

**AGENDA**  
**ORDINANCE COMMITTEE MEETING**

**Thursday, June 8, 2023 – 4:00 p.m.**  
**Hybrid Meeting**

**TO VIEW THE ORDINANCE COMMITTEE MEETING & OFFER PUBLIC COMMENT:**  
[https://scarboroughmaine.zoom.us/webinar/register/WN\\_NFUs4\\_i\\_RSaOjnXhFzTa3w](https://scarboroughmaine.zoom.us/webinar/register/WN_NFUs4_i_RSaOjnXhFzTa3w)

**TO VIEW THE ORDINANCE MEETING ONLY:**  
<https://www.youtube.com/watch?v=MmsudOtPxgM>

- Item 1.** Call to Order
- Item 2.** Roll Call.
- Item 3.** Approval of the minutes from the May 11, 2023, meeting.
- Item 4.** Discussion on proposed amendments to Chapter 405 Zoning Ordinance; Chapter 405B Site Plan Review Ordinance; Chapter 405C Shoreland Zoning Ordinance; Chapter 406 Subdivision Ordinance; Chapter 408 Extractive Industry & Land Reclamation Ordinance; Chapter 420 Erosion & Sediment Control at Construction Sites Ordinance; Chapter 903 Non-Stormwater & Discharge Ordinance.
- Item 5.** Discussion and possible action on proposed amendments on Chapter 1018 Marijuana Establishment Licensing Ordinance.
- Item 6.** Next agenda items.
- Item 7.** Adjournment.

# MEMO

**To:** Ordinance Committee

**From:** Angela Blanchette, P.E., Town Engineer

**Date:** June 8, 2023

**Re:** Ordinance Amendments based on Chapter 419 Recent Amendments and the Adoption of Chapter 420

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## Overview

In April of 2023 the Town Council adopted revised language within Chapter 419, Post-Construction Stormwater Infrastructure Management Ordinance, as was required under the Town's Federal Stormwater Permit requirements. Similarly, Town Council adopted a new Erosion & Sediment Control Ordinance, Chapter 420, on April 19, 2023. Because these two ordinances impact all types of construction activity in Town, there are many Ordinances that need to be updated to reference these new requirements so that they are clear to developers and do not create conflicts in the requirements set by the Federal, State, and now our local regulations. The following Ordinances have been revised to accomplish this process:

- Chapter 405 Zoning Ordinance
  - Add definitions
  - Add language requiring Low Impact Development and Green Infrastructure
  - Add reference to Chapter 420, Erosion & Sediment Control Ordinance
- Chapter 405B Site Plan Review Ordinance
  - Add reference to "Total Disturbed Area"
  - Add reference to Chapter 419, Post-Construction Stormwater Ordinance
  - Add reference to Chapter 420, Erosion & Sediment Control Ordinance
  - Add language to delineate wetlands similar to DEP requirements
  - Clarifying Stormwater calculation requirements
  - Add documentation requirements (as-builts)
- Chapter 405C Shoreland Zoning Ordinance
  - Add reference to Chapter 419, Post-Construction Stormwater Ordinance
  - Add reference to Chapter 420, Erosion & Sediment Control Ordinance
  - Add language requiring Low Impact Development and Green Infrastructure

- Chapter 406          Subdivision Ordinance
  - Add reference to “Total Disturbed Area”
  - Add reference to Chapter 420, Erosion & Sediment Control Ordinance
  - Clarifying Stormwater calculation requirements
  - Add documentation requirements (as-builts)
  - Add language requiring Low Impact Development and Green Infrastructure
  - Add reference to Street Lighting Standard
- Chapter 408          Extractive Industry & Land Reclamation Ordinance
  - Add reference to “Total Disturbed Area”
  - Add reference to Chapter 420, Erosion & Sediment Control Ordinance
- Chapter 420          Erosion & Sediment Control at Construction Sites Ordinance
  - Additional stabilization measures for steep slopes that was inadvertently omitted from the original Ordinance when adopted in April 2023
- Chapter 903          Non-stormwater Discharge Ordinance
  - Added language related to dechlorinated water discharge to be consistent with federal permit requirements

### **Background**

Chapter 419 revisions and the creation of Chapter 420 were required as part of the Town of Scarborough’s MS4 Stormwater Permit requirements, as administered by the Environmental Protection Agency through the Maine Department of Environmental Protection. These Ordinances are intended to provide a higher level of local oversight for construction activity in order to protect our natural resources.

As part of the recent MS4 Permit updates, all regulated communities, including Scarborough, must have a local Ordinance in place by June 30, 2023 that provides guidance and a process for all construction activity to follow associated with erosion and sediment controls. By implementing this Ordinance, the Town will further ensure that debris, soils, and other pollutants will not impact to our waterways, wetlands, and other natural resources.

Staff recommends amending the applicable ordinance as shown in the attachments provided.

### **ATTACHMENTS**

- |                         |  |
|-------------------------|--|
| A. Revised Chapter 405  | Zoning Ordinance   |
| B. Revised Chapter 405B | Site Plan Review Ordinance                                 |
| C. Revised Chapter 405C | Shoreland Zoning Ordinance                                 |
| D. Revised Chapter 406  | Subdivision Ordinance                                      |
| E. Revised Chapter 408  | Extractive Industry & Land Reclamation Ordinance           |
| F. Revised Chapter 420  | Erosion & Sediment Control at Construction Sites Ordinance |
| G. Revised Chapter 903  | Non-stormwater Discharge Ordinance                         |

CHAPTER 405  
ZONING ORDINANCE  
(REVISED 06/08/23)

## SECTION VI. DEFINITIONS

### **Disturbed Area:**

Means all land areas of a Parcel that are stripped, graded, grubbed, filled, or excavated at any time during the Site preparation or removing vegetation for, or construction of, a project. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include redevelopment and new Impervious Areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

### **Impervious Area:**

Means the total area of a Parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious.

## SECTION IX. PERFORMANCE STANDARDS.

### SECTION IX. PERFORMANCE STANDARDS.

#### I. PRIVATE WAY RESIDENTIAL DEVELOPMENT [11/01/06]

##### 8. Private Way Road Infrastructure Design and Construction Standards

The design of the road and utility infrastructure shall be reviewed and approved by the Town Engineer.

###### a. Road Design

1. The road horizontal and vertical alignment design criteria shall comply with the requirements of the Residential Access Street classification in the Street Acceptance Ordinance. The length shall be measured as shown on drawing number 2 in Appendix D.
- a. A dead end private way shall provide a hammerhead end treatment. The hammerhead shall be shown on the plan to be recorded at the Cumberland County Registry of Deeds.
  - i. The hammerhead end treatment for a private way that provides required street frontage for a cumulative total of six (6) or fewer lots shall be configured to allow a fire truck to turn around in compliance with Section IX(I)10. The location of the hammerhead shall be located at or past the furthest driveway of the approved lots from the existing public road. The furthest driveway may be used for the short perpendicular leg of the hammerhead turn around. The required infrastructure for the short leg of the hammerhead outside of the right of way shall be contained within an easement of an approved dimension by the Town Engineer for emergency vehicle maneuvering.
  - iii. The hammerhead end treatment for a private way that provides required street frontage for a cumulative total of more than six (6) lots shall conform to the alignment and dimensional standards in the Street Acceptance Ordinance. The location of the hammerhead shall be located past the furthest driveway of the approved lots from the existing public road. Lot access shall not be allowed from the hammerhead. The hammerhead road infrastructure shall be contained within the road right of way in compliance with the Street Acceptance Ordinance.
2. The road typical section shall comply with drawing number 1 in Appendix D. The intersection of the private road at a Town Way shall be paved and comply with drawing number 4 in Appendix D.
3. All intersections of a private way, whether existing or proposed, with a Town or other private way shall comply with the Maine Department of Transportation standards for intersection sight distance. The submitted analysis shall be prepared by a Professional Engineer, or Surveyor, licensed by the State of Maine, qualified for such analysis.
4. The location of a driveway for access to a lot may cross a no disturb buffer, but the amount of disturbance shall be kept to a minimum. However, a driveway

## SECTION IX. PERFORMANCE STANDARDS.

located through a wetland may be subject to the State of Maine Natural Resource Protection Act and/or Army Corp of Engineers wetland filling requirements.

### b. Utilities Location & Design

1. The location of utilities to service the lots shall comply with drawing number 3 in Appendix D. If power, telephone and cable TV service is overhead, the pole alignment shall maintain a minimum offset distance from the edge of travel lane to the face of the pole of 7 feet. The design of the utilities shall comply with the requirements of the utility companies providing service.
2. A stormwater management plan must be prepared identifying specifications of the stormwater management infrastructure. The plan shall be prepared by a Professional Engineer licensed by the State of Maine. The stormwater infrastructure shall be designed for a 25-year, 24-hour storm recurrence interval, and shall include green infrastructure and low impact development practices.
3. The Town Engineer may require a street light at a proposed intersection with a Town Public Way when the private way provides required street frontage for a cumulative total of more than six (6) lots. When required by the Town Engineer, the street light fixture and configuration shall comply with the Town's street light policy. The cost of installation and maintenance shall be borne by the owners of the lots which acquire their required street frontage from the private way and identified in the maintenance declaration.

### c. Construction Standards

1. All materials and construction of the road and drainage infrastructure shall comply with the requirements of the Street Acceptance Ordinance or specific utilities standards. An (E&S) erosion control management plan and narrative must be prepared ~~and~~ submitted, and must comply with requirements set forth in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance. –The (E&S) plan shall describe a sequence of actions and timelines for the control, containment and disposal of disturbed soils by the use of appropriate erosion control (BMP's) best management practice during the construction period. Erosion control BMP's shall comply with the Maine Erosion & Sedimentation Control BMP Manual prepared by the Maine Department of Environmental Protection,
2. The construction of the road shall be inspected by a Professional Engineer licensed by the State of Maine. The engineer shall provide a signed written report to the Town Engineer that in his opinion the construction is in compliance with the Road Infrastructure Design and Construction standards and the fire department protection design standards. The report shall attach documentation supporting compliance with the Town's specifications such as granular material gradations, compaction test results, storm drain material specifications, etc.

## SECTION IX. PERFORMANCE STANDARDS.

### d. Easements

1. Utility easements shall be provided consistent with the standards of the utility companies providing service. In addition, easements shall be provided for the road drainage infrastructure where it exceeds the private right of way and that will be maintained under the maintenance agreement for the private way. All easements must provide metes and bounds line data with type & recipient identified on the plan to be recorded. If any easements are to be granted to the Town of Scarborough, the applicant shall prepare and record easement deeds to the Town of Scarborough; the language of the easement deed shall be approved by the Town prior to recording. The Planning Department is hereby authorized to accept such easement deeds on behalf of the Town.

## O.1 PERFORMANCE STANDARDS – UTILITY-SCALE SOLAR ENERGY SYSTEMS

### 2. Standards for Utility-Scale Solar Energy Systems:

- a. Utility Connections - Utility connections from the solar photovoltaic installation shall be placed underground, depending on appropriate soil conditions, shape and topography of the site, and any requirements of the utility provider.
- b. Visual Impact - Visual impacts shall be minimized by preserving natural vegetation, screening abutting properties, and protecting scenic resources. Buffer requirements of Section VIII. of the Zoning Ordinance shall apply.
- c. Natural Resources - Wetland, vernal pools, surface waters, and slopes greater than twenty percent (20%) shall be conserved. Whenever possible, the area surrounding the array shall be planted with native wildflower meadow seed mix to stabilize the soil, encourage infiltration of runoff and increase pollinator habitat. The Planning Board may allow limited crossings for driveways or utilities to provide access to an upland area that is otherwise deemed to meet all other standards for the development of a Utility-Scale Solar Energy System.

Land Clearing and Erosion Control – Clearing of natural vegetation shall be limited to what is necessary for the construction, operation, and maintenance of Utility-Scale Solar Energy Systems. Adherence to the provisions of the Maine Department of Environmental Protection's Maine Erosion and Sediment Control Best Management Practices is mandatory. [An erosion and sedimentation control plan and narrative is required, and must comply with requirements set forth in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.](#) Herbicide use is prohibited. No prime agricultural soil or significant volume of topsoil shall be removed from the site to install a Utility-Scale Solar Energy System or its accompanying infrastructure. Removal of mature trees is discouraged and the imposition of mitigation measures or restrictions on tree clearing shall be prescribed by the Planning Board in order to prevent habitat fragmentation of existing forested landscapes and to protect hydrological regimes and other essential ecosystem functions. In the event that a site's vegetation is disturbed or must be removed to provide for solar access during the construction of the project, a



## SECTION IX. PERFORMANCE STANDARDS.

revegetation plan is required and must be prepared by a qualified professional. The plan shall indicate the existing nature of the vegetation to be removed; describe revegetation activities and how they create beneficial habitat by using native vegetation in all disturbed areas of the site not used to achieve operational efficacy of the Utility-Scale Solar Energy System; and a maintenance plan. The Planning Board may approve an alternate revegetation plan that uses native vegetation but does not necessarily establish a beneficial habitat.

**CHAPTER 405B**  
**SITE PLAN REVIEW ORDINANCE**  
**(REVISED 06/08/23)**

**CHAPTER 405B  
TOWN OF SCARBOROUGH  
SITE PLAN REVIEW**

**III. Application & Review Procedures [amended 04/21/2021]**

The following procedures and application requirements shall govern development proposals for major and minor development review.

**A. Major Development Review [amended 04/21/2021]**

**1. Sketch Plan Review**

Prior to submitting a formal site plan review application, the applicant may submit a sketch plan for review by the Planning Board. The sketch plan shall be conceptual and sketch plan review shall be considered an informal, informational review and discussion. The purpose of the sketch plan review process is to enable the applicant to present a concept plan for a development to the Planning Board in order for the Board to understand the type and scale of the proposed development as well as the associated on and off-site issues. Further, this process is intended to provide the applicant with preliminary feedback from the Board in order to identify any issues or revisions that should be addressed in the site plan review application.

The following information should be submitted or presented for discussion during sketch plan review:

- a. The proposed site, including its boundaries, size, location, and landscape.
- b. The environmental characteristics or constraints of the site, such as waterbodies, wetlands, floodways, steep slopes, etc.
- c. The proposed use and scale of development, including a conceptual site plan, landscape plan, and building elevations.
- d. Total disturbed area.
- ~~ed.~~ An overview of any traffic issues or implications.
- ~~fe.~~ An overview of the local regulations and State permits that may apply to the proposed project and any requested waivers of such regulations.

The sketch plan review shall be conceptual and informational, and there shall be no formal action by the Planning Board. Further, the submittal and review of a sketch plan shall not be considered the creation of a pending proceeding under 1 M.R.S.A. § 302. Following sketch plan review, an applicant must submit a formal site plan review application in order to seek site plan approval.

## 2. Site Plan Application Procedures & Action [amended 06/05/19]

- j. The text of paragraph 8,(i) above, shall be included as a note on the approved site plan.

## 3. Submission Requirements

The applicant shall submit to the Planning Board the following plans and information in a form required by the Planning Department:

- a. A boundary survey prepared by a professional land surveyor licensed by the State of Maine indicating the boundary lines, dimensions, encumbrances, water bodies, water features, zoning designation(s) and topography of the site. This boundary survey shall be prepared at a scale no greater than one (1) inch = forty (40) feet. Plans showing engineering details submitted as part of the site plan application may be prepared by either a professional land surveyor or by a professional engineer.
- b. A site plan(s), at a scale no greater than one (1) inch = forty (40) feet, showing all existing and proposed buildings, contour elevations, structures, parking spaces and layout, driveways, driveway openings, service areas, proposed outside display or vending areas, proposed grades and drainage facilities, proposed water and sewage facilities or connections, landscaping plan including proposed trees and planting areas, proposed locations of fences, walls, signs and advertising features, proposed walkways and pedestrian amenities, total disturbed area, and a lighting plan. The site plan shall also include a locus map showing the relationship of the project to the surrounding area at a scale no greater than one inch equals 2,000 feet. The site plan shall also show all contiguous land owned by the applicant or the owner of the land proposed for development.
- c. Building plans showing the floor plans, an outside access plan, and all elevations. The elevations shall indicate the proposed material and color of all of the proposed principal buildings and structures. The Planning Board may also require elevations of the accessory buildings and structures depending on their size and location.
- d. Stormwater management systems, details and calculations in compliance with Section IV.G of this ordinance.
- e. An erosion and sedimentation control plan and narrative in accordance to Chapter 420 - Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
- fe. A written statement prepared by a Maine Licensed Professional Engineer that describes the potential traffic flow patterns into and upon the site for both vehicles and pedestrians, the expected peak hour trip generation associated with the proposal, and the measured sight distance of each proposed driveway access. A traffic impact study shall be submitted for any project forecasted to generate 35 or more trip ends during any peak hour or if a project is forecasted to cause an existing access with less than 35 peak hour trip ends to exceed this threshold. The Planning Board or Town staff may also require a traffic study if specific safety or capacity issues have been identified for the general

vicinity of the development. The scope of the study shall be determined based on discussions with the Town's Traffic Engineer and be completed by a Registered Professional Engineer with significant experience in traffic engineering. The study should be appropriate for the level of impact. At a minimum the study shall contain the following information: collision history at the intersection of the proposed street/driveway, capacity evaluation at the proposed driveway, sight distance analysis, Road Impact Fee calculations and the need for improvements such as turning lanes, signalization, etc. In compiling a traffic study, trip generation shall be based upon the most recent edition of the ITE's "Trip Generation" Manual and shall include an evaluation of each peak hour condition.

**gf.** Any proposed off-site improvements to roads, sidewalks, natural areas or other infrastructure as may be necessary to accommodate the proposed development.

**hg.** A lighting plan in compliance with Section IV(H) of this ordinance.

**ih.** Reports from the Police Chief, Fire Chief, and to the extent applicable, from the Water District and Sanitary District, containing their requirements or recommendations.

**ji.** Such other information or plans as may be necessary to enable the Town Planner, Town Engineer, Code Enforcement Officer, and Planning Board to determine that the proposed structure and use of the land will conform to the provisions of this ordinance, the Scarborough Zoning Ordinance and, where applicable, the Scarborough Shoreland Zoning Ordinance and all other applicable Town Ordinances.

**kj.** A list of any requested waivers of required submissions and waivers from the standards of this ordinance.

**lk.** A description of method to be used to permanently delineate wetlands and wetland buffers to prevent encroachment. [08/17/2005]

**ml.** The location and description of all historic and archeological resources on the parcel as identified by the Maine State Historic Preservation Office, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance together with a narrative describing how these resources can be preserved and incorporated into the development plan. If an identified resource will be removed, altered, or not included as part of the development plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the development plan. [03/19/2014][Amended 03/18/2015]

The Planning Board may waive any of the above submission requirements if the Board finds that the required information is not necessary due to special circumstances of a particular site plan, or the nature or scale of the proposed development. Requirements set forth in Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites

Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency are not waivable.

#### **IV. Performance & Design Standards [amended 04/21/2021]**

The following minimum performance and design standards shall apply to all site plans and shall serve as the minimum requirements for approval of any application. However, where the Planning Board or Town Planner (together the “Applicable Reviewing Authority”) as applicable finds that due to the nature or special circumstances of a particular plan the requirements of certain standards are not requisite to the interest of public health, safety and general welfare, the Applicable Review Authority may waive such requirements, subject to appropriate conditions to achieve the intent of this ordinance. Requirements set forth in Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency are not waivable.

##### **G. Stormwater Management [amended 04/21/2021]**

Adequate provisions shall be made for the control, collection and disposal of all stormwater runoff from the site. Drainage plans, details, and calculations shall address the two, ten and twenty-five year, twenty-four hour storm events. These plans shall be designed to compliment the hydrology and natural features of the site and shall not cause adverse impacts to abutters, downstream properties, or receiving waters. Post-development stormwater flow rates must be equal to or less than pre-development stormwater flow rates.

1. Stormwater management areas shall be treated as integral, attractive and natural parts of the landscape. Natural areas shall be used to retain and drain stormwater to the extent possible.
2. When areas of the site are to be paved they may be designed and constructed with pervious and semi-pervious alternatives to bituminous pavement. Alternative parking surfaces, such as porous pavement, are intended to minimize storm water run-off and facilitate infiltration and natural hydrological functions to the extent feasible.
3. Stormwater treatment basins shall be patterned after natural features and shall avoid hard geometric shapes. These basins shall be planted with wetland species to improve their aesthetic and habitat values.
4. Abrupt changes to natural drainage ways and grades shall be avoided. Natural drainage ways shall not be filled unless specifically permitted by the Applicable Reviewing Authority and transitional grading shall be used to blend all earthworks into the natural contours of the site.
5. Drainage systems shall be designed so as to not impact streets, adjacent properties, downstream properties, and local soils and vegetation. The system shall also consider and incorporate the upstream runoff that may pass over the site. Systems should include green infrastructure and low impact development practices.

6. The water quality of receiving waters shall not be degraded by the stormwater runoff from the site. Oil and grease traps, on-site vegetated waterways, drainage swales, and vegetated buffer strips shall be utilized as needed to aid in the prevention of degraded receiving waters.
7. Where ground protection and rip rap is necessary in visible locations it shall be constructed of hand-placed rock or geo-grid, rather than course rip-rap.
8. Wherever feasible, drainage basins shall be designed to be shared between abutting properties to lessen the amount of land area devoted to stormwater management.
9. If applicable, the site must comply with and submit all documentation required in accordance to Chapter 419 – Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance.
- 8.10. Erosion and sedimentation control plan and narrative is required in accordance to Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.

## **V. Site Conditions & Environmental Considerations**

Before and during construction, the applicant or developer shall abide by the following conservation, erosion, and sediment control measures as well as the site construction, safety, and hazardous waste standards.

### **A. Conservation, Erosion, & Sediment Control [amended 04/21/2021]**

1. All sites must comply with Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
- ~~1.2.~~ Stripping of vegetation, re-grading and other development shall be performed in such a way as to minimize erosion.
- ~~2.3.~~ Development shall preserve prominent natural features, keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water run-off.
- ~~3.4.~~ Wherever feasible, natural vegetation shall be retained, protected, and supplemented.
- ~~4.5.~~ The extent of disturbed area and the duration of exposure shall be proposed by the applicant for consideration by the Applicable Reviewing Authority. The proposal shall conform to time schedules acceptable to the Applicable Reviewing Authority or to the Town Planner and Town Engineer if the Applicable Reviewing Authority so directs.
- ~~5.6.~~ Disturbed soils shall be stabilized as efficiently as possible.

~~6.7.~~ Temporary vegetation or mulching shall be used to protect exposed critical areas during development.

~~7.8.~~ The permanent vegetation and mechanical erosion control measures shall be installed in conformance with a specified schedule as approved by the Applicable Reviewing Authority or by the Town Planner and Town Engineer if the Applicable Reviewing Authority so directs.

~~8.9.~~ Until the disturbed area is stabilized, sediment in the runoff shall be trapped and contained by the use of debris basins, sediment basins, silt traps, silt fencing or other acceptable measures.

~~9.10.~~ Whenever sedimentation is caused by stripping vegetation, re-grading or other development, it shall be the responsibility of the developer causing the sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any resulting damages in an efficient manner.

~~10.11.~~ Any developer conducting an activity on or across a stream, watercourse or swale or upon a floodway or right-of-way thereof shall maintain, as nearly as possible, the state of the stream, watercourse, swale, floodway or right-of-way during the activity. Following the activity, the water feature shall be returned to its original, or equal, condition.

~~11.12.~~ Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

## **VII. Enforcement, Occupancy and Performance Guaranty** **[amended 04/21/2021]**

This ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer. It shall be a violation of this ordinance (1) to undertake an activity requiring site plan review without first obtaining site plan approval from the Applicable Reviewing Authority, (2) to develop or use any property for which a site plan has been approved except in the manner shown on the approved site plan and as per Section III(B)(8) of this ordinance, or (3) to violate any condition of approval of an approved site plan. Any person who violates this ordinance shall be penalized pursuant to 30-A M.R.S.A. section 4452. Each day a violation exists constitutes a separate violation.

### **A. Occupancy Permit and Performance Guaranty**

An occupancy permit for the use or occupancy of any land, building, structure or part thereof requiring site plan approval shall be issued in accordance with Section IV(G), Certificate of Occupancy, of the Town of Scarborough Zoning Ordinance.

No occupancy for full or partial occupancy shall be issued by the Code Enforcement Officer until the Town Engineer, Town Planner or their designee are satisfied that the property has



been constructed in accordance with the approved site plan and conditions of approval, or that the Town has received a performance guarantee for the completion of specific outstanding site elements and required offsite improvements within a specified timeframe, as well as final documentation required in all applicable Town ordinances including but not limited to as-builts.

A performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. The amount of a performance guarantee shall be determined by the Town Engineer or her/his designee, following the submission of a cost estimate by the applicant, and shall be in an amount at least equal to the total cost of the remaining work to be completed. [amended 11/01/17]

CHAPTER 405C  
SHORELAND ZONING ORDINANCE  
(REVISED 06/08/23)

**CHAPTER 405C  
SHORELAND ZONING ORDINANCE  
FOR THE TOWN OF  
SCARBOROUGH, MAINE**

**Section 15. Land Use Standards**

All land use activities within the shoreland zone shall conform to the following provisions, if applicable.

**C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or within a Wetland** (amended 06/03/2020, effective date 10/01/2020)

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
3. The location shall not interfere with existing developed or natural beach areas.
4. The facility shall be located so as to minimize adverse effects on fisheries.
5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
9. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
10. Vegetation may be removed in excess of the standards in Section 15(O) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the

Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

- (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment access way must be restored.
- (b) Revegetation must occur in accordance with Section 15(SR).

## **G. Roads and Driveways**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high water line of water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland. (amended 07/15/2009)

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent. (amended 07/15/2009)

Section 15(G)(1) does not apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(G)(1) except for that portion of the road or driveway necessary for direct access to the structure. (amended 07/15/2009)

2. Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream, or wetland. (amended 07/15/2009)

3. Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 100 year frequency water flows and a cross-sectional area at least equal to 1.2 times the cross-sectional area of the river, stream, or tributary stream channel. However, in watersheds with an approved Watershed Management Plan, bridge and culvert sizing shall be determined using the guidance within those detailed plans or the standard provided above, whichever maintains the greater opening. (amended 06/03/2020, effective date 10/01/2020)

4. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway providing access to permitted uses within or outside the district, may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or

driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland. (amended 06/03/2020, effective date 10/01/2020)

5. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section (15) ~~Q-S~~ (amended 07/15/2009)

## **I. Storm Water Runoff**

1. All new construction and development shall be designed to ensure storm water runoff from the site will be less than or equal to that of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters. Controls shall include green infrastructure and low impact development practices. (amended 07/15/2009)

2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning, and must comply with Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance, if applicable.

## **L. Mineral Exploration and Extraction**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15(~~ML~~)(4) below. (amended 07/15/2009)

2. No part of any extraction operation, including drainage and runoff control features shall be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of any water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property. (amended 07/15/2009)

3. [Reserved]

4. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

- a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
- b. The final graded slope shall be two and one half to one (2 1/2:1) slope or flatter. (amended 07/15/2009)

- c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
5. In keeping with the purpose of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.
6. Mineral extraction shall also comply with all applicable requirements of the Extractive Industry, Waste Control, Landfill and Land Reclamation Ordinance of the Town of Scarborough.

#### **N. Timber Harvesting (revised and adopted 07/15/2009)**

**(5) Land Management Roads.** Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(N)(7) of this rule.

(a) Land management roads and associated ditches, excavation, and fill must be set back at least:

- (i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;
- (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
- (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams

(b) The minimum 100 foot setback specified in Section 15(N)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(N~~—1~~)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

#### **O. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting**

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazard trees as described in ~~section Q~~Section P. (amended 07/15/2009) (amended 06/03/2020, effective date 10/01/2020)

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district. (amended 07/15/2009)

## **S. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in disturbed areas or unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan and activities must comply with requirements set forth in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance. The plan shall be submitted to the permitting authority for approval and shall include but not limited to, where applicable, provisions for: (amended 07/15/2009)

- a. Mulching and revegetation of disturbed soil.
- b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
- c. Permanent stabilization structures such as retaining walls or riprap.

2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
- b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
- c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

CHAPTER 406  
SUBDIVISION ORDINANCE  
(REVISED 06/08/23)



**CHAPTER 406**  
**SUBDIVISION ORDINANCE**  
**TOWN OF SCARBOROUGH, MAINE**

**SECTION 4. PURPOSE, AND INTERPRETATION, AND REVIEW CRITERIA**

The purposes of this ordinance are to promote the development of an economically stable and sound community; to provide safe and adequate streets, utilities and other services to new land development; to provide convenient and safe traffic circulation and access; to assure generally the development of areas in a manner consistent with any comprehensive plan for the Town of Scarborough; to clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A. § 4404, to protect the environment and conserve the natural and cultural resources identified in the Scarborough Comprehensive Plan as important to the community; to minimize the potential impacts from new subdivisions on neighboring properties and on the town; and to provide uniform procedures and standards for observance by the Planning Board and Subdividers. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements for the protection of public health, safety and welfare. To this end, in evaluating any proposed subdivision of land within the Town of Scarborough, Maine the Planning Board shall determine that such subdivision will meet the design standards set forth in this Ordinance, will comply with all other pertinent State and Local codes and ordinances, and will comply with the following review criteria:

- A. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;
- B. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
- C. The proposed subdivision will not cause an unreasonable burden on an existing water supply if one is to be utilized;
- D. The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- E. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;
- F. The proposed subdivision will provide for adequate sewage waste disposal;
- G. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;

- H. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- I. The proposed subdivision is in conformance with this Subdivision Ordinance, the Scarborough Comprehensive Plan, the Scarborough Zoning Ordinance, the Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance, the Scarborough Shoreland Zoning Ordinance (if applicable), the Scarborough Site Plan Review Ordinance (if applicable), the Scarborough Post-Construction Stormwater Infrastructure Management Ordinance (if applicable), and all applicable State and Local codes and regulations; in making this determination, the Planning Board may interpret the Comprehensive Plan and applicable local ordinances, codes and regulations;
- J. The subdivider has adequate financial and technical capacity to meet the standards of this Ordinance;
- K. Whenever situated in whole or in part, within 250 feet of any pond, lake, stream, river, wetland or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or wetland or unreasonably affect the shoreline of such body of water or wetland;
- L. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
- M. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;
- N. All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district. Boundary locations of wetlands must be permanently marked.;
- O. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 M.R.S.A., section 480-B, subsection 9;
- P. The proposed subdivision will provide for adequate storm water management including green infrastructure and low impact development practices. Post-development stormwater flow rates must be equal to or less than pre-development stormwater flow rates;
- Q. If any lots in the proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Title 38 M.R.S.A., section 480-B,

none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

- R. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

## **SECTION 5. ADMINISTRATION**

5:1 The Planning Board of the Town of Scarborough, hereinafter called the Board, shall administer this ordinance.

5:2 Whenever any subdivision is proposed or before any contract for the sale or offer to sell such subdivision or any part thereof shall have been negotiated, or before any permit for the erection of any structure within such subdivision shall be granted, or before any utility installations, grubbing, ditching, grading, construction of roads, grading of land or lots shall be done on any subdivision, the subdividing owner or her/his authorized agent shall apply formally to the Board for approval of a Final Plan of such subdivision, which plan shall be in conformance with all of the requirements, design standards and specifications set forth in this ordinance, and shall record an attested copy of the Final Plan so approved and so endorsed in the Cumberland County Registry of Deeds. [amended 11/01/17]

5:3 When an application for subdivision approval is received and accepted by the Town Planner, the Planner shall give a dated receipt to the applicant and shall notify by mail all property owners within 500 feet of the proposed subdivision, and the clerk and the planning boards of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project. The Town Planner shall also notify by mail a public drinking water supplier if the subdivision is within its source water protection area. The Town Planner shall not accept the application if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town. When the Town Planner has accepted the application and determines that thirteen (13) copies of all material apparently required to constitute the application have been submitted, he/she shall promptly so advise the Planning Board and schedule consideration of the application for its next following meeting. He/She shall promptly notify the applicant of the time and place for such meeting, and he/she shall transmit to each Planning Board member a copy of the application material. He/She shall advise the Board of his/her comments and recommendations regarding additional information which might be useful to the Board, other permits or approvals which the subdivision might require, and the apparent timetable for Planning Board action. [amended 11/01/17]

5:4 As to any intended subdivision of land, the subdivider shall prepare and formally submit to the Board both a Preliminary Plan for study, and modification where required, and a Final Plan. The Final Plan shall not be prepared until the subdivider has received from the Board written notice that a majority of the Board has approved the Preliminary Plan of such subdivision.

5:5 The Director of Public Works and the Engineer shall make reports to the Planning Board with respect to the adequacy of the design standards and specifications of the proposed street or private street, including the need for street lighting and storm drains. Said report must be submitted before any approval is granted. The Planning Board may also engage the services of one or more professional consultants to conduct peer review of the materials submitted by the subdivider, the costs of which shall be paid by the subdivider as provided in Section 11 of this Ordinance.

5:6 Prior to submission of the subdivision application and the Preliminary Plan, an applicant may choose to present a sketch plan for review by the Planning Board at a pre-application meeting. At such meeting, the Planning Board and the applicant may discuss the lot layout, road design and other features of the proposed plan, as well as the format, procedures and process for reviewing the subdivision. Any such pre-application meeting shall be scheduled by the Town Planner once the Town Planner has determined that the applicant has submitted sufficient information for the Planning Board to consider, including a sketch plan containing the following information:

- (1) Subdivision name, boundaries, acreages, tax map and lot numbers, magnetic and grid north point, date and graphic scale.
- (2) Location Plan – A location plan of the subdivision, at a scale of 1000-2000 feet to the inch, showing right of way lines of all proposed streets in the subdivision and their location in relation to existing streets and readily identifiable as to locus on the Scarborough Zoning Map.
- (3) Name and address of record owner, subdivider, and engineer, surveyor, firm, or individual who prepared the plan.
- (4) Existing and proposed lines of streets, ways, easements, lots and any public or common areas within the subdivision.
- (5) Location, name, and present width of each street and public or private way bounding or within 500 feet of the subdivision.
- (6) Approximate locations of existing buildings and site features such as wooded areas, wetlands, and water bodies within or adjacent to the proposed subdivision.

A plan considered by the Planning Board in pre-application meeting is not considered a complete or pending application and creates no vested rights. Submittal of the pre-application sketch plan and review of the pre-application sketch plan by the Planning Board shall not be considered to create a pending proceeding under 1 M.R.S.A. § 302.

## **SECTION 7. PRELIMINARY PLAN REQUIREMENTS AND PROCEDURES**

7:1 A request for approval of a subdivision shall be made to the Board in writing and shall be accompanied by a Preliminary Plan, that shall be drawn at a scale between 20 and 100 feet to the inch. The Preliminary Plan shall be accompanied by a location map showing the relationship of the proposed subdivision to adjacent properties and public access and drawn at no smaller scale than 500 feet to the inch.

7:2 When practical, a standard sized sheet 24" x 36" shall be used for all plans and shall contain the following information:

- (a) Name of Subdivision, owner(s), engineer(s), and surveyor(s).
- (b) Graphic scale, date and grid point.
- (c) Existing Zoning.
- (d) Ownership and location of abutting properties.
- (e) Name, location, width, profile, cross-section, radius of curves, angles or change in direction and center line, length of all existing and/or proposed public or private streets, other public ways, building lines and easements in the subdivision. All street names shown for proposed streets located in a subdivision shall be checked against local records to assure that none are duplicates of existing street names or so similar as to cause confusion. Refer to Section 10 for Street Infrastructure Design Standards.
- (f) Type, location, profile and cross-section of all existing and/or proposed surface water drainage.
- (g) Location of all existing and/or proposed utilities - water, gas, electricity or other.
- (h) Location of all existing and/or proposed sanitary sewers showing size, profile, and cross-section; or description, plan, location, if other means of sewage disposal with evidence of the nature of soils and subsoils and their ability to adequately support sewage waste disposal as required by the Scarborough Plumbing Ordinance and the Maine State Plumbing Code, Part II, and that the land is suitable for subsurface sewage disposal systems.
- (i) Topography at two (2) foot contour intervals, unless otherwise prescribed by the Planning Board and Town Engineer. In addition, the location of existing natural or manmade features and soils conditions influencing the layout of the proposed subdivision shall be shown.
- (j) Lot lines and approximate dimensions.
- (k) Proposed uses of property.
- (l) Proposed public areas, if any.
- (m) Location and boundaries of wetlands and the permanent markings.
- (n) 100-year flood elevations.
- (o) Total disturbed area.
- (p) Erosion and sedimentation control plan and narrative in accordance to Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
- (q) List of proposed Lots connecting to future and/or existing public drainage infrastructure.
- ~~(or)~~ Any requested waivers from the standards of this Ordinance.
- ~~(ps)~~ The location and description of all historic and archeological resources on the parcel as identified by the Maine State Historic Preservation Office, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance together with a narrative describing how these resources can be preserved and incorporated into the subdivision plan. If an identified resource will be removed, altered, or not included as part of the subdivision plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the plan. [Amended 03/18/2015]

7:3 In addition to the Preliminary Plan, the Board may require the subdivider or others to undertake studies where deemed necessary or desirable to protect the public convenience, safety, health and welfare.

7:4 An application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 30 days of receipt of such application. The Board shall, after such consideration and within 30 days of receipt of an application and Preliminary Plan, issue a written statement informing the sub-divider or her/his authorized agent of approval, disapproval or conditional approval or of any changes required prior to the submission of the Final Plan.

7:5 No final plan shall be approved by the Board unless submitted by the subdivider or her/his authorized agent within 12 months from the issuance of Preliminary Approval.

## **SECTION 9. PERFORMANCE GUARANTEES**

9:1 In order to insure completion of all improvements required by the Town of Scarborough, Maine the subdivider shall furnish to the Town Treasurer a performance guarantee prior to the recording of the Final Plan. Said performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. In determining the acceptability of the issuer, the Town Treasurer may rely on any published information available concerning the issuer's financial condition and projected financial condition during the term of the letter of credit. The determination of the Town Treasurer on the acceptability of the issuer is final and not appealable. The amount of such performance guarantee (the "Stated Amount") shall be approved by the Board and the Town Treasurer, and shall be in an amount at least equal to the total cost of furnishing, installing, connecting and completing all of the onsite and offsite improvements including, but not limited to; street grading, paving, storm drainage and utilities or other improvements specified, as well as final documentation required in all applicable Town ordinances including but not limited to as-builts, and shall be conditioned on the completion of all such specified improvements within 30-months of the date the Performance Guarantee is furnished. The performance guarantee may allow for, but shall not require, periodic reductions of the State Amount as portions of the specified improvements are determined by the Town Engineer to be complete, provided that each such reduction shall be limited to 85 percent of the cost of the improvements for which the reduction is allowed. In no event shall the performance guarantee be reduced to less than 15 percent of the Stated Amount until all the specified improvements have been completed and inspected and all fees due under Section 11 below or pursuant to any conditions of approval have been paid in full.

9:2 The Board may grant one or more extensions of up to exceed 12 months beyond the guaranteed performance period when the subdivider can demonstrate, to the satisfaction of the Board good cause for such extension; provided, however, that the performance guarantee shall remain in full force and effect during any such extension period and that the total duration of the original performance guarantee and any extensions granted under this Section 9.2 shall not exceed five years from the date on which the original performance guarantee was furnished. The Planning Board may not grant an extension if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears

on any fees owed to the Town of Scarborough in connection with any other development within the Town.

9:3 Before a subdivider may be released from any obligation required by her/his guarantee of performance, the Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, State and Local codes and ordinances. [amended 11/01/17]

9:4 At the time of approval of the final plan, the Planning Board may approve the construction of the subdivision in specifically identified phases and allow the subdivider to furnish separate performance guarantees for each phase prior to commencement of construction of each phase, provided that the performance guarantee furnished for any individual phase must secure the construction of all required improvements within such phase plus any improvements located in other phases which are necessary in order for the phase being constructed to comply with the requirements of this Ordinance should subsequent phases not be constructed. The time limits of sections 9:1 and 9:2 shall apply separately to each phase. In addition, the time limits of section 9:1 and 9:2 may be modified for a phased subdivision pursuant to a contract zoning agreement approved by the Scarborough Town Council under the Scarborough Zoning Ordinance.

## **SECTION 10. STREET INFRASTRUCTURE DESIGN STANDARDS**

10:1 The design of streets shall provide for proper continuation of streets from adjacent subdivisions and built-up areas and proper projection of streets into adjacent unsubdivided and open land.

10:2 All public streets constructed after December 4, 2003 shall comply with the appropriate design standards and specifications set forth in the Street Acceptance Ordinance of the Town of Scarborough, Maine.

10:3 If access to the street or streets within the subdivision is from an existing private street which does not meet such design standards and specifications, the subdivider shall cause such existing road to be brought into compliance with such standards and specification.

10:4 Street lighting must comply with the Town of Scarborough's Street Lighting Policy.

10:~~5~~4 When considering private street proposals the Planning Board shall require that the developer clearly identify the party responsible for maintenance of the private street. A note shall be placed on the final plan and incorporated into each deed stating that the proposed street is not dedicated for acceptance by the Town.

## **SECTION 13. WAIVERS [Amended 05/20/2020]**

### **13:1 Waivers of Submission Requirements Authorized.**

Where the Planning Board determines there are special circumstances relating to a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, except any submission requirements as to which the Ordinance specifically prohibits waiver. For a waiver to be granted, the applicant must demonstrate in writing that the Planning Board can



evaluate the proposed subdivision under the standards of 30-A M.R.S.A. §4404 and of this Ordinance without the information contained in the submissions for which the applicant requests a waiver.

### **13:2 Waivers of Standards Authorized.**

Where the Planning Board makes written findings of fact that, due to special circumstances of a particular parcel proposed to be subdivided, compliance with certain of the standards of 30-A M.R.S.A. §4404 or of this Ordinance is not required, the Board may waive such requirement of standard, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the Scarborough Comprehensive Plan, the Zoning Ordinance, or this Ordinance, and provided that the public health, safety, and welfare will not be compromised by the waiver. Requirements set forth in Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency are not waivable.

### **13:3 Conditions.**

Waivers may only be granted in accordance with Sections 13:1 and 13:2. When granted waivers the Board may set conditions so that the purposes of these regulations are met.

### **13:4 Waivers to be Shown on the Recording Plan.**

When the Planning Board grants a waiver from any of the improvements required by the Ordinance or from any of the standards of 30-A M.R.S.A. §4404 or of this Ordinance, the final plan to be recorded at the Registry of Deeds shall indicate the waivers granted and the dates on which they were granted.



CHAPTER 408  
EXTRACTIVE INDUSTRY &  
LAND RECLAMATION ORDINANCE

(REVISED 06/08/23)

## CHAPTER 408

### TOWN OF SCARBOROUGH

#### EXTRACTIVE INDUSTRY AND LAND RECLAMATION ORDINANCE

##### Section 7. GENERAL REQUIREMENTS

7.1 Any proposed project shall be in conformity with the comprehensive plan of the Town of Scarborough, and with the provisions of all pertinent state and local codes and ordinances.

7.2 Any proposed project shall be in conformity with the Town of Scarborough Chapter 420 – Erosion and Sedimentation at Construction Sites Ordinance

7.32 Any proposed project shall be reviewed by the Board with regard to its impact upon the natural environment, and shall not adversely affect or destroy the ecological balance of any area.

In order to approve an application, the Board must find based upon the information presented to it by the applicant and other interested parties that the proposed project:

- a. will not result in unsafe or unhealthful conditions;
- b. will not result in erosion or sedimentation;
- c. will not result in water pollution;
- d. will conserve vegetation;
- e. will conserve natural beauty;
- f. will avoid problems associated with flood plain development and use;
- g. will avoid hazards due to steep slopes;
- h. will avoid problems due to standing water; and
- i. will avoid problems due to gas generation.

The Planning Board may at the owner's expense engage a certified engineer of its choice to develop detailed plans in accordance with the provisions of this ordinance.

7.43 Any project proposal shall be accompanied by a report regarding site geology, hydrology, and soil conditions; source and pertinent engineering properties of fill and cover materials; types and numbers of equipment to be used for excavating, earth moving, spreading, compacting, and other purposes, persons responsible for the actual operation and maintenance of the site, and intended operating procedures, and the ultimate plan and proposed use of the completed site.

7.54 Any proposed project shall be reviewed by the Board with respect to its impact on existing land uses.

7.65 Any proposed project shall be reviewed by the Board with respect to its impact on existing transportation facilities.

7.76 Sufficient top soil or loam shall be retained to cover all areas, or other provisions must be made to the Board's satisfaction within the rehabilitation plans.

7.87 If any portion of the site has been identified as containing historic or archaeological resources, the Board will require appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

7.98 The plan review by the Planning Board shall take into consideration, but is not limited to the following items:

- a. fencing, landscaping buffer strips, public safety;
- b. advertising signs and lighting;
- c. parking space, loading and unloading areas;
- d. entrances and exists;
- e. time period for operation;
- f. hours of operation;
- g. methods of operation;
- h. weight and loading limit of trucks;
- i. sand and gravel spillage upon public streets;
- j. rehabilitation plans (per Section 11 below); and
- k. ecological and other natural consideration.

7.109 The Board shall impose such conditions as necessary to safeguard the health, safety and welfare of the community. No new project shall be approved that involves excavating below the seasonal high water table, or that result in, standing water.

## **Section 8. PRELIMINARY PLAN REQUIREMENT AND PROCEDURES**

8.1 A request for approval of any project shall be made to the Board in writing, and shall be accompanied by a preliminary plan which shall be drawn at no smaller scale than 100 feet to the

inch. The preliminary plan shall be accompanied by a location map showing the relationship of the proposed project to adjacent properties.

8.2 When practical a standard sized sheet 24" X 36" shall be used for all plans and shall contain at least the following information:

a. Name of project; owner(s) and engineer(s) or surveyor(s);

b. Graphic scale, date and north point;

c. Existing zoning;

d. Ownership and location of abutting properties;

e. Total disturbed area;

fe. Type, location, profile and cross section of all existing and/or proposed surface water; drainage;

g. Erosion and sedimentation control plan and narrative in accordance to Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance;

hf. Location of all existing and/or proposed utilities (water, gas, electricity, and other);

ig. Existing and proposed topography at no less than five foot contour intervals, unless otherwise prescribed by the Board;

jh. Proposed use of property at completion of the project;

ki. Provisions must be made to avoid hazards from excessive slopes and to avoid standing water. Where an embankment must be left upon completion of operations at a location within the project, it shall be at a slope not steeper than 1 foot vertical to 4 feet horizontal;

lj. The operation must be shielded from surrounding property with adequate screening and create no disturbance of water sources;

mk. The operation when terminated shall not detract from the appearance or value of nearby property;

nl. The edge of all workings shall be set back from the property lines a minimum of 200 feet. When encroachment has been made within 200 feet of a property line, the Board shall require corrective measures to protect adjacent properties;

om. No excavation shall be extended below the grade of adjacent streets unless two hundred feet from the street line.

8.3 In addition to the preliminary plan the Board may require the owner or others to undertake studies where it is deemed necessary or desirable by the Board. Said studies are to be undertaken at the owner's expense.

8.4 An application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 30 days of receipt of such application.

8.5 The final plan shall be submitted by the owner to the Board for review within 60 days from the granting of preliminary approval. Failure to do so shall constitute a withdrawal of the application.

8.6 The Preliminary Application shall be accompanied by an engineering opinion, in form and content satisfactory to the Planning Board, and other technical information required by the Board to make the necessary findings under Section 7.2. The cost of obtaining this information shall be borne by the owner.

CHAPTER 420

EROSION & SEDIMENT CONTROL AT  
CONSTRUCTION SITES ORDINANCE

(REVISED 06/08/23)

## Chapter 420 Town of Scarborough

### Erosion and Sedimentation Control at Construction Sites Ordinance

#### Section 5 Submission Requirements

##### 5.1 Project Contacts and Qualifications

The applicant shall provide contact information (i.e., name, company if applicable, phone number, physical address, and email address) as described below:

- Applicant,
- Qualified Professional, and
- Contractor (if applicable)

##### 5.2 Erosion and Sedimentation Control Plan Content

The Erosion and Sedimentation Control Plan shall be prepared in accordance with the performance standards contained in Appendix 1.

The Erosion and Sedimentation Control Plan shall consist of a graphic representation of the Site at a scale no smaller than 1 inch = 100 feet showing:

- Parcel boundaries,
- Locations of Protected Natural Resources,
- 75-foot setback line, horizontal distance. Of the normal high-water line of all Protected Natural Resources,
- Locations of all potential sources of authorized and unauthorized non-stormwater discharges,
- Locations of all Erosion and Sedimentation Control BMPs to be used,
- Topography for Site pre-and post-construction conditions as 2-foot elevation contours,
- Details for all Erosion and Sedimentation Control BMPs to be used,
- Locations of grades and steep side slopes greater than 3:1, and additional Erosion and Sedimentation Control BMPs and stabilization measures to be used for these locations,
- Details and timing associated with phasing of Construction Activity in Disturbed Areas at the Site, and phasing of installation and stabilization of Erosion and Sedimentation Control BMPs (if applicable),
- Erosion and Sedimentation Control BMPs Notes with construction standards,
- A narrative description of the timing, inspections, and Erosion and Sedimentation Control BMPs to be used,
- Example inspection form,
- Concrete washout plan if necessary,
- Dewatering plan if necessary, and
- Locations of areas not to be disturbed by Construction Activity, including trees, vegetation, and areas intended for infiltration.

The Erosion and Sedimentation Control Plan shall also include documentation of any variances or releases provided by the Maine Department of Environmental Protection from Chapter 500 performance standards.



## Appendix 1 – Erosion and Sedimentation Control Standards

The Erosion and Sedimentation Control Plan required under this Ordinance shall be developed and implemented to conform to the Maine Department of Environmental Protection's 06-096 CMR Chapter 500 Stormwater Management Rule Appendices A, B, and C as mandatory minimum standards with the following additional standards. Whenever a standard of this Ordinance conflicts with Maine Department of Environmental Protection's 06-096 CMR Chapter 500 Stormwater Management Rule Appendices A, B, and C, the more stringent standard shall control.

Where not otherwise specified in this Appendix, the Erosion and Sedimentation Control BMPs shall be designed using Performance Standards specified in the Maine Erosion and Sediment Control BMPs Manual developed by the Maine DEP (October 2016 or most current version). Abrupt changes in grades and steep side slopes (>3:1) shall be avoided. Transitional grading shall be used to blend all earthworks into the natural contours of the land where possible. Additional erosion and sedimentation control, and stabilization must be included for grades and steep side slopes greater than or equal to 3:1.

Erosion and Sedimentation Control BMPs that require design to accommodate specific storm events shall be designed using precipitation data from either the Northeast Regional Climate Center (<http://precip.eas.cornell.edu>), Extreme Precipitation Tables, or the NOAA Atlas 14 precipitation data ([https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html)).

The Erosion and Sedimentation Control Plan shall be prepared by a Qualified Professional as defined in this Ordinance.

CHAPTER 903  
NON-STORMWATER DISCHARGE  
ORDINANCE

(REVISED 06/08/23)

**CHAPTER 9\_\_**  
**TOWN OF**  
**SCARBOROUGH**  
**NON-STORM WATER DISCHARGE ORDINANCE**

**Article V. Prohibition of Non-Storm Water Discharges**

**A. General Prohibition.** Except as allowed or exempted herein, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Drainage System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Municipality may have approved the connections, drains or conveyances by which a Person Discharges unallowed Non- Storm Water Discharges to the Storm Drainage System.

**B. Allowed Non-Storm Water Discharges.** The creation, initiation, origination or maintenance of the following Non-Storm Water Discharges to the Storm Drainage System is allowed:

1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); dechlorinated hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing (where discharge is not directly into a wetland or body of water);
2. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
3. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.
4. ~~Drained~~ Dechlorinated water from swimming pools.

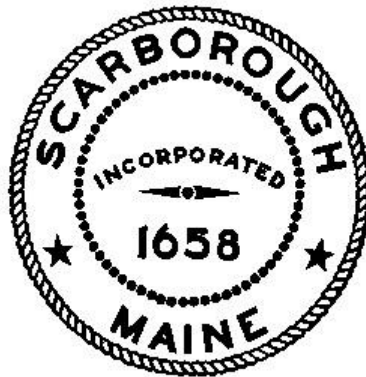
**CHAPTER 1018**

**TOWN OF SCARBOROUGH**

**~~MARIJUANA~~CANNABIS**

**ESTABLISHMENT LICENSING**

**ORDINANCE**



Adopted 01-22-2020 - Effective Date: 02-22-2020  
Amended 08-18-2021

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**Chapter 1018**  
**Town of Scarborough**  
**MarijuanaCannabis Establishments Licensing Ordinance**

**Section 1. Purpose.**

The purpose of this Ordinance is to regulate and license MarijuanaCannabis Establishments as defined in this Ordinance and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, and the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended, in order to promote the health, safety, and general welfare of the residents of Scarborough.

Persons or entities wishing to establish a MarijuanaCannabis Establishment within the Town of Scarborough shall first obtain a license from the Scarborough Town Council (hereinafter “the Town Council”) and shall be subject to the provisions of this Ordinance.

**Section 2. Authority.**

This Ordinance is adopted pursuant to the authority granted by 28-B M.R.S.A. §401 *et seq.*, as may be amended, and 22 M.R.S.A. §2421 *et seq.*, as may be amended.

**Section 3. Definitions.**

The following definitions shall apply to this Ordinance:

*Adult use marijuanacannabis* shall mean “adult use marijuanacannabis” as that term is defined in 28-B M.R.S.A. §102(1), as may be amended.

*Adult Use MarijuanaCannabis Cultivation Facility* shall mean a “cultivation facility” as that term is defined in 28-B M.R.S.A. §102(13), as may be amended.

*Adult use marijuanacannabis product* shall mean “adult use marijuanacannabis product” as that term is defined in 28-B M.R.S.A. §102(2), as may be amended.

*Adult Use MarijuanaCannabis Products Manufacturing Facility* shall mean a “products manufacturing facility” as that term is defined in 28-B M.R.S.A. §102(43), as may be amended.

*Adult Use MarijuanaCannabis Testing Facility* shall mean a “testing facility” as that term is defined in 28-B M.R.S.A. §102(54), as may be amended.

*Applicant* shall mean a person that has submitted an application for licensure as a MarijuanaCannabis Establishment pursuant to this Ordinance.

*Cultivate* or *cultivation* shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuanacannabis for use or sale. It does not include manufacturing.

*De Minimis changes* shall mean minor changes to a submitted floor plan of less than -50%, improvements to odor mitigation plans, enhancements to security plans, or changes to ownership interest or officers of not greater than 50%. [Adopted 08/18/2021]

*Edible Cannabis Product* shall mean a “Edible Cannabis Product” as the term is defined in in 28-B M.R.S.A. §102(16), as may be amended.

*Inherently Hazardous Extraction Methods* shall mean inherently hazardous solvent extraction using a 99 percent or greater purity of the following solvents: (1) Butane; (2) Propane; (3) Acetone; (4) Heptane; (5) Pentane; or (6) Any other chemicals approved by the Office of Cannabis Policy in writing.

*Licensed premises* shall mean the premises specified in an application for a State or Local License pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use marijuanacannabis, adult use marijuanacannabis products, medical marijuanacannabis or medical marijuanacannabis products in accordance with the provisions of this Ordinance and the requirements of State law and regulations.

*Licensee* shall mean a person licensed pursuant to this Ordinance.

*Local License* shall mean any license required by and issued under the provisions of this Ordinance.

*Local Licensing Authority* shall mean the Town Council, as further specified in the provisions of this Ordinance.

*Manufacture or manufacturing* shall mean the production, blending, infusing, compounding or other preparation of marijuanacannabis products, including, but not limited to, marijuanacannabis extraction or preparation by means of chemical synthesis. It does not include cultivation.

*MarijuanaCannabis* shall mean “marijuanacannabis” as that term is defined in 28-B M.R.S.A. §102(27) as may be amended.

*MarijuanaCannabis concentrate* shall mean the resin extracted from any part of a marijuanacannabis plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of marijuanacannabis concentrate in a marijuanacannabis product, the weight of any other ingredient combined with marijuanacannabis to prepare a marijuanacannabis product may not be included.

*MarijuanaCannabis Establishment* shall mean an Adult Use MarijuanaCannabis Cultivation Facility, an Adult Use MarijuanaCannabis Products Manufacturing Facility, an Adult Use MarijuanaCannabis Testing Facility, a Medical MarijuanaCannabis Dispensary, a Medical MarijuanaCannabis Testing Facility, a Medical MarijuanaCannabis Manufacturing Product Facility, and a Medical MarijuanaCannabis Cultivation Facility. A MarijuanaCannabis Establishment does not include an Adult Use MarijuanaCannabis Store or a Medical MarijuanaCannabis Caregiver Retail Store, which are not permitted in the Town of Scarborough.

*Medical marijuanacannabis* shall mean the medical use of marijuanacannabis, with the term “medical use” as defined in 22 M.R.S §2422(5), as amended.

*Medical marijuanacannabis caregiver* shall mean a “caregiver” as that term is defined in 22 M.R.S.A. §2422(8-A), as may be amended.

*Medical MarijuanaCannabis Caregiver Retail Store* shall mean “caregiver retail store” as that term is defined in 22 M.R.S.A. §2422(1-F) as may be amended.

*Medical marijuanacannabis cultivation area* shall mean a “cultivation area” as that term is defined in 22 M.R.S.A. §2422(3), as may be amended.

*Medical MarijuanaCannabis Cultivation Facility* shall mean a medical marijuanacannabis cultivation area used or occupied by one or more medical marijuanacannabis registered caregivers and a facility licensed under this ordinance to cultivate, prepare and package medical marijuanacannabis at a location that is not the residence of the Registered Caregiver or Qualifying Patient.

*Medical MarijuanaCannabis Dispensary* shall mean a “registered dispensary” as that term is defined in 22 M.R.S.A. §2422(6), as may be amended.

*Medical marijuanacannabis product* shall mean a “marijuanacannabis product” as that term is defined in 22 M.R.S.A. §2442(4-L), as may be amended.

*Medical MarijuanaCannabis Products Manufacturing Facility* shall mean a “manufacturing facility” as that term is defined in 22 M.R.S.A. §2422(4-R), as may be amended.

*Medical marijuanacannabis qualifying patient* shall mean a “qualifying patient” as that term is defined in 22 M.R.S.A. §2422(9), as may be amended.

*Medical marijuanacannabis registered caregiver* shall mean a “registered caregiver” as that term is defined in 22 M.R.S.A. §2422(11), as may be amended.

*Medical MarijuanaCannabis Testing Facility* shall mean a “marijuanacannabis testing facility” as that term is defined in 22 M.R.S.A. §2422(5-C), as may be amended.

*Non-Inherently Hazardous Extraction Methods shall mean Mechanical extraction using: (1) Potable water and ice made from potable water; (2) Dry screening or sieving; (3) Cryogenic or subzero processing not involving a solvent; or (4) Pressure and temperature; CO2 extraction; Ethanol, including solutions of ethanol and potable water; or A liquid chemical, compressed gas or commercial product that has a flashpoint above 38 degrees Celsius or 100 degrees Fahrenheit.*

*Plant Canopy* shall mean “Plant canopy” as that term is defined in 28-B M.R.S.A. §102(41), as may be amended.

*Owner* shall mean a person whose beneficial interest in a MarijuanaCannabis Establishment is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a MarijuanaCannabis Establishment and/or has a controlling interest in a MarijuanaCannabis Establishment.

*Person* shall mean a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. “Person” does not include any governmental organization.

*State License* shall mean any license, registration or certification issued by the State Licensing Authority.

*State Licensing Application* shall mean the application form and supporting materials required by the State for the purpose of a person obtaining a State license, registration or certification for the cultivation, manufacture, distribution, testing and sale of adult use marijuanacannabis, adult use marijuanacannabis products, medical marijuanacannabis and/or medical marijuanacannabis products in this State.

*State Licensing Authority* shall mean the authority (or authorities) created by the State for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale

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of adult use marijuanacannabis, adult use marijuanacannabis products, medical marijuanacannabis and/or medical marijuanacannabis products in this State.

#### **Section 4. License Required.**

No person may establish, operate or maintain a MarijuanaCannabis Establishment without first obtaining a license from the Town Council.

Any grandfathered use pursuant to Section 10.5.A of this Licensing Ordinance shall obtain a license from Town Council within 6 months of the adoption of this Ordinance; however, the standards of Section 10.A.(2, 3, 4) are not applicable to licensing process of these grandfathered activities.

#### **Section 5. License Application.**

An application for a license must be made on a form provided by the Town. All applicants must be qualified according to the provisions of this Ordinance. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

The application for a MarijuanaCannabis Establishment license shall contain the following information:

##### **A. Name of Applicant.**

1. If the applicant is an individual: The individual shall state their legal name and any aliases and submit proof that they are at least twenty- one (21) years of age.
2. If the applicant is a partnership: The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any, and submit proof that all partners are at least twenty-one (21) years of age.
3. If the applicant is a corporation: The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and submit proof that all officers, directors and principal stockholders are at least twenty-one (21) years of age.
4. If the applicant is a limited liability company (LLC): The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process, and submit proof that all members are at least twenty-one (21) years of age.
5. If the applicant intends to operate the MarijuanaCannabis Establishment under a name other than that of the applicant, they must state the MarijuanaCannabis Establishment's name and submit the required registration documents.

##### **B. The applicant's mailing address and residential address.**

##### **C. Recent passport-style photograph(s) of the applicant(s) or governmental issued photo identification.**

##### **~~D. The applicant's driver's license.~~**

- E. A sketch showing the configuration of the subject premises, including building footprint, plant canopy square footage calculations, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.
- F. The location of the proposed MarijuanaCannabis Establishment, including a legal description of the property, street address, and telephone number. The applicant must also demonstrate that the property meets the zoning requirements for the proposed use.
- G. If the applicant has had a previous license under this Ordinance or other similar MarijuanaCannabis Establishment license applications in another town in Maine, in the Town of Scarborough, or in another state denied, suspended or revoked, they must list the name and location of the MarijuanaCannabis Establishment for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and they must list whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose license has previously been denied, suspended or revoked, listing the name and location of the MarijuanaCannabis Establishment for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation.
- H. If the applicant holds any other permits/licenses under this Ordinance or other similar MarijuanaCannabis Establishment license from another town, the Town of Scarborough, or state the applicant shall provide the names and locations of such other permitted/licensed businesses, including the current status of the license or permit and whether the license or permit has been revoked.
- I. The type of MarijuanaCannabis Establishment for which the applicant is seeking a license and a general description of the business including hours of operation.
- J. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the MarijuanaCannabis Establishment pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.
- K. A copy of a Town Tax Map depicting the property lines of any public or preexisting private school within one thousand (1000) feet of the subject property. For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program all as defined in 20-A M.R.S.A. §1, or any other educational facility that serves children from prekindergarten to grade 12, as well as any preschool or daycare facility licensed by the Maine Department of Health and Human Services.
- L. Evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.
- M. A copy of the security plan as required by Section 10(A)(6) of this Ordinance.
- N. A copy of the odor and ventilation mitigation plan as required by Section 10(A)(7) of this Ordinance.
- O. A copy of the operations plan, as required by Section 10(A)(8) of this Ordinance.
- P. Consent for the right to access the property as required by Section 10(B) of this Ordinance.

- Q. Evidence of insurance as required by Section 10(C)(1) of this Ordinance.
- R. Medical ~~marijuana~~cannabis registered caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. §2425-A(12), as may be amended, and the Maine Freedom of Access Act, 1 M.R.S.A. §402(3)(F), shall mark such information as confidential.

#### Section 6. Application and License Fees. [Amended 08/18/2021]

- A. Applicant Fee. An applicant must pay a ~~\$350~~ application fee for new licenses, and \$350 for renewal applications, upon submission. Applicants are also responsible for the Town's expenses associated with the review of an application, including the cost of any third-party review if necessary.
- B. License Fee. Local License fees are set forth below and shall be paid annually:
1. Adult Use ~~Marijuana~~Cannabis Cultivation Facility:
    - (a) Tier 1: 0 to 500 SF of plant canopy: ~~\$750~~ \$1,000
    - (b) Tier 2: 501-2,000 SF of plant canopy: ~~\$3,000~~ \$1,500
    - (c) Tier 3: 2,001-7,000 SF of plant canopy: ~~\$7,500~~ \$2,000
    - (d) Tier 4: greater than 7,000SF of plant canopy: ~~\$10,000~~ \$2,500
  2. Adult Use or Medical ~~Marijuana~~Cannabis Testing Facility: \$1,000
  3. Adult Use or Medical ~~Marijuana~~Cannabis Products Manufacturing Facility: ~~\$2,500~~
    - (a) Tier 1: Edible Cannabis Product Processing: ~~\$500~~
    - (b) Tier 2: Non-Inherently Hazardous Extraction \$1,000:
    - (c) Tier 3: Inherently Hazardous Extraction: \$2,500
    - (d) Entities seeking both an adult use and medical manufacturing license within the same tier will pay 50% of the fee for the second license.
  4. Medical ~~Marijuana~~Cannabis Cultivation Facility: ~~\$750~~ \$1,000
- C. Application Change Fee: License holders seeking to make de minimum changes to an existing license: \$150. [Adopted 08/18/2021]

#### Section 7. Licensing Authority and Procedure. [Amended 08/18/2021]

- A. The initial application for a license shall be processed by the Town Clerk and reviewed and approved by the Town Council.
- B. Complete application. In the event that the Town Clerk determines that a submitted application is not complete, the Town Clerk shall notify the Applicant within ten (10) business days that the application is not complete and shall inform the Applicant of the additional information required to process the application.
- C. Public hearing.

1. A public hearing by the Town Council on an application for a license shall be scheduled after receipt of a completed application. The Town Clerk shall publish public notice of the hearing not less than ten (10) days prior to the hearing in a newspaper of general circulation in Cumberland County.
  2. When an application is determined to be complete, the Town Clerk shall, at the applicant's expense, give written notification to all abutting property owners within five-hundred (500) feet of the parcel on which the proposed license is sought of the date, time, and place of the meeting at which the application will be considered. Notification shall be sent at least ten (10) days prior to the first meeting at which the complete application is to be reviewed. Failure of any property owner to receive the notification shall not necessitate another hearing or invalidate any action of the Board. For purposes of this section, the owners of the abutting properties shall be considered to be the parties listed by the tax assessor for the Town of Scarborough.
- D. A renewal application shall be subject to the same application and review standards as applied to the initial issuance of the license. Renewal applications from applicants in good standing, with no change, or de minimis, to the original application, may be approved by the Town Manager or their designee, so long as all other criteria and requirements as outlined in this Section and Section 10, have been met. The Town as part of the renewal process, shall consider compliance from prior years, and based upon that review, may recommend conditions to any future license to correct, abate, or limit past problems to forward to the Town Council for action.  
[Amended 08/18/2021]
- E. Responsibilities and review authority.
1. The Town Clerk shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Ordinance. The Town Clerk shall consult with other Town Departments and any appropriate State Licensing Authority as part of this investigation.
  2. No Local License shall be granted by the Town Council until the Police Chief, the Fire Chief, and the Code Enforcement Officer have all made the determination that the Applicant complies with this and all other local ordinance and state laws and provides a written recommendation to the Town Clerk. Where an agent of the Town determines that is necessary for the Town to consult with a third-party expert consultation to the applicant. Before doing so, however, the Town shall give reasonable notice to the applicant of its determination of need, including the basis for the determination; the third-party that the Town propose to engage; and then estimated fee for the third-party consultation. The applicant shall have the opportunity respond for up to (10) business days from receipt of the Town's notice before the Town engages the third-party. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any ordinance provision or State law, it shall be the duty of the Applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the Town authorized to make the inspection at any reasonable time that admission is requested.
  3. The Town Council shall have the authority to approve license and renewal applications, subject to the exception outlined in 7(D) above, and impose any conditions on a license that may be necessary to insure compliance with the requirements of this Chapter or to address concerns about operations that may be resolved through the conditions. The failure to

comply with such conditions shall be considered a violation of the license.  
[Amended 08/18/2021]

4. The Town Manager, or designee, with the endorsement of the Council Chair, shall have the authority to approve de minimis changes to an existing license subject to continued compliance with this Section and Section 10 below. [Adopted 08/18/2021]

#### **Section 8. License Expiration and Renewal.** [Amended 08/18/2021]

- A. ~~Each Local License issued shall be effective for one year from the date of issuance. A new license, when granted, shall be valid until August 31<sup>st</sup>, immediately following said granting of said license, except that new licenses granted during July and August shall be valid until August 31<sup>st</sup> of the following calendar year.~~
- B. Renewal applications must be submitted at least 45 days prior to the date of expiration of the annual Local License. An application for the renewal of an expired license shall be treated as a new license application.
- C. Licenses issued under this Ordinance are not transferable to a new owner. A transfer in ownership interest, change in the officers of an owner, of greater than 50% of the ownership interest or officer shall require a new license. Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A Licensee who seeks to operate in a new location shall acquire a new Local License for that location. [Amended 08/18/2021]

#### **Section 9. Denial, Suspension or Revocation of License.**

- A. A Local License under this Ordinance shall be denied to the following persons:
  1. A person who fails to meet the requirements of this Ordinance. Where an Applicant is an entity rather than a natural person, all natural persons with an ownership interest shall meet these requirements.
  2. A person who has had a license for a ~~MarijuanaCannabis~~ Establishment revoked by the Town or by the State.
  3. An Applicant who has not acquired all necessary State approvals and other required local approvals prior to the issuance of a Local License.
- B. The Town may suspend or revoke a license for any violation of this Chapter, Chapter 1000a, Chapter 405, or any other applicable building and life safety code requirements. The Town may suspend or revoke a license if the licensee has a State License for a ~~MarijuanaCannabis~~ Establishment suspended or revoked by the State. The Licensee shall be entitled to notice and a hearing prior to any suspension or revocation, except where the reason for suspension or revocation could reasonably threaten health, safety, or welfare, as long as notice and a hearing is provided as soon as practicable.

#### **Section 10. Performance Standards for License** [amended 08/18/2021]

- A. General.
  1. All ~~MarijuanaCannabis~~ Establishments shall comply with applicable state and local laws and regulations.
  2. ~~MarijuanaCannabis~~ Establishments shall only be located within the zoning districts permitted in the ~~Scarborough Zoning Ordinance~~.

3. ~~MarijuanaCannabis~~ Establishments may not be located on property within 1,000 feet of the property line of a preexisting school as required and defined in Section 5(K) of this Ordinance.
4. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the ~~MarijuanaCannabis~~ Establishment is located. If the ~~MarijuanaCannabis~~ Establishment is located within a commercial subdivision, the required setback shall be measured from the closest portion of a building that is used for the ~~MarijuanaCannabis~~ Establishment to the property line of the school. Presence of a town, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
5. Pursuant to 22 M.R.S.A. §2429-D(3), Caregiver Retail Stores, Medical ~~MarijuanaCannabis~~ Dispensaries, Medical ~~MarijuanaCannabis~~ Testing Facilities, Medical ~~MarijuanaCannabis~~ Manufacturing Facilities and Medical ~~MarijuanaCannabis~~ Cultivation Facilities that were operating with Town approval prior to December 13, 2018, are grandfathered in their current location and current use and shall be treated as legally non-conforming uses in accordance with Article III of the Scarborough Zoning Ordinance, provided, however, that said ~~MarijuanaCannabis~~ Establishments shall apply for and obtain a license. If any non-conforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by the Zoning Ordinance for the district in which such land is located.
6. Security measures at all ~~MarijuanaCannabis~~ Establishment premises shall include, at a minimum, the following:
  - a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with thirty (30) day video storage, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises; and
  - b. Door and window combination video and motion detector intrusion system ~~and contact sensors~~ with audible alarm and ~~remotely accessible smart-phone~~ monitoring, maintained in good working condition; and
  - c. A ~~mounted and non-removable~~ locking safe or locked room ~~with a security door and contact alarm~~ permanently affixed to the premises that is suitable for storage of all ~~marijuanacannabis, marijuanacannabis~~ products, and ~~currency cash~~ stored overnight on the licensed premises; and
  - d. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk to dawn, that is either constantly on or activated by motion detectors, and complies with applicable provisions of the lighting performance standards in the Town of Scarborough Zoning Ordinance and the Good Neighbor Ordinance; and
  - e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars ~~or equipped with monitored glass-break sensors~~; and
  - f. Methods to ensure that no person under the age of twenty-one (21) shall have access to ~~marijuanacannabis~~ and ~~marijuanacannabis~~ products.

7. ~~Odor and Ventilation.~~ All Cannabis Establishments shall have odor mitigation systems to ensure that the smell of Cannabis shall not be detectable beyond the property boundary, subject to the enforcement process outlined in Section 11. ~~A Cannabis Establishment, and property owner, are responsible for taking any and all reasonable measures necessary to ensure this standard is met. Cannabis Cultivation Facilities, or other Cannabis Establishments with increased probability to emit odors, will be subject to the following stipulations:~~

a. ~~Marijuana Establishments shall be required to install an activated carbon, or equivalent, odor mitigation system with a minimum air exchange rate of fifteen (15) air changes per hour in the following areas:~~

1. ~~mature flower rooms~~
2. ~~cure rooms~~
3. ~~trim rooms and packaging rooms~~
4. ~~hallways adjacent to the mature floor rooms~~
5. ~~other areas with high odor potential~~

Alternative odor control technologies may be considered with documentation of efficacy.

b. ~~License holders will be required to replace activated Carbon Media or other filters used to mitigate odor in accordance with the manufacturer's specifications. Carbon Media includes but is not limited to carbon filters, carbon canister filters and pre-filters.~~

c. ~~All odor mitigation equipment used by an applicant or License holder shall always be in operation unless (1) the interruption is caused by a power outage or power failure; (2) the interruption is caused by routine maintenance, as recommended by the manufacturer, or emergency maintenance, to the odor mitigation equipment; or (3) the Town, in writing, permits otherwise. In the event there is a power outage or power failure, the License shall do whatever is reasonably necessary (e.g., informing Central Maine Power of any power disruption) to ensure power is restored to its facility as soon as reasonably practicable. For any disruption due to maintenance, the License holder shall ensure the odor mitigation equipment is returned to service or replaced as soon as reasonably practicable.~~

d. ~~No exterior venting of cannabis odor unless the applicant or License holder: (1) notifies the Town; (2) provides evidence of the cannabis odor being properly treated before exhausted outside; and (3) Town approves of the exterior venting of the cannabis odor. The Town shall not deny an applicant or License holder from venting odor outside unless either fails to provide sufficient evidence that the odor will be properly treated before its exhausted outside, or the License holder has been fined more than once by the Town for an odor violation.~~

e. ~~No window air conditioning units or window fans are permitted.~~

f. ~~All windows must always remain closed.~~

g. ~~Maintenance Records for all odor mitigation equipment shall be maintained for a period of two (2) years from the date of maintenance. Maintenance Records means records of purchases of replacement carbon filters or other odor mitigation equipment, performed maintenance tracking, documentation and notification of malfunctions or power outages,~~

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scheduled and performed training sessions, and monitoring of administrative controls. All Maintenance Records shall be made available for review, upon request from the Town.

- h. Submit an Odor Mitigation Plan at the initial application stage of seeking a License. A License holder shall not be required to re-submit an Odor Mitigation Plan upon renewing the License unless there have been changes to the facility floor plan or system design as described in the existing Odor Mitigation Plan. The Odor Mitigation Plan must, at a minimum, includes the following information:

#### 1. FACILITY ODOR EMISSIONS INFORMATION

- Facility floor plan. This section should include a facility floor plan, with locations of odor-emitting activity(ies) and emissions specified. Relevant information may include, but is not limited to, the location of doors, windows, ventilation systems, and odor sources. If a facility has already provided the locations of specific odor-emitting activities and emissions in its business license application floor plan, it may instead reference the facility's business file number(s) and the relevant sections within such application where the floor plan is located.
- System design. The system design should describe the odor control technologies that are installed and operational at the facility (e.g., carbon filtration) and to which odor-emitting activities, sources, and locations they are applied (e.g., bud room exhaust).
- Specific odor-emitting activity(ies). This section should describe the odor-emitting activities or processes (e.g., cultivation) that take place at the facility, the source(s) (e.g., budding plants) of those odors, and the location(s) from which they are emitted (e.g., flowering room).
- Phases (timing, length, etc.) of odor-emitting activities. This section should describe the phases of the odor-emitting activities that take place at the facility (e.g., harvesting), with what frequency they take place (e.g., every two weeks on Tuesdays), and for how long they last (e.g., 48 hours).
- Odor Mitigation Specification Template. Form can be found on the Town's Cannabis Establishment License webpage.

#### 2. ADMINISTRATIVE CONTROLS

- Procedural Activities. This section should describe activities such as building management responsibilities (e.g., isolating odor-emitting activities from other areas of the buildings through closing doors and windows).
- Staff training procedures This section should describe the organizational responsibility(ies) and the role/title(s) of the staff members who will be trained about odor control; the specific administrative and engineering activities that the training will encompass; and the frequency, duration, and format of the training (e.g., 60 minute in-person training of X staff, including the importance

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*of closing doors and windows and ensuring exhaust and filtration systems are running as required).*

- *Recordkeeping systems and forms This section should include a description of the records that will be maintained (e.g., records of purchases of replacement carbon filter, performed maintenance tracking, documentation and notification of malfunctions, scheduled and performed training sessions, and monitoring of administrative controls). Any examples of facility recordkeeping forms should be included as appendices to the Plan.*

i.

7. ~~Odor and Ventilation. All Marijuana Establishments shall have odor mitigation systems and a plan to ensure that the smell of marijuana shall not be detectable at the property boundary or at any adjoining use of the same property, whichever is closer. A Marijuana Establishment, and property owner, are responsible for taking any and all measures necessary to ensure this standard is met. Marijuana Cultivation Facilities, or other Marijuana Establishments with increased probability to emit odors, will be subject to the following stipulations:~~

- ~~Establishments shall be required to install an activated carbon, or equivalent, odor mitigation system with a minimum air exchange rate of ten (10) air changes per hour in all flower rooms, cure rooms, trim rooms, or other areas with high odor potential. Alternative odor control technologies may be considered with documentation of efficacy.~~
- ~~License holders will be required to replace activated carbon media in accordance with the manufacturer's specifications but no less than on an annual basis. [amended 08/18/2021]~~

8. ~~Cannabis Waste and Disposal. Operating Plan. Marijuana Establishments which cultivate, test, and/or manufacture are required to submit an operation plan that at a minimum addresses wastewater and waste disposal. No marijuanacannabis, marijuanacannabis products, marijuanacannabis plants, or other marijuanacannabis waste may be stored outside, other than in secured, locked containers. Any wastewater shall be treated such that it will not create excessive odors, contamination, or pollution.~~

9. Signs. In addition to the sign regulations contained in Chapter 405, Zoning Ordinance, signage must comply with the requirements in 22 M.R.S.A. §2429-B and 28-B M.R.S.A. §702.

#### B. Performance Standards for Inherently Hazardous Extraction Manufacturers

1. Engineer Certification Requirement. Inherently Hazardous Extraction Methods. The Applicant shall provide a written certification by a professional engineer licensed in Maine. The engineer must certify that the manufacturing facility's storage, preparation, electrical, gas monitoring, fire suppression and exhaust systems are adequate. The Applicant is only required to submit this certification at the time it first files for a Local License in Scarborough.

#### CB. Right of Access /Inspection.

1. Every MarijuanaCannabis Establishment shall allow the Scarborough Code Enforcement Officer ("CEO"), Fire Department, and Police Department to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance.
2. All MarijuanaCannabis Establishments shall agree to be inspected annually by the Scarborough Fire Department and have a Knox Box installed at the structure's exterior entrance

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for emergency access. Knox Boxes shall be obtained and installed in coordination with the Scarborough Fire Department.

C. Insurance and Indemnification.

1. Each ~~marijuana~~cannabis establishment shall procure and maintain commercial general liability coverage in the minimum amount of \$1,000,000 per occurrence for bodily injury, death, and property damage.
2. By accepting a license issued pursuant to this Ordinance, the licensee knowingly and voluntarily waives and releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of any ~~MarijuanaCannabis~~ Establishment owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.
3. By accepting a license issued pursuant to this Ordinance, the permittee/licensee agrees to indemnify, defend, and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of any injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of a licensed ~~MarijuanaCannabis~~ Establishment.

D. State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, cultivation, manufacture, distribution, or testing of ~~MarijuanaCannabis~~ or ~~MarijuanaCannabis~~ products, the additional or stricter regulation shall control the establishment or operation of any ~~MarijuanaCannabis~~ Establishment in Scarborough.

Compliance with all applicable State laws and regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with State laws or regulations shall be grounds for revocation or suspension of any license issued hereunder.

**Section 11. Odor Observation and Enforcement**

Per Section 10(7), odor of cannabis by a Licensee shall not be detectable beyond the property boundary. Cannabis odor observation shall be undertaken to arrive at a determination that a cannabis odor exists beyond the property line. The standard of proof necessary to verify a complaint is a preponderance of the evidence. All cannabis odor observations made by the Town shall be made in writing. This Section only applies to Licensed Cannabis Establishments.

If the Code Enforcement Department receives seven (7) or more written cannabis odor complaints, the process below shall be used to correct the odor problem. Odor complaints must be from at least three (3) different households or businesses that are within 500 feet of the suspected property line of the cannabis odor location, during a seven-day period. The minimum of seven (7) complaints must be reported across a minimum of two (2) days within the seven-day period and complaints from the same household must be a minimum of ninety (90) minutes apart.

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1. Within forty-eight (48) hours of receiving the seventh cannabis odor complaint during a seven-day period, the Code Enforcement Department shall investigate the properties that made the complaints to assess the situation. The Code Enforcement Department will conduct two (2) random inspections within the next five (5) calendar days. If the Code Enforcement Officer (“CEO”) is unable to verify the cannabis odor complaints, the inquiry ends. If the CEO verifies the cannabis odor complaints, the CEO shall contact the Licensee. If the CEO is unable to determine which Licensee is generating the cannabis odor but by the preponderance of the evidence, can ascertain the property in which the cannabis odor is emanating from, the CEO shall contact the Landlord of the property. The CEO shall provide verbal notice of violation to the Licensee or to the Landlord, provide instructions to comply with this Ordinance and require the Licensee or Landlord to notify the Code Enforcement Department, in writing, of conformance of the Ordinance within ten business days of receiving the verbal notice of violation. The notice of compliance shall include what steps were taken to be in conformance of the Ordinance.

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2. If after the fourteen-day period as described above, cannabis odor complaints persist from the same households or businesses, the Code Enforcement Department shall assemble a Cannabis Odor Panel (“Odor Panel”) to investigate the cannabis odor complaints. The Odor Panel shall include at least three (3) of the following positions: Assistant Town Manager, representative of the Fire Department, representative of the Police Department, Zoning Administrator and a Code Enforcement Officer. The Licensee (if known) and the Landlord must be notified of the date and time when the Odor Panel will meet and be permitted to witness, not participate, in the Odor Panel’s investigation. The Licensee and/or Landlord may send a representative to meet the Odor Panel on their behalf. All members of the Odor Panel must be present and shall investigate within five (5) business days of receiving the complaints.

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a. Odor Panel identifies the Licensee generating the cannabis odor - If the Odor Panel observes the cannabis odor after the ten-day period as described above, the Code Enforcement Department shall notify the Licensee of the second violation, in writing, assess a fine for the violation, require the Licensee to submit a written report from a mechanical engineer or odor management specialist with recommendations for modification/improvement of the odor mitigation system within sixty (60) days of receipt of notice of violation and installation of recommendations and notice of compliance within ninety (90) days. Unless an extension to submit the report and/or notice of compliance is granted by the Code Enforcement Department, failure to submit the report or notice of compliance five business days after the date in which the report or notice of compliance is due shall result in an immediate suspension of the Local License until the report or notice of compliance is submitted to the Code Enforcement Department. The Code Enforcement Department shall not unreasonably deny an extension request to submit the report or notice of compliance as described herein; however, it is the responsibility of the Licensee to request an extension, in writing, to the Code Enforcement Department and provide a reason for the extension.

b. Odor Panel is unable to identify the Licensee generating the cannabis odor - If the Odor Panel observes the odor after the ten-day period as described above but cannot ascertain which Licensee is responsible for the cannabis odor, the Code Enforcement Department shall notify the Landlord of the second violation, in writing, assess a fine for the violation

require the Landlord to submit a written report from a mechanical engineer or odor management specialist with recommendations for modification/improvement of the odor mitigation system within ninety (90) days of receipt of notice of violation and installation of recommendations and notice of compliance within one hundred and twenty (120) days. Unless an extension to submit the report and/or notice of compliance is granted by the Code Enforcement Department, failure to submit the report or notice of compliance five business days after the date in which the report or notice of compliance is due shall in a fine, per day, until the report or notice of compliance is submitted to the Code Enforcement Department. The Code Enforcement Department shall not unreasonably deny an extension request to submit the report or notice of compliance as described herein; however, it is the responsibility of the Landlord to request an extension, in writing, to the Code Enforcement Department and provide a reason for the extension.

3. If after a ten-day period after the submittal of the notice of compliance from the Licensee under Section \_\_\_\_\_ or ten-day period for the Landlord under Section \_\_\_\_\_ (whichever is applicable), the cannabis odor complaints persist from the same households or businesses, the CEO shall investigate the odor complaints within five business days. If the CEO is unable to verify the complaints, the inquiry ends. If the CEO again verifies the cannabis odor complaints, the following process shall occur:

- a. CEO identifies the Licensee generating the cannabis odor – the Code Enforcement Department shall issue a third notice of violation, a fine and request the Town Council consider changes to the Licensee’s Local License. Those changes may include adding additional performance standards to the Licensee’s Local License to resolve the odor concerns cited by the Code Enforcement Department, restrict the Local License, suspend the Local License until the Licensee submits evidence to the Code Enforcement Department that the Licensee is in compliance with this Ordinance, and/or revoke the Licensee’s Local License. The Code Enforcement Department shall provide the Licensee with the date and time the Town Council will consider the Licensee’s Local License in the third notice of violation.
- b. CEO unable to identify the Licensee generating the cannabis odor – the Code Enforcement Department shall issue a third notice of violation, a fine to the Landlord, per day, until the Code Enforcement Department determines that the cannabis complaint is resolved and request the Town Council consider re-examining the land use and performance standards at said location, including adding additional odor mitigation performance standards at that property, placing a cap on the number of Cannabis Establishments permitted at that location, setbacks, and/or prohibiting some or all forms of cannabis activity on that property. The Town shall notify the Landlord and any Licensees at the Landlord’s property that is licensed to cultivate or manufacture cannabis in Scarborough of the date and time the Town Council will consider changes under this section.

All complaints and any related documentation associated with the investigation of the cannabis odor complaints, at no cost to the Licensee or Landlord, shall be made available to the Licensee or Landlord

within ten business days of the Town Council meeting to consider the Licensee's Local License or the Landlord's property.

In the event the Town Council suspends or revokes a Licensee's Local License, the Town Council shall give the Licensee, if permitted under State law, a reasonable period to remove all Cannabis from the Licensee's Licensed Premise. All odor mitigation equipment must remain in operation and in compliance with this Ordinance until the Cannabis is removed from the Licensed Premises. In the event the Town Council suspends and/or revokes the Licensee's Local License and the Licensee is operating as an Adult Use Cannabis Establishment, the Town shall notify the Office of Cannabis Policy of the suspension or revocation.

At any point the CEO or the Town is unable to verify the odor complaints, the violation process reverts to the beginning of the violation process as described herein. If a Landlord or Licensee has not received any verbal or written notice of violation under this Section for one year from the date of the last verbal or written notice of violation, the violation process reverts to the beginning of the violation process as described herein.

#### **Section 121. Violations and Penalties.**

This Ordinance shall be enforced by the Code Enforcement Officer or the Police Chief and her/his designees, who may institute any and all actions to be brought in the name of the Town.

- A. Any violation of this Ordinance, including the operation of a ~~Marijuana~~Cannabis Establishment without a valid Local License and failure to comply with any condition, shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500. Every day a violation exists constitutes a separate violation. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of this Ordinance. In any court action, the Town may seek injunctive relief in addition to penalties, and shall be entitled to recover its costs of enforcement, including its attorney's fees.
- B. In addition to any other remedies provided by this Ordinance, the Town may take all necessary steps to immediately shut down any ~~marijuanacannabis~~ business and post the business and the space that it occupies against occupancy for the following violations: operating a ~~marijuanacannabis~~ business without a Local License or State License; failure to allow entrance and inspection to any Town official on official business after a reasonable request; and any other violation that the Town determines as the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.
- C. The Town Manager shall inform members of the Town Council before instituting action in court, but need not obtain the consent of the Town Council, and the Town Manager may institute an action for injunctive relief without first informing members of the Town Council in circumstances where immediate relief is needed to prevent a serious public harm. In addition, the Town Manager may enter into administrative consent agreements in the name of the Town for the purposes of eliminating violations and recovering penalties without court action

#### **Section 132. Appeals.**

- A. Any appeal of a decision of the Town Council to issue, issue with conditions, deny, or revoke a license shall be to the Superior Court in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

B. Any order, requirement, decision, or determination made, or failure to act, in the enforcement of this ordinance by the CEO or Police Chief is appealable to the Zoning Board of Appeals.

**Section 143. Severability.**

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

**Section 154. Other Laws.**

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Maine Medical Use of ~~Marijuana~~~~Cannabis~~ Act, 22 M.R.S.A. Chapter 558-C, as may be amended and the ~~Marijuana~~~~Cannabis~~ Legalization Act, 28-B M.R.S.A. Chapter 1, as may be amended. In the event of a conflict between the provisions of this Chapter and the provisions of the above laws or any other applicable State or local law or regulation, the more restrictive provision shall control.

**Section 165. Effective Date.**

The effective date of this Ordinance shall be 30 days following adoption by the Town Council.