

**CHAPTER 413
TOWN OF SCARBOROUGH
GROWTH MANAGEMENT ORDINANCE
Repealed and Replaced XX, XX, 2021
Effective July 1, 2021**

**Potential Amendments per correspondence with John Cloutier
added in blue print below**

1. TITLE

This ordinance shall be known as the “Growth Management Ordinance of the Town of Scarborough, Maine” and shall be referred to herein as the “Ordinance.”

2. LEGAL AUTHORITY

This Ordinance is adopted pursuant to the home rule powers as provided for in VIII-A of the Maine Constitution and 30-A M.R.S.A. § 3001, 30-A M.R.S.A. § 4323, and 30-A M.R.S.A. §4360.

3. PURPOSE

The purpose of this Ordinance is to protect the health, safety and general welfare of the residents of Scarborough through placing reasonable and appropriate limitations on residential development in accordance with the Comprehensive Plan, more specifically:

- a. to provide for the immediate housing needs of the existing residents of the Town of Scarborough.
- b. to ensure fairness in the allocation of building permits.
- c. to plan for continued residential population growth in Scarborough which will be not limited to, education, public safety, transportation infrastructure, waste disposal and health services.
- d. to avoid circumstances in which the rapid development of new residences potentially housing many families with school age children, would outpace the Town’s capability to expand its schools and other necessary services soon enough to avoid serious school overcrowding and a significant reduction in the level and quality of other municipal services.

4. DEFINITIONS

Terms not specifically defined in this Ordinance shall have the same meaning as in the Zoning Ordinance.

- A. Affordable housing: A dwelling unit that may be purchased or leased by a household with low or moderate income. As used in this ordinance, the term “affordable housing” has the same meaning as in the Zoning Ordinance.
- B. Building permit: A permit issued by the Building Inspector pursuant to Section IV(D) of the Zoning Ordinance.
- C. Code Enforcement Officer: The Town of Scarborough Code Enforcement Officer, an assistant code enforcement officer or an authorized agent of either.
- D. Comprehensive Plan: The adopted Comprehensive Plan of the Town of Scarborough.
- E. Common Scheme of Development: Common scheme of development means a plan or process of development which:
 - (1) Takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity and timeframe; and
 - (2) A project reviewed in common through:

- (a) the town's Planned Development, Large Scale Planned Development, Subdivision, Site Plan, or Unified Ownership processes; or
 - (b) a permitting process of a State or Federal agency;
- and,
- (3) Exhibits characteristics of a unified approach, method, or effect such as:
 - (a) unified ownership, management, or supervision;
 - (b) sharing of common equipment or labor; or
 - (c) common financing.
- F. Dwelling unit: A dwelling unit as defined in the Scarborough Zoning Ordinance.
 - G. Family gift lot: A lot which is not within a subdivision and which has been created by a gift from a parent to a child (including an adopted child or stepchild) or from a child to a parent (including an adoptive parent or stepparent).
 - H. Gift: The conveyance of property for which the grantor receives no money, property or any other value as consideration for the conveyance.
 - I. Growth permit: A permit, issued in accordance with the provisions of this Ordinance, which allows the issuance of a building permit for the construction, creation or placement of one new dwelling unit within the Town of Scarborough.
 - J. Multifamily: A building designed and/or used for residential occupancy by three (3) or more families living independently in three (3) or more dwelling units.
 - K. Subdivision: A subdivision as defined in 30-A M.R.S.A. § 4401, as such may be amended from time to time, and approved by the Scarborough Planning Board pursuant to the Town of Scarborough Subdivision Ordinance.
 - L. Zoning ordinance: The Zoning Ordinance of the Town of Scarborough, Maine, as such may be amended from time to time.

5. APPLICABILITY

This Ordinance shall apply to the construction, creation, or placement of any new dwelling unit within the Town of Scarborough.

6. EXEMPTIONS

The dwelling units described below are exempt from the requirements of this Ordinance and shall not require a growth permit:

- a) the repair, replacement, reconstruction or alteration of an existing dwelling unit.
- b) a dwelling unit on a family gift lot, provided that no person may obtain more than one building permit pursuant to this exemption during the time this ordinance is in effect.
- c) a dwelling unit that is part of a contract zone in which the provisions of the contract zone agreement if the terms of the contract zone contain an exemption from the provisions of this Ordinance.
- d) a dwelling unit that qualifies as affordable housing under the Town's Zoning Ordinance.
- e) a dwelling unit that is part of an approved multifamily building and contains not more than one (1) bedroom and not more than seven hundred fifty (750) square feet of living space.
- f) ~~the~~ the dwelling unit has been deemed exempt by action of Town Council in accordance with Section 7(F) below.
- g) ~~all multi-family~~ dwelling units with 2 or fewer bedrooms and <1200 square feet that are in the Crossroads Planned Development District within subdivisions that have been approved by the Planning Board as of the effective date of this ordinance, this exemption ~~to expire on is repealed~~ December 31, 2021.

- h) if there are no growth permits available from the annual allocation, the Code Enforcement Officer may issue up to five (5) building permits each calendar year for detached single family dwellings located on lots that are not part of a subdivision.
- i) a dwelling unit within a manufactured housing community and/or mobile home park licensed by the Town of Scarborough.

The Code Enforcement Officer is responsible for determining if a dwelling unit qualifies as exempt.

7. ADMINISTRATION

- A. The creation of each new dwelling unit shall require one (1) growth permit.
- B. The number of growth permits allocated annually and the process for the issuance of growth permits from this annual allocation are set forth in subsections C, D, and E.
- C. Annual allocation of growth permits per calendar year.
 - 1) Commencing on January 1, 2022, the maximum number of growth permits annually issued between January 1st and December 31st shall be ~~one hundred thirty-five (135)~~ one hundred and forty-four (144). Any growth permits that are not issued in the calendar year shall expire and shall not be carried forward to the next year.
 - a) ~~Notwithstanding any other provision in this Ordinance to the contrary, if there are no growth permits available from the annual allocation, the Code Enforcement Officer may issue up to five (5) additional growth building permits each calendar year for detached single family dwellings located on lots that are not part of a subdivision. Five (5) additional growth permits may be issued by the Code Enforcement Officer under this exemption for detached single family dwellings located on lots that are not party of a subdivision from 7/1/2021 to 12/31/2021.~~
 - 2) During each calendar year, no more than thirty (30) growth permits shall be issued from the annual allocation for dwelling units located in the Rural Residence and Farming District R-F and the Rural Residence, Farming, and Manufactured Housing District R-F-M west of the Maine Turnpike in the area designated as a Limited Growth Area in the Comprehensive Plan.
 - a) During a calendar year not more than eighty-five (85) growth permits may be issued for single family homes
 - 3) During each calendar year, no more than twenty percent (20%) of the growth permits available from the annual allocation shall be issued to a common scheme of development.
- D. Application procedure for growth permits.
 - 1) A growth permit application shall be submitted together with a completed building permit application to the Code Enforcement Officer either by mail or during normal business hours.
 - 2) ~~The Growth Permit application shall be accompanied by a nonrefundable administrative fee as specified in the Town of Scarborough Schedule of License, Permit, and Application Fees.~~
 - 3) The applications shall be reviewed in the order in which they were received. Only complete applications will be accepted.
 - 4) A growth permit application is required for each dwelling unit, although multiple growth permits may be requested on a single application.
- E. Issuance procedure for growth permits from the annual allocation.
 - 1) Growth permits shall be issued on a first-come, first-served basis according to the dates and times the applications are accepted as complete by the Code Enforcement Officer under Section 7(D)(3) above.
 - 2) If all available permits are issued during a calendar year, not more permits may be issued

and no applications accepted until such time as permits become available.

F. Town Council Exemptions.

A property owner or his/her representative may request that the Town Council exempt a dwelling unit(s) from the requirements of this Ordinance. Exemptions under this subsection shall require the affirmative vote of at least two thirds of the Town Council members present and voting, but in no event less than four, based on the following criteria:

- 1) The dwelling unit is located within the Town's designated growth areas, as defined by the adopted Comprehensive Plan;
- 2) The dwelling unit is part of a mixed-use or multifamily development; and
- 3) The dwelling units will promote the general welfare of the residents of Scarborough, is in the public interest and will have beneficial impacts on the Town as a whole. Factors for the Council to apply in making a determination of whether a dwelling unit(s) meets this criteria are set forth in Appendix A of the Zoning Ordinance.

G. Transferability.

Growth permits are issued only for the specific lot identified in the growth permit application. A growth permit may be transferred to a new owner of the lot, provided notice of the transfer of ownership is given in writing to the Code Enforcement Officer before the growth permit is replaced by a building permit. Transfer of ownership does not change the date of issuance or the ranking of an issued growth permit. An application for a growth permit is not transferable.

H. Expiration

A Growth Permit shall expire with the building permit.

8. PERIODIC REVIEW OF ORDINANCE

The Town Council shall conduct a periodic review of this Ordinance, but at least every three (3) years, to evaluate whether the rate of residential growth remains consistent with the Town's ability to absorb the growth, and shall determine whether the number of growth permits available under this Ordinance should be adjusted by amendment to this Ordinance. ~~The Town Council shall conduct a review at least once every three (3) years.~~ During its review the Council shall set the number of growth permits at 105% or more of the mean number of growth permits issued during the ten (10) years immediately prior to the year in which the number is calculated. The Town Council may seek assistance or advice from the Planning Board in connection with such review. This section does not limit the Council's authority to review and/or amend the Ordinance at any other time.

9. VIOLATION, PENALTIES AND ENFORCEMENT

Any person who constructs, creates or places a dwelling unit within the Town of Scarborough without a growth permit required by this Ordinance or who owns or occupies a dwelling unit constructed, created or placed within the Town of Scarborough without a growth permit required by this Ordinance commits a civil violation and is subject to the fines, penalties and remedies provided in 30-A M.R.S.A. § 4452. Each day a violation continues to exist after notice of the violation constitutes a separate violation. This Ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer in the manner provided for enforcement of violations of the Zoning Ordinance under Section IV, subsections (A) and (B) of the Zoning Ordinance.

10. APPEALS

Any decision under the provisions of this Ordinance may be appealed to Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. Any decisions under the provisions of this Ordinance are not appealable to the Scarborough Board of Appeals.

11. SEVERABILITY.

If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of this ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

12. EFFECTIVE DATE and TRANSITION PROVISIONS.

This Ordinance is effective as of July 1, 2021. Any growth permits issued prior to July 1, 2021, shall be governed by the Growth Management Ordinance provisions in effect prior to July 1, 2021.

- a) Applications for growth permits that were accepted under the Growth Management Ordinance provisions in effect prior to July 1, 2021 that are pending at the time of adoption of this Ordinance shall have access to the growth permits available pursuant to this Ordinance, if necessary. Notwithstanding any provision in this Ordinance to the contrary, growth permits issued under this subsection to applications accepted under the prior Ordinance shall have 90 days to convert their growth permit to a building permit from the date of issuance. Any such application under this subsection that is unable to obtain a growth permit in calendar year 2021 remains eligible for a growth permit in calendar year 2022 if the application is deemed complete under the provisions of this Ordinance prior to December 31, 2021.
- b) ~~Be it further ordained, that~~ †The Annual Allocation of Growth Permits for the period July 1, 2021, thru December 31, 2021, shall be set equal to 50.