# AGENDA

# ORDINANCE COMMITTEE

**Thursday, March 15, 2018**
**4:30 p.m.**
**Council Chamber A**

**Item 1.** Call to order.

**Item 2.** Attendance.

**Item 3.** Approval of Minutes: November 2, 2017.

**Item 4**. Discussion on possible Odor Ordinance.

**Item 5**. Discussion on Senior Property Tax Relief Program.

**Item 6**. Discussion on Mooring Ordinance.

**Item 7**. Discussion on Affordable rents.

**Item 8.** Identification of next agenda items.

**Item 9.** Adjournment.

BE IT HEREBY ORDAINED by the Ordinance Committee of the Town of Scarborough, Maine, in Ordinance Committee assembled, that Chapter 616 – the Town of Scarborough Good Neighbor Ordinance, is amended as follows:

**TOWN OF SCARBOROUGH**
**Good Neighbor Ordinance**

## 1. PURPOSE.

The Scarborough Town Council recognizes certain basic standards that allow residents to enjoy their homes and property, preserve peace and quiet in our neighborhoods, help maintain property values and prevent disputes among neighbors. The purpose of this ordinance is to promote these standards and allow for enforcement of violations.

## 2. CREATION OF NOISE NUISANCES

**(a.)** **Purpose.** The Scarborough Town Council finds that excessive noise on the public ways may cause distraction to other drivers and preclude the safe operation of motor vehicles to the detriment of the health, welfare and safety of Scarborough's citizens. Accordingly, it is the policy of the Town of Scarborough to prohibit unnecessary, excessive, annoying and distracting noise on the public right-of-way within the Town of Scarborough. The Town Council also finds that people have a right to the peaceful enjoyment of their property and that excessive or continuous noise may limit that enjoyment. Accordingly, it is the policy of the Town of Scarborough to discourage the creation of unnecessary and unpleasant noise when such noise negatively affects surrounding residents.

**(b.)** **Definitions.** For the purpose of this article, the following words and phrases shall have the following meanings:

*Town* means the Town of Scarborough, Maine.

*Noise-creating devices* means any electrical, mechanical or chemical device or instrument, or combination thereof that creates noise during its operation by a person.

*Motorcycle* means an unenclosed motor vehicle, having a saddle for the use of the operator, with two or three wheels in contact with the ground, including, but not limited to, motor-scooters and mini-bikes.

*Operation* means actual control by a person.

*Public right-of-way* means any street, roadway, alley, sidewalk, or other area deeded or dedicated for public travel or transportation purposes.

*Straight pipe exhaust system* means any straight through muffler that does not contain baffles, including, but not limited to, glass packs, steel packs and straight pipes.

**A. Noise Upon Public Right-of-Way.**

**(1.) Creation of Certain Noises upon Public Right-of-Way Prohibited.**

**(a.)** No person, while occupying any public right-of-way in the Town, shall operate any noise-creating device in such a manner that the public's attention is drawn to the source of the noise.

**(b.)** The prohibition of this section shall include, but not be limited to, the following activity or conduct:

i. Discharging fireworks or any exploding device,
ii. Firing a starter pistol, air gun, BB gun or a firearm,
iii. Sounding a bell or whistle for so extended a period of time as to cause annoyance to others,
iv. Rapid throttle advance and/or revving of an internal combustion engine resulting in increased noise from the engine,
v. Operations of a motor vehicle, as defined in 29-A M.R.S.A. §101 (42), including but not limited to a motorcycle, with a straight pipe exhaust system, an exhaust system with a cutout, bypass or similar device or an exhaust system that does not meet the requirements of Maine law, including, but not limited to, 29-A M.R.S.A §1912.

**(2.) Exceptions.** The provisions of this section shall not apply to the following activity or conduct:

(a.) Expression or communication protected by the United State's Constitution, including the First Amendment, or the Maine Constitution.
(b.) Any activity or conduct the regulation of which has been preempted by Maine Statute.
(c.) Any noise created by a governmental entity in the performance of an official duty.
(d.) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit.
(e.) The sounding of any signaling device permitted by law.

**(3.) Engine Brake**. A person operating a motor vehicle in the Town of Scarborough shall not use an unmuffled engine brake to slow the vehicle except in an emergency situation for the purpose of avoiding a collision with a vehicle, object, person or animal. As used in this section, "engine brake" means a device that retards the motion of a motor vehicle by using the compression of the engine of the motor vehicle and "unmuffled" means that the engine brake is not equipped with a muffler which complies with the requirements of 29-A M.R.S.A. section 1912. This section does not apply to emergency response vehicles operated by a governmental entity or licensed provider of emergency medical services.

**B. Noise Abatement.**

**(1.) Loud, offensive noises prohibited.**

No person shall make, continue, or cause to be made or continued any loud, boisterous, unnecessary or unusual noises which shall annoy, disturb, injure, or endanger the comfort, repose, health, peace, or safety of others.

**(2.) Definitions.**

For the purpose of this article, the following words and phrases shall have the following meanings:

*Daytime hours* means the hours between 7:00 a.m. and 9:00 p.m. Monday through Thursday; between 7:00 a.m. and 10 p.m. Friday through Saturday; and between 9:00 a.m. and 9:00 p.m. on Sunday.

*Domestic power equipment* means but is not limited to power saws, drills, grinders, lawn and garden tools, and other domestic power equipment intended for use in residential areas by a homeowner.

*Nighttime hours* means the hours between 9:00 p.m. and 7:00 a.m. Sunday evening through Friday morning; between 10:00 p.m. and 7:00 a.m. Friday evening through Saturday morning; and between 10:00 p.m. and 9:00 a.m. Saturday evening through Sunday morning.

*Property line* means that line along the ground surface and its vertical extension which:

(1.) Separates real property owned or controlled by any person from contiguous real property owned or controlled by another person; or
(2.) Separates real property from the public right-of-way.

**(3.) Exclusions.**

This ordinance shall not apply to noise emitted by or related to:

(1.) Any bell or chime from any building clock, school, or church.
(2.) Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in an emergency situation; provided, however, that burglar alarms or car alarms not terminating within 30 minutes after being activated shall be unlawful.
(3.) Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.
(4.) Farming equipment or farming activity.
(5.) Noise from domestic power equipment, such as but not limited to power saws, sanders, grinders, lawn and garden tools, or similar devices operated during daytime hours.
(6.) Timber harvesting (felling trees and removing logs from the woods).
(7.) Noise generated by any construction or demolition equipment which is operated during daytime hours. Emergency construction or repair work by public utilities shall also be exempted. The police department may allow construction during nighttime hours if it is demonstrated that the extenuating circumstances disallow construction during the daytime hours.
(8.) Noise created by refuse and solid waste collection.
(9.) Municipal, public works, or utility projects.
(10.) Using, displaying, firing, or exploding consumer fireworks within the Town of Scarborough in accordance with the Consumer Fireworks Ordinance, Chapter 608A and any other applicable law or regulation.

**(4.) Specific prohibitions.**

The following acts, among others, are declared to be loud, boisterous, unnecessary or unusual noises which shall annoy, disturb, injure, or endanger the comfort, repose, health, peace, or safety of others in violation of this ordinance, but such enumeration shall not be deemed to be exclusive:

(a.) Excessive animal noise shall be regulated by the provisions in Chapter 604 – Animal Control Ordinance section 604-8 Animal Noise.

(b.) The using or operating or the permitting to be played, used, or operated of any radio, receiver, electronically amplified musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of music or sound which is audible outside of any structure during the nighttime hours or which broadcasts the sound in a loud and unreasonable manner during day-time hours which is audible a minimum of 200 feet from the source of the noise except as otherwise permitted, licensed or sponsored by the Town.

(c.) The use of any automobile, motorcycle or other vehicle, nonessential to safe and reasonable operation, in one or more of the following ways:

i. Revving of motor vehicle engines.
ii. Squealing of tires.
iii. Accelerating or braking unnecessarily so as to cause a harsh, objectionable or unreasonable noise.
iv. Operating audio equipment clearly audible beyond the confines of a motor vehicle.

**C. Enforcement.**

This section of the ordinance may be enforced by any officer of the Scarborough Police Department. No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this ordinance while such person is engaged in the performance of her/his duty.

Violations of this ordinance shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this ordinance, a written notice shall be given to the alleged violator which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice. If the cause of the violation is not removed or the condition abated or fully corrected within the time period specified in the written notice, or if the same person commits a subsequent violation of the same provision or provisions, of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation.

If the alleged violator cannot be located in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at her/his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice.

## 3. CREATION OF LIGHTING NUISANCES.

**A. Purpose.** The purpose of this ordinance is to provide reasonable restrictions on the use of lighting in or near the residential zones of the Town so as to prevent lighting from creating a nuisance to residents within residential zones. It is recognized that lighting is essential to the conduct of many commercial and industrial enterprises for advertising and security. It is further recognized that protective security lighting in residential zones constitutes a deterrent to crime and contributes to the safety of residents. Further, properly controlled lighting in residential areas for landscaping and highlighting architectural features of buildings and structures enhances the aesthetics of properties and neighborhoods. However, it is equally recognized that lighting, by virtue of its intensity, brightness, direction, duration, and hours of operation, can constitute a nuisance to adjacent residential dwellers. It is hereby the intent of the Town in adopting this ordinance to encourage the

appropriate use of lighting as set forth herein, but to regulate it in a manner to avoid any public nuisance in residential areas.

**B. Exceptions**. All properties covered by the Town of Scarborough Site Plan Review Ordinance, 405b, are exempt from this ordinance.

**C. Outdoor light restrictions**

(1.) **Light confinement**. All outdoor lights shall, to the greatest extent possible, be allowed for safety, security, operational needs, and decorative purposes but must confine emitted light to the property on which the light is located, by means of shielded or hooded lighting elements and shall not be directed upwards except where the light is directed away from neighboring properties and limited to the greatest extent possible to avoid urban sky glow.

(2.) **Spillover light**. Spillover light on to residential property shall not exceed one-tenth (0.1) of one (1) foot-candle at the residential property line.

**D. Outdoor light prohibitions**

(1.) Any unhoused light source.

(2.) Any light that creates glare observable within the normal range of vision of any public right-of-way or glare that creates a safety hazard.

(3.) Any light that resembles an authorized traffic sign, signal or device, or that interferes with, misleads, or confuses vehicular traffic as determined by the Chief of Police or designee.

**E. Enforcement**

(1.) This section of the ordinance may be enforced by any Code Enforcement or Law Enforcement officer.

(2.) No person shall interfere with, oppose, or resist any authorized person charged with the enforcement of this ordinance while such person is engaged in the performance of her/his duty.

(3.) Violations of this ordinance shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this ordinance, a written notice of violation may be given to the alleged violating homeowner/responsible party which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice of violation. If the cause of the violation is not removed nor the condition abated or fully corrected within the time period specified in the written notice of violation, or if the same homeowner/responsible party commits a subsequent violation of the same provision or provisions, of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation. If the alleged violating homeowner/responsible party cannot be located in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violating homeowner/responsible party at her/his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice.

**4. Odor Levels**

**Level 1: An odor what would ordinarily not be noticed by the average person but could be detected by the experienced inspector or hyper-sensitive individual.**

**Level 2. An odor so weak that the average person might detect if if attention was called to it but would not otherwise attract attention.**

**Level 3. An odor of moderate intensity that would be readily detected and would be regarded with disfavor.**

**Level 4. An odor what would force itself upon the attention of the average person and that would make the air very unpleasant.**

**Level 5. An odor of such intensity that the air would be absolutely unfit to breathe.**

## 4.5 PENALTIES.

### A. Noise Violations

Violation of the noise sections of this ordinance are a civil violation punishable by the following civil penalties:

| | |
|---|---|
| (1) First Offense: | $50.00 |
| (2) Second Offense: | $100.00 |
| (3) Third Offense: | $200.00 |
| (4) Fourth and Subsequent Offenses: | $500.00 |

### B. Lighting Violations

Any person found to be in violation of the lighting section of this ordinance or who fails to obey any lawful order of any officer charged with the enforcement of the provisions contained therein commits a civil violation and shall be fined between $100 to $2,500 for each day such violation continues after the time for correction of the violation specified in the written notice of violation under Section E (3) has expired.

## 5.6. SEVERABILITY.

Should any section or provision of this ordinance be determined in a court of law to be unconstitutional, invalid or unenforceable, such determination shall not affect the validity of any other portion of the ordinance or of the remainder of the ordinance as a whole.

## 6. 7. EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE

This ordinance repeals Chapter 614, Noise Abatement Ordinance, adopted on November 7, 2007 and amended March 7, 2012 and repeals and replaces Chapter 611, Noise Ordinance, adopted August 20, 2003.

**Section 11. Marking of Boats Left on Shores or Flats.** [adopted 02-18-09][amended 02-20-13]

Any boat that is left on the shores or flats of the Town of Scarborough must have owner information attached to the inside of its stern. If the owner is a mooring holder, the boat must also have the mooring number attached as well. Skiffs in violation of this section will be impounded and stored at the owner's expense.

## Article V - Regulations Concerning Anchoring, Mooring and Security of Vessels

**Section 1a. Placement of Private Moorings.**

It shall be a violation of this Ordinance to place any mooring in the harbor without a permit from the Harbormaster issued in accordance with 38 M.R.S.A. Sections 3, 7-A and 8. A person whose application for a mooring permit is denied may appeal as provided in Article X of this Ordinance There shall be no appeal from the issuance of a permit.

**Section 1b. Minimum Mooring Requirements.** [amended 02-20-13]

All moorings shall conform to the following specifications. [amended 04/04/2007]

| Size of Boat | Up to 16' | from 16' up to 25' | from 25' up to 30' | from 30' up to 36' | 36' and above |
|---|---|---|---|---|---|
| Weight of Block | Up to 500# (open boat) | Up to 750# | Up to 1,000# | Up to 1, 250# | 1500# minimum |
| Size of Chain Shackle | ½" | ½" | 5/8" | ¾" | ¾" to match minimum |
| Size of Nylon Pennant | ½" | ½" | ¾" | 1" | 1" |
| Length of Mooring maximum | 25' | 25' | 30' | 35' | 35' |

The Harbormaster may permit variations from these specifications, if in his or her judgment, the proposed mooring has holding power equivalent to that which would be provided by a mooring meeting these specifications.

All moorings that are to be placed up river from the day marker in Scarborough must be built using granite block only and cannot be any higher than 24 inches in overall height.

Marker Buoys to show at all tides. All chains to be at least one foot above high water mark. All moorings to be inspected every two years - no later than July 1st.

The Harbormaster shall maintain a plot plan of the anchorage area indicating locations of moorings, size of boats, and areas to be used as waterways. A copy of this map will be kept on file at the Town Office.

**Subletting of Mooring Space:**

The owner of any vessel having mooring space shall not sublet said mooring or mooring space to another user or boat owner; however another boat owner may use the mooring, provided the original owner pays the fee or fees and has requested permission from the Harbormaster to moor such vessel.

## Article IV - General Regulations

**Section 1. Liability.**

**(a) Boat Owner:**
Any person using the facilities within the limits of a harbor or maritime facility shall assume all risk of damage or loss to her/his property and the Town of Scarborough assumes no risk on account of fire, theft, Act of God, or damages of any kind to vessels within the harbor or maritime facility. [amended 11/01/17]

**(b) Marine Facility Owner and/or Operator:**
It shall be the responsibility of the owner, licensee, lessee, or operator of any marina, anchorage, repair yard, or other marine facility, located within the harbor, waterway or other maritime facility, to maintain the physical improvements under her/his jurisdiction in a safe, clean, and visually attractive condition at all times, to provide adequate security and fire prevention measures and appropriate fire fighting equipment as may be directed by the Town Manager. Failure to initiate activity within 30 days of receipt of written notice from the Town Manager to correct unsafe or otherwise unsatisfactory conditions and to pursue same to completion to the satisfaction of the Town Manager shall be a violation of this section. [amended 11/01/17]

**Section 2. Launching and Recovery of Vessels.**

**(a)** None other than the driver may occupy a motor vehicle while it is present upon the area known as a launching ramp located within the Town of Scarborough. It is recommended [2/22/94] all motor vehicles using said ramp should securely block at least one wheel of the said motor vehicle while it is standing upon said ramp.

**(b)** No person shall use a boat launching facility owned or operated by the Town of Scarborough without first obtaining an annual boat launching permit or a one-day boat launching permit from the Town. Annual permits shall be valid from April 1st of the year of issuance until March 31st of the following year, and one-day permits shall be valid for the calendar day specified on the permit. Fees for the boat launching permits shall be as specified in the Schedule of License, Permit and Application Fees established by the Town Council. [amended 05/07/03]

**Section 3. Permits, Suspensions or Revocations.**

**(a)** Mooring permits granted under Article V of this Ordinance shall be valid from April 1 of the year of issuance to March 31 of the following year. Other permits granted by the Harbormaster shall be valid for the period of time specified on the permit. The fees shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**(b)** If the Harbormaster finds that a holder of a permit under this Ordinance has violated any of the provisions of this ordinance, the Harbormaster may suspend or revoke the permit. The Harbormaster shall notify the permit holder of the suspension or revocation in writing. The suspension or revocation shall take effect as soon as the Harbormaster (1) delivers the notice in person to the permit holder, (2) posts a copy of the notice on the permit holder's vessel or (3) mails a copy of the notice to the permit holder at the most recent address which the permit holder has provided to the Harbormaster. The permit holder may appeal a suspension or revocation under this paragraph as provided in Article X of this Ordinance.

**(c)** If the Harbormaster finds that a mooring has not been used for at least thirty days between April 1 and October 1 of the year in which the permit was issued or if the Harbormaster finds that the

holder of the permit no longer owns the vessel specified in the mooring permit application, the Harbormaster shall give notice to the permit holder of the Harbormaster's intent to revoke the permit. Notice shall be given and shall take effect as specified in paragraph (b) above. Unless, within fifteen days of the effective date of such notice, the permit holder demonstrates extenuating circumstances to the Harbormaster, the Harbormaster shall revoke the permit using the procedure set forth in paragraph (b) above. "Extenuating circumstances" means circumstances which make it impossible or impractical to have a boat in the water during the boating season, such as, but not limited to loss or destruction of the vessel, mechanical breakdowns or unexpected repairs, and death or serious illness of the permit holder. Decisions of the Harbormaster under this paragraph (c) may be appealed as provided in Article X of this Ordinance.

**(d)** A person whose permit is revoked under paragraph (b) or (c) above shall be treated as a new applicant for purposes of placement on any waiting list in the next permit year.

**Section 4. Damage to Harbor or Other Property.**

It shall be unlawful to willfully or carelessly destroy, damage, disturb or interfere with any public or private property in the Harbor area.

**Section 5. Tampering with or Boarding Vessels without Permission.**

It shall be a violation of this Ordinance for any person willfully to board, break in, enter, damage, move or tamper with any vessel or part thereof, located within the harbor unless authorized by the rightful owner of such vessel.

**Section 6. Obstruction of Facilities.**

It shall be a violation of this Ordinance for any person willfully to prevent any other person from the use and enjoyment of the harbor facilities.

**Section 7. Signs, Placement and Maintenance.**

The Town of Scarborough may place and maintain, or cause to be placed and maintained, either on land or water, such signs, notices, signal buoys or control devises as the Harbormaster deems necessary to carry out the provisions of this Ordinance, or to secure public safety and the orderly and efficient use of the harbor or maritime facility.

**Section 8. Securing Permission for Debarkations.**

It shall be a violation of this Ordinance to disembark passengers or discharge cargo from a commercial vessel onto any public or privately owned float, pier or wharf within the harbor, without the consent of the owner thereof or of the Harbormaster, as the case may be, except at piers and wharfs expressly designed for such purposes.

**Section 9. Protected Swimming Areas.**

It shall be a violation of this Ordinance to operate or navigate any vessel within a designated swimming area. The Town of Scarborough may identify swimming areas by signs, buoys, or other means.

**Section 10. Shellfish Areas.**

Shellfish regulations are contained in the Town of Scarborough's Shellfish Conservation Ordinance.

*Town of Scarborough, Maine*
Town Clerk's Office
259 US Route One
PO Box 360
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**TO:** Ordinance Committee Members

**FROM:** Tracy Cole, Deputy Town Clerk

**DATE:** March 12, 2018

**RE:** **Mooring Ordinance**

It has come to our attention that there are issues with the Mooring Permits. We are aware that people are not using their Moorings. We have also heard that Mooring Owners are subletting their Mooring, which is not allowed. We currently have 254 Moorings.

Some suggestions would be:

- To show proof of registering their boat.
- Have the Harbor Master check to see if current mooring holders are actually using their Moorings.

Also, our Mooring Waiting list currently has 81 people waiting for Moorings in the Town of Scarborough. Some of these people have been on for 10 or more years. If we could tighten up the Ordinance maybe we could issue more Moorings for those on the waiting list.

**SECTION VI. DEFINITIONS**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine Section VI. Definitions, is amended as follows:

**Affordable Housing:** [Adopted 11/03/2004] [Amended 05/03/2006][Amended 12/03/2014] Affordable Housing means decent, safe and sanitary living accommodations that are affordable to households, in accordance with following provisions:

A. An Owner-Occupied Affordable Housing Unit is a unit which has an expected sales price that is reasonably anticipated to result in monthly housing costs (including mortgage principal, interest, and insurance; homeowners' insurance costs, real estate taxes and basic utility and energy costs) that do not exceed 30% of a household's gross monthly income. The qualified household gross income for an Affordable Housing Unit is 80% or less than the most recently published Portland, Maine, MSA Median Family income adjusted for family size and consistent with the income thresholds published by the U.S. Department of Housing and Urban Development for the region.

B. A Renter-Occupied Affordable Housing Unit is a unit which is leased to a household for an amount (including rent and basic utility and energy costs) that does not exceed 30% of ~~the household's~~ gross monthly income calculated using income that is less than or equal to 80% Median Income Limits of the most recently published City of Portland, Maine ~~The qualified household gross income for a Renter-Occupied Housing Unit is 80% or less than the most recently published Portland, Maine,~~ MSA Median Family Income adjusted for family size based on rental unit size, and consistent with the income thresholds published by the U.S. Department of Housing and Urban Development for the region.

To qualify for the unit, the household's income must be less than or equal to the 80% Median Income Limits by family size. As an existing lessee, the household income can exceed the threshold by 140% before the household no longer qualifies for the affordable unit, and must be converted to market rent with the next available unit designated as the affordable unit.

As an example, using the 2017 Income Limits, and assuming a one-bedroom unit with a household size of one:

Maximum Rent including basic utility and energy costs: $1,150 ($46,000 x 30% / 12 months)

Qualifying Household: Earns less than or equal to $46,000.

Annual Recertification: Household earns less than or equal to $64,400 ($46,000 x 140%)