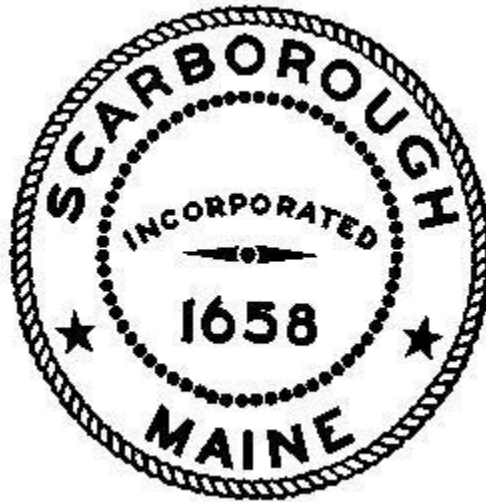


**CHAPTER 413**

**TOWN OF SCARBOROUGH**

**RATE OF GROWTH ORDINANCE**



**Repealed and Replaced May 5, 2021**  
**Effective June 1, 2021**  
**Amended October 5, 2022**  
**Amended June 21, 2023 – Effective July 1, 2023**

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**CHAPTER 413**  
**TOWN OF SCARBOROUGH**  
**GROWTH MANAGEMENT ORDINANCE**  
**Repealed and Replaced May 5, 2021**  
**Effective June 1, 2021 –**  
**Amended June 21, 2023 – Effective July 1, 2023**

**A. TITLE**

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

**B. LEGAL AUTHORITY**

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

**C. PURPOSE** [Amended 06/21/2023]

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

**D. EFFECTIVE DATE AND TRANSITION PROVISIONS.** [Amended 06/21/2023]

This Ordinance is effective as of July 1, 2023. Any growth permits issued prior to July 1, 2023, shall be governed by the Growth Management Ordinance provisions in effect prior to July 1, 2023. Applications for growth permits that were accepted under the Growth Management Ordinance provisions in effect prior to July 1, 2023 that are pending at the time of adoption of this Ordinance shall have access to the growth permits or building permits available prior to the adoption of this Ordinance.

**E. DEFINITIONS** [Amended 06/21/2023]

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

**Affordable Housing:**

The term “affordable housing” has the same meaning as in the Zoning Ordinance and deed restricted for a minimum period of 30 years.

**Building Permit:**

A permit issued by the Building Inspector pursuant to Section IV(D) of the Zoning Ordinance.

**Code Enforcement Officer:**

The Town of Scarborough Code Enforcement Officer, an assistant code enforcement officer or an authorized agent of either.

**Dwelling Unit:**

A dwelling unit as defined in the Scarborough Zoning Ordinance.

**Family Gift Lot:**

A lot which is not within a subdivision and which has been created by a gift from a parent to a child (including an adopted child or stepchild) or from a child to a parent (including an adoptive parent or stepparent).

**Gift:**

The conveyance of property for which the grantor receives no money, property or any other value as consideration for the conveyance.

**Growth Permit:**

A permit, issued in accordance with the provisions of this Ordinance, which allows the issuance of a building permit for the construction, creation or placement of one new dwelling unit within the Town of Scarborough.

**Multifamily:**

A building designed and/or used for residential occupancy by three (3) or more families living independently in three (3) or more dwelling units.

**Subdivision:**

A subdivision as defined in 30-A M.R.S.A. § 4401, as such may be amended from time to time, and approved by the Scarborough Planning Board pursuant to the Town of Scarborough Subdivision Ordinance.

**Workforce Housing:**

The term “workforce housing” has the same meaning as in the Zoning Ordinance and deed restricted for a minimum period of 30 years.

**Zoning Ordinance:**

The Zoning Ordinance of the Town of Scarborough, Maine, as such may be amended from time to time.

**F. APPLICABILITY** [Amended 06/21/2023]

This Ordinance shall apply to the construction, creation, or placement of any new dwelling unit within the Town of Scarborough unless exempt as follows in Section G.

**G. EXEMPTIONS** [Amended 10/05/2022]

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

1. Accessory dwelling units as defined in the Zoning Ordinance.
2. Repair, replacement, reconstruction or alteration of an existing dwelling unit.
3. A dwelling unit on a family gift lot, provided that no person may obtain more than one building permit pursuant to this exemption during the time this ordinance is in effect.
4. Dwelling unit(s) that are part of a contract zone in which the provisions of the contract zone agreement if the terms of the contract zone contain an exemption from the provisions of this Ordinance.
5. If there are no growth permits available from the Area allocations the Code Enforcement Officer may issue up to five (5) building permits each calendar year for detached single family dwellings located on lots that are not part of a subdivision.

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

**H. GROWTH AREAS DEFINED** [Adopted 06/21/2023]

The number of growth permits allocated shall be based on the location of the specific request as defined below. The creation of each new dwelling unit regardless of size or bedroom number shall require one (1) growth permit.

1. **Area 1:** Area 1 is defined as dwelling units located in the Rural Residence and Farming District (R- F), Rural Residence, Farming and Manufactured Housing District (R-F-M), Residential District R-2, Residential District R-3, Residential District R-4, Residential District R-4A, Running Hill-Gorham Road Mixed Use District (RH) and Running Hill-Gorham Road Transition District (RH2) zoning districts in the areas designated as Rural Residential Limited Growth Area and Low to Moderate Density Residential Growth Area in the Comprehensive Plan.
2. **Area 2:** Area 2 is defined as dwelling units located in the Town and Village Centers District (TVC), Town and Village Centers Transition District (TVC2), Town and Village Centers Fringe District (TVC3), Town and Village Centers 4 District (TVC-4), Village Residential 2 (VR2), Village Residential 4 District (VR-4), General Business District (B3), Haigis Parkway District (HP), Residence and Professional Office District (RPO), and Traditional Neighborhood Design (TND) zoning districts in the areas designated as Corridor Transformation, Community Activity Center and Regional Activity Center Growth Areas in the Comprehensive Plan.
3. **Area 3:** Area 3 is defined as dwelling units located in the Crossroads Planned Development (CPD) zoning district in the area designated as Regional Activity Center Growth Area in the Comprehensive Plan.

**I. GROWTH PERMITS ALLOCATED BY AREA** [Adopted 06/21/2023]

1. Allocation of growth permits in Area 1.
  - a. Commencing on July 1, 2023, the maximum number of growth permits annually issued between July 1st and June 30th shall be twenty-five (25). Any growth permits not issued in the calendar year shall expire and shall not be carried forward to the next year.
  - b. During each one-year period, no more than fifty percent (50%) of the growth permits available from the Area 1 allocation shall be issued to a common scheme of development.
  - c. Three months prior to the end of each one-year period, all remaining growth permits shall be made available regardless of common scheme limitations.
  - d. The allocation of 25 growth permits in Area 1 shall continue to renew every year on July 1st, until such time Town Council acts to adjust.
2. Allocation of growth permits in Area 2.
  - a. Commencing on July 1, 2023, the maximum number of growth permits issued between July 1, 2023, and June 30, 2026, shall be two-hundred ten (210). Any growth permits not issued in the three-year period shall expire and shall not be carried forward to the next years.
  - b. No more than thirty-five percent (35%) of the growth permits available from the three-year allocation shall be issued for units with three (3) or more bedrooms.
  - c. During each three-year period, no more than fifty percent (50%) of the growth permits available from the Area 2 allocation shall be issued to a common scheme of development.
  - d. Six months prior to the end of each three-year period, all remaining growth permits shall be made available regardless of common scheme limitations.
  - e. The allocation of 210 growth permits in Area 2 shall continue to renew every three years on July 1st, until such time Town Council acts to adjust.
3. Allocation of growth permits in Area 3.
  - a. Commencing on July 1, 2023, the maximum number of growth permits issued between July 1, 2023, and June 30, 2026, shall be four-hundred (400). Any growth permits not

issued in the three-year period shall expire and shall not be carried forward to the next years.

- b. No more than thirty-five twenty percent (35%) of the growth permits available from the three-year allocation shall be issued for units with three (3) or more bedrooms.
- c. The allocation of 400 growth permits in Area 3 shall continue to renew every three years on July 1st, until such time Town Council acts to adjust.

## **J. AFFORDABLE AND WORKFORCE HOUSING GROWTH PERMITS ALL AREAS**

[Adopted 06/21/2023]

1. Allocation of Affordable and Workforce Housing growth permits Town wide.
  - a. Growth permits issued under this section are required meet the definition of affordable and/or workforce housing as defined in this Ordinance and be deed restricted for a period of thirty (30) years.
  - b. Commencing on July 1, 2023, the maximum number of growth permits issued between July 1,2023 and June 30, 2026 shall be one hundred (100). Any growth permits that are not issued in the three-year period shall expire and shall not be carried forward to the next years.
  - c. No more than twenty percent (20%) of the growth permits available from the three-year allocation shall be issued for units with three (3) or more bedrooms.
  - d. Any time permits allocated under this section fall below fifty percent (50%) of the total allocation, staff will advise Town Council to the number remaining.
  - e. If at any time during the three-year period growth permits are expended, Town Council may act to replenish the number of Affordable and Workforce Housing growth permits available.
  - f. The allocation of 100 growth permits for Affordable and Workforce Housing in all areas shall continue to renew every three years on July 1st, until such time Town Council acts to adjust.

## **K. ADMINISTRATION** [Amended 06/21/2023]

1. Application procedure for growth permits.
  - a. All residential projects that are subject to Site Plan approval as required in Chapter 405B Site Plan Review ordinance shall apply for growth permits with the site plan application. Upon approval of the site plan, the growth permits shall be allocated to project. If growth permits are not available at the time of Site Plan submittal and subsequent approval, growth permits will not be issued with approval. The project will request growth permits with subsequent building permits and will be placed in order of request.
  - b. All residential projects exempt from Site Plan approval shall apply for growth permits with a completed building permit application to the Code Enforcement Officer.
  - c. The applications shall be reviewed in the order in which they were received. Only complete applications will be accepted.
  - d. A growth permit application is required for each dwelling unit, although multiple growth permits may be requested on a single application.
2. Issuance procedure for growth permits from the annual allocation.
  - a. Growth permits shall be issued on a first-come, first-served basis according to the dates and times the applications are approved through Site Plan approval or as accepted as complete building permit applications 4 the Code Enforcement Officer.
  - b. If all available permits are issued during the specific Areas calendar period as defined in Section H and Section I above, no additional rate of growth permits may be issued and

no building permit applications accepted until such time rate of growth as permits become available.

3. Transferability.

- a. Growth permits are issued only for the specific lot identified in the growth permit application.

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

4. Expiration

- a. A Growth Permit shall expire with the building permit or site plan approval expiration date, whichever occurs first.

**L. REPORTING.** [Amended 06/21/2023]

1. The Code Enforcement Officer will maintain a listing of all permits issued under this ordinance and any exemptions granted. The listing shall be made accessible to the public on file and through the Town Website and shall include the following:

- a) Growth Area classification as defined by Section I above
- b) Owner and/or applicant name
- c) Tax map, lot number, address and zoning
- d) Building type and number of units (if applicable) and number of bedrooms per unit
- e) Exemption type (if applicable)
- f) Site Plan approval date (if applicable)
- g) Building permit issued date (if applicable)
- h) Certified of occupancy date (when available)

2. The Planning and Codes Department shall prepare an annual report to the Town Council as to the status of growth permits issued and remaining in the three areas as defined by Section I and Section J above. The annual reports shall also include performance metrics relating to impacts of growth as defined by Town Council.

**M. PERIODIC REVIEW OF ORDINANCE** [Amended 06/21/2023]

The Town Council shall conduct a biennial review of this Ordinance to determine if it remains consistent with the Town's ability to absorb growth, to achieve the priorities outlined within the Comprehensive Plan, and to determine if the number of growth permits available under this Ordinance should be adjusted by amendment. During its review the Town Council shall set the number of growth permits at 105% or more of the mean number of growth permits issued during the ten (10) years immediately prior to the year in which the number is calculated. The Town Council may seek assistance or advice from the Planning Board in connection with such review.

This section does not limit Town Council's authority to review and/or amend the Ordinance at any other time. All changes other than the required review during each three-year period shall require supermajority vote by the Town Council for amendments.

**N. VIOLATION, PENALTIES AND ENFORCEMENT** [Amended 06/21/2023]

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

**O. APPEALS** [Amended 06/21/2023]

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

**P. SEVERABILITY.** [Amended 06/21/2023]

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