures.**

The [adjudicatory](#) hearing board shall conduct hearings under this Ordinance according to the following procedures:

a. The chair of the [adjudicatory](#) hearing board, who will be designated by the Board of Selectmen at the time of appointment, shall preside over a hearing under this Ordinance, after notice has been given as required by Section 2 of this ~~Ordinance Article~~.

b. A quorum of the [adjudicatory hearing](#) board required to conduct a hearing under this Ordinance shall consist of three (3) [adjudicatory hearing B](#)board members. Any decision will be made by a majority of those [adjudicatory hearing board](#) members present and voting on any issue brought to hearing under this Ordinance.

c. The Town Clerk or his/her designee shall serve as secretary to the [adjudicatory](#) hearing board for purposes of any hearing under this Ordinance. The secretary shall maintain a permanent record of all [adjudicatory hearing](#) board hearings, including all evidence or other written materials submitted during the hearing. All records maintained or prepared by the

secretary are public records that shall be filed in the Town Clerk's Office and may be inspected at reasonable times.

d. The adjudicatory hearing board may adopt rules for the conduct of a hearing under this Ordinance, which rules shall be recorded by the secretary. The chair shall have the authority to waive any rule for good cause shown.

e. The adjudicatory hearing board may receive any oral and/or documentary evidence pertaining to a matter before it but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Each party shall have the right to present its case or defense by oral and/or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of facts. The Town Administrator may represent the Town at any hearing or may designate any other Town employee, contractor or agent to represent the Town where such representation is determined to be necessary.

f. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in any appeal or variance proceeding, shall constitute the record. All decisions by the adjudicatory hearing board shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor.

g. The secretary shall prepare a written order based upon the decision of the adjudicatory hearing board. The order shall establish a water level regime for the water body and, if applicable, minimum flow requirements for the dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in section 1 of this Article.

h. The secretary shall post a copy of the order in Town Hall, shall mail a copy to the Commissioner of the Department of Environmental Protection and to each petitioner, if any, and shall file a copy of the order in the York County Registry of Deeds.

ARTICLE VI-FEES

The Board of Selectmen may establish by order a fee for adjudicatory hearings under this Ordinance.

ARTICLE VII-APPEAL

Any decision made by the adjudicatory hearing board after an adjudicatory hearing held under this Ordinance may be appealed by the petitioner or the DEP to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

ARTICLE VIII-ENFORCEMENT

The Commissioner of the Department of Environmental Protection or any littoral or riparian proprietor may commence an action to enjoin the violation of any provision of this Ordinance. The Commissioner of the Department of Environmental Protection may enforce any order issued under Article V of this Ordinance by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

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The violation of any order issued under Article V of this Ordinance, is punishable by a forfeiture of not less than \$100 and not more than \$10,000. Each day of violation is considered a separate offense.

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ARTICLE IX-EFFECTIVE DATE

This Ordinance or any subsequent amendment thereto shall not become effective until approved by the Commissioner of the Environmental Protection, as required by 30-A M.R.S.A. § 4455.