

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**WORKSHOP RE: 2024 REVALUATION UPDATE – 6:00 P.M.**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**TO VIEW TOWN COUNCIL MEETING & OFFER PUBLIC COMMENT:**

<https://scarboroughmaine.zoom.us/j/87280934847>

**TO VIEW TOWN COUNCIL MEETING ONLY:**

<https://www.youtube.com/channel/UCD5Y8CFy5HpXMftV3xX73aw>

***NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.***

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** General Public Comments.
- Item 5.** Minutes: January 3, 2024 - Town Council Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.
- Item 8.** Town Manager Report.

**\*Procedure for Addressing Council [Councilor Chair will explain process]**

**Order No. 23-140, 7:00 p.m. Public hearing** and second reading on the new requests for a Cannabis Establishment License from Michael Shannon, d/b/a Shannon's Best Buds, located at 15 Holly Street #205B for a Medical Cannabis Products Manufacturing Facility and Christopher McNeil d/b/a Rose Smoke, LLC, located at 3 Commercial Road for a Medical Cannabis Products Manufacturing Facility. [Tabled from January 3, 2024] *[Assistant Town Manager]*

**Order No. 24-002, 7:00 p.m. Public hearing** and second reading on the proposed amendments to Chapter 1002 – the Town of Scarborough Shellfish Ordinance. *[Shellfish Conservation Commission]*

**Order No. 24-003, 7:00 p.m. Public hearing** and second reading on the proposed amendment to Chapter 311 – the Town of Scarborough Schedule of Fees relating to Non-Resident Day Passes. *[Shellfish Conservation Commission]*

**OLD BUSINESS:** None at this time.

**NEW BUSINESS:**

**Order No. 24-005.** First reading and refer to the Planning Board, the proposed amendments to Chapter 405 – the Zoning Ordinance, Section XIX.D. Regional Business District. Regional Business District B-2 – D. Special Exceptions and in Section IX. Performance Standards. *[Planning Director]*

**Order No. 24-006.** First reading and schedule a public hearing and second reading on the proposed amendment to Chapter 311 – the Town of Scarborough Schedule of Fees relating to Lift Assist. *[Fire Chief]*

**Order No. 24-007.** First reading and schedule the second reading to repeal and replace the Ordinance Establishing a Moratorium on Adult Use Marijuana Cultivation Facilities and Medical Marijuana Cultivation Facilities in the Pine Point Industrial Overlay District that the Town Council approved on August 16, 2023 and enact a new Ordinance Establishing a Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities that would apply Town-wide. *[Ordinance Committee]*

**Order No. 24-008.** Act on the request from the Police Chief to accept a \$1,500 donation from Stacey Woight to be used for basic necessities for individuals or families in need. *[Police Chief]*

**Order No. 24-009.** Act on the request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance, to approve the acceptance of public infrastructure, as noted and recommended by the Town Engineer. *[Town Engineer]*

**Order No. 24-010.** Act on the request from the Shellfish Conservation Commissions to approve the Shellfish Allocations for the 2024 Season. *[Shellfish Conservation Commission]*

**Order No. 24-011.** Act on the request to approve the names to the Ad-Hoc Open Space Committee. *[Councilor Shupe]*

**Order No. 24-012.** Act on the request to approve the charge for the School Building Committee – Phase I. *[Chairman McGee]*

**Item 9.** Non-Action Item.

**Item 10.** Standing and Special Committee Reports and Liaison Reports.

**Item 11.** Council Member Comments.

**Order No. 24-013.** Act on the request for an executive session pursuant to Title 1, §405.6.(a) regarding the Town Manager's Performance Evaluation. *[Chairman McGee]*

**Item 12.** Adjournment.



To: Scarborough Town Council  
From: Thomas J. Hall, Town Manager  
RE: Town Manager's Report  
Date: January 17, 2024

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Below is an initial list of items that will be included in the Town Manager's Update at the regular public meeting of January 17, 2024. I will provide a verbal update on each of these items and will likely include other items of interest.

- **Storm Damage-**
  - Three storms- two causing severe coastal flooding
  - Federal Disaster Declaration expected
  - Work well underway to evaluate damage.
    - Higgins Beach - Ramp, Pump Station, Sea Wall
    - Co-op/Pine Point - Dunes, Commercial Pier
    - Black Point Road/Prouts Neck - Jersey Barriers
    - Eastern Trail
    - Payne Road
  - Preliminary Public Assistance Package Submitted to FEMA today
  - Outstanding work from our Public Safety Staff, Public Works Staff, and Private Partners
    - EMD Coordination and Planning
    - 2 Structure Fires
    - 600,000 Gallons of Water Removed from Pine Point
- **FEMA Flood Maps**
  - New maps issued on December 20, 2023
  - Amendments to Floodplain Management Ordinance
  - Required Changes must be completed by June 20, 2024
  - Staff working on timeline and communications plan
  - Future Council Workshop
- **School Building Project**
  - New Charge
  - Community Survey Development in process (statistically valid)
  - Councilor Corner Live - January 25, 2024
- **Eastern Trail - Close The Gap-**
  - Resumption of Key Stakeholder Meetings. Next meeting January 30
- **Dredge Update -**
  - Final Stage- mouth of the river (mooring field to main channel)
  - Western Beach - Public to avoid
  - Storm Impact - Brief delay and very minor damage to equipment - no substantial setback
  - Approximately 2-3 weeks to completion

- **Revaluation Communication Plan-**
  - Outreach to Neighborhood groups
  - Councilor Anderson Liaison
  - Workshop this evening
  
- **Avenue 2 Update** - Update on NRPA application for path relocation
  
- **Traffic Calming Policy** -Draft policy distributed for review
  - Maple Avenue Meeting - January 24 - draft policy to be discussed
  
- **Q2 Financial Update** - Finance Director to provide on February 7, 2024
  
- **FY25 Budget** - Presentation to Council - March 27, 2024
  - Sidewalks





# Federal Emergency Management Agency

Washington, D.C. 20472

December 20, 2023

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:  
19P

Jonathan Anderson  
Chairperson, Town Council  
Town of Scarborough  
P.O. Box 360  
Scarborough, Maine 04070

Community Name: Town of Scarborough,  
Cumberland County,  
Maine  
Community No.: 230052  
Map Panels Affected: See FIRM Index

Dear Chairperson Anderson:

This is to notify you of the final flood hazard determination for Cumberland County, Maine (All Jurisdictions), in compliance with Title 44, Chapter I, Part 67, Section 67.11, Code of Federal Regulations (CFR). This section requires that notice of final flood hazards shall be sent to the Chief Executive Officer of the community, all individual appellants, and the State Coordinating Agency, and shall be published in the *Federal Register*.

The statutory 90-day appeal period that was initiated for your community when the Department of Homeland Security's Federal Emergency Management Agency (FEMA) published a notice of proposed flood hazard determinations for your community in the local newspaper has elapsed. FEMA did receive an appeal regarding the proposed flood hazard determinations during that time. The technical data submitted in support of the appeal has been evaluated and the appeal has been resolved in accordance with the requirements of 44 CFR Part 67. We determined that changes were warranted based on the submitted data and have incorporated the applicable changes on the final copies of the Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for your community.

Accordingly, the flood hazard determinations for your community are considered final. The final notice for flood hazard determinations will be published in the *Federal Register* as soon as possible. The FIS report and FIRM for your community will become effective on June 20, 2024. Before the effective date, we will send your community final printed copies of the FIS report and FIRM. For insurance purposes, the community number and new suffix code for the panels being revised are indicated on the FIRM and must be used for all new policies and renewals.

Because the FIS report for your community has been completed, certain additional requirements must be met under Section 1361 of the National Flood Insurance Act of 1968, as amended, within 6 months from the date of this letter.

It must be emphasized that all the standards specified in 44 CFR Part 60.3(e) of the National Flood Insurance Program (NFIP) regulations must be enacted in a legally enforceable document. This includes adoption of the current effective FIS report and FIRM to which the regulations apply and other modifications made by this map revision. Some of the standards should already have been enacted by your community in order to establish initial eligibility in the NFIP. Your community can meet any additional requirements by taking one of the following actions in this Paragraph of the NFIP regulations:

1. Amending existing regulations to incorporate any additional requirements of 44 CFR Part 60.3(e);
2. Adopting all the standards of 44 CFR Part 60.3(e) into one new, comprehensive set of regulations; or
3. Showing evidence that regulations have previously been adopted that meet or exceed the minimum requirements of 44 CFR Part 60.3(e).

Also, prior to the effective date, your community is required, as a condition of continued eligibility in the NFIP, to adopt or show evidence of adoption of the floodplain management regulations that meet the standards of 44 CFR Part 60.3(e) of the NFIP regulations by the effective date of the FIRM. These standards are the minimum requirements and do not supersede any State or local requirements of a more stringent nature.

Many states and communities have adopted building codes based on the International Codes (I-Codes); the model I-Codes (2009 and more recent editions) contain flood provisions that either meet or exceed the minimum requirements of the NFIP for buildings and structures. The model codes also contain provisions, currently found in an appendix to the International Building Code, that apply to other types of development and NFIP requirements. In these cases, communities should request review by the NFIP State Coordinator to ensure that local floodplain management regulations are coordinated (not duplicative or inconsistent) with the State or Local building code. FEMA's resource, *Reducing Flood Losses through the International Code: Coordinating Building Codes and Floodplain Management Regulations, 5th Edition (2019)*, provides some guidance on this subject and is available at <https://www.fema.gov/emergency-managers/risk-management/building-science/building-codes/flood>.

Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to the prohibitions contained in Section 202(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended, and 44 CFR Part 59.24.

To assist your community in maintaining the FIRM, we have enclosed a Summary of Map Actions (SOMA) to document previous Letters of Map Change (LOMC) actions (i.e., Letters of Map Amendment, Letters of Map Revision) that will be affected when the revised FIRM panels referenced above become effective. If no LOMCs were issued previously for your community, you are receiving a SOMA for informational purposes only.

Once the FIS report and FIRM are printed and distributed, the digital files containing the flood hazard data for the entire county can be provided for use in a computer mapping system. These files can be used in conjunction with other thematic data for floodplain management purposes, insurance requirements, and many other planning applications. Copies of the digital files of the FIRM panels may be obtained by calling our FEMA Mapping and Insurance eXchange (FMIX), toll free, at (877) 336-2627 (877-FEMA MAP) or by visiting the Map Service Center at <https://www.msc.fema.gov>. In addition, your community may be eligible for additional credits under our Community Rating System if you implement your activities using digital mapping files.

For assistance with your floodplain management ordinance or enacting the floodplain management regulations, please contact Susan Baker, NFIP State Coordinator for Maine by telephone at (207) 287-8063. If you should require any additional information, we suggest that you contact the Director, Mitigation Division of FEMA, Region 1 at (617) 956-7576 for assistance. If you have any questions concerning mapping issues in general or the enclosed SOMA, please call our FMIX at the telephone number shown above. Additional information and resources you may find helpful regarding the NFIP and floodplain management can be found on our website at <https://www.fema.gov/flood-maps>. Copies of these documents may also be obtained by calling our FMIX.

Sincerely,



Luis V. Rodriguez, P.E.  
Director, Engineering and Modeling Division  
Risk Management Directorate | Resilience

Enclosure:  
Final SOMA

cc: Community Map Repository  
Autumn Speer, Planning Director, Town of Scarborough

## FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

To assist your community in maintaining the Flood Insurance Rate Map (FIRM), we have summarized below the effects of the enclosed revised FIRM panels(s) on previously issued Letter of Map Change (LOMC) actions (i.e., Letters of Map Revision (LOMRs), Letter of Map Revision based on Fill (LOMR-Fs), and Letters of Map Amendment (LOMAs)) that will be affected when the revised FIRM becomes effective on June 20, 2024.

### 1. LOMCs Incorporated

The modifications effected by the LOMCs listed below will be reflected on the revised FIRM. In addition, these LOMCs will remain in effect until the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
			NO CASES RECORDED		

### 2. LOMCs Not Incorporated

The modifications effected by the LOMCs listed below will not be reflected on the revised FIRM panels or will not be reflected on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lot(s) or structure(s) involved were outside the Special Flood Hazard Area, as shown on the FIRM. These LOMCs will remain in effect until the revised FIRM becomes effective. These LOMCs will be revalidated free of charge 1 day after the revised FIRM becomes effective through a single revalidation letter that reaffirms the validity of the previous LOMCs.

## FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

### 2A. LOMCs on Revised Panels

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
LOMA	190100004D&D	01/17/1996	36 OLD NECK ROAD	2300520021D	23005C0804F
LOMA	98-01-196A	03/04/1998	2A WILDROSE LANE - LOT 1B	2300520021D	23005C0808F
LOMA	98-01-828A	08/12/1998	221 SPURWINK ROAD - ASSESSMENT MAP R-97, LOT 14	2300520010D	23005C0809F
LOMA	99-01-712A	05/07/1999	PROPERTY MAP U.13 - LOT 1A	2300520021D	23005C0804F
LOMA	00-01-0174A	12/17/1999	101 EAST GRAND AVENUE	2300520023D	23005C0811F
LOMA	00-01-0846A	09/12/2000	7 WILDROSE LANE	2300520010D	23005C0808F
LOMA	04-01-1182A	06/07/2004	LOT 66, SECTION 9, OCEAN VIEW HARBOR -- 7 CATHERINE DRIVE	2300520021D	23005C0812F
LOMA	06-01-0090A	11/16/2005	1 CHASEDEER LANE	2300520021D	23005C0804F
LOMA	06-01-B154A	02/23/2006	Tax Assessor's Map R098, Parcel 12 (ME)	2300520010D	23005C0809F
LOMA	06-01-B139A	04/21/2006	6 Wiley Way -- Tax Map R098, Parcel 10 (ME)	2300520010D	23005C0809F
LOMA	08-01-1273A	11/06/2008	9 THUNDER ROAD	2300520015D	23005C0777F
LOMA	09-01-0523A	03/26/2009	TAX MAP U-36, LOT 6 -- 20 MILLIKEN ROAD	2300520020D	23005C0784F
LOMA	12-01-0211A	12/06/2011	TAX MAP R077, LOT 19 -- 52 US ROUTE 1	2300520010D	23005C0802F
LOMA	12-01-0348A	02/09/2012	TAX MAP R096, LOTS 5 & 9 --- 302 HIGHLAND AVENUE	2300520010D	23005C0806F 23005C0808F
LOMA	13-01-1784A	05/16/2013	TAX MAP R100, LOT 5 -- 83 SPURWINK ROAD	2300520022D	23005C0808F
LOMA	14-01-1035A	12/30/2013	Lot Lot 36, Olde Millbrook Subdivision - 14 Olde Mill Road	2300520021D	23005C0804F
LOMA	14-01-1437A	03/18/2014	TAX MAP 73, LOT 14 -- 59 BLACK POINT ROAD	2300520021D	23005C0804F

## FINAL SUMMARY OF MAPACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
LOMA	14-01-3039A	09/16/2014	LOT 5 - 14 Milliken Road	2300520020D	23005C0784F
LOMA	14-01-3184A	09/25/2014	TAX MAP R-90, LOT 16C -- 6 OLD NECK ROAD	2300520022D	23005C0812F
LOMA	15-01-1668A	06/29/2015	8 WILEY WAY	2300520010D	23005C0809F
LOMA	16-01-0747A	02/03/2016	BEAVER CREEK SUBDIVISION, LOT 2A -- 4 WILDROSE LANE	2300520010D	23005C0808F
LOMA	16-01-1974A	08/12/2016	82 FOGG ROAD	2300520021D	23005C0808F
LOMA	17-01-0451A	12/22/2016	15 THUNDER ROAD	2300520015D	23005C0777F
LOMA	17-01-1417A	05/19/2017	OCEAN VIEW HARBOR, SECTION 3, LOT 12 -- 40 OLD NECK ROAD	2300520021D 2300520022D	23005C0812F
LOMA	17-01-2528A	10/02/2017	11 STARBIRD ROAD	2300520010D	23005C0809F
LOMA	17-01-2680A	10/24/2017	BEAVER CREEK SUBDIVISION, LOT 3 -- 6 WILDROSE LANE	2300520010D	23005C0808F
LOMR-F	18-01-0960A	04/02/2018	9 CANTERBURY LANE	2300520021D 2300520022D	23005C0808F
LOMA	19-01-0878A	04/19/2019	17 MILLIKEN ROAD	2300520020D	23005C0784F
LOMA	19-01-1152A	06/13/2019	17 MILLIKEN ROAD (GARAGE)	2300520020D	23005C0784F
LOMA	20-01-0300A	01/10/2020	19 MILLIKEN ROAD	2300520020D	23005C0784F
LOMA	20-01-1544A	09/08/2020	Lot 86, Block -/2, Olde Millbrook Subdivision -- 17 Fern Circle	2300520021D	23005C0804F
LOMA	21-01-0353A	01/15/2021	6 ROSE HILL WAY	2300520020D	23005C0784F

## 2B. LOMCs on Unrevised Panels

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
			NO CASES RECORDED		

## FINAL SUMMARY OF MAPACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

## 3. LOMCs Superseded

The modifications effected by the LOMCs listed below have not been reflected on the Final revised FIRM panels because they are being superseded by new or revised flood hazard information or the information available was not sufficient to make a determination. The reason each is being superseded is noted below. These LOMCs will no longer be in effect when the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	195100098D&D	05/20/1988	65 FOGG ROAD	2
102	1-89-13	06/21/1989	V-ZONE DETERMINATION FOR FIRM PANEL 0022 - AT HIGGINS BEACH, BERENSON PROPERTY	4
102	1-89-12	06/21/1989	V-ZONE DETERMINATION FOR FIRM PANEL 0022 - AT HIGGINS BEACH, GUSTAFSON PROPERTY	4
LOMA	199300047R01	11/12/1992	8 MORNING STREET	6
102A	93-01-047P	11/01/1993	LCX REALTY, INC. PROPERTY OFF KING ST., PINE POINT	4
LOMA	95-01-004A	12/14/1994	UNIT 68, BUILDING 3 - SANDPIPER 2 CONDO	2
LOMA	199500493R01	01/17/1996	24 CLAY PITS RD	6
102A	96-01-069P	11/18/1996	LIBBY RIVER/ATLANTIC OCEAN - PINTAIL POINT SUBDIVISION	4
LOMA	500009425R01	06/12/1997	9 FERN CIRCLE	4
LOMA	500012805R01	07/31/1997	24 CLAY PITS RD	4
LOMA	98-01-1038A	02/03/1999	SANDPIPER II CONDOMINIUMS	4
LOMR-F	00-01-0528A	06/08/2000	67 FOGG ROAD	6
LOMA	01-01-0130A	12/05/2000	5 HAMPTON CIRCLE	2
LOMA	01-01-1228A	09/05/2001	LOT 6, DUNEFIELD II--6 DUNEFIELD LANE	4
LOMA	01-01-1174A	09/14/2001	#7 AVENUE SEVEN	2

## FINAL SUMMARY OF MAPACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
102	01-01-045P	11/19/2001	FOGG, SILVER & S. BRANCH BROOKS - RIVER WOODS SUBD.	4
LOMA	02-01-1794A	10/30/2002	11 HEMLOCK CIRCLE	2
LOMA	03-01-0300A	12/20/2002	54 WINNOCKS NECK ROAD	2
LOMA	03-01-1740A	08/28/2003	LOT 63, OLDE MILLBROOK SUBDIVISION--17 HEMLOCK CIRCLE	2
LOMA	04-01-0222A	11/17/2003	5 FERN CIRCLE	3
LOMA	04-01-0396A	01/02/2004	20 CLAY PITS ROAD	4
102	04-01-031P	06/28/2004	ATLANTIC OCEAN - MOISTER PROPERTY	4
LOMA	04-01-1450A	08/19/2004	52 WINNOCKS NECK ROAD	2
LOMA	06-01-0091A	11/16/2005	40 CLAY PITS ROAD -- LOT 4A	2
LOMA	06-01-0093A	11/22/2005	42 CLAY PITS ROAD	2
LOMA	06-01-B127A	06/13/2006	7 Starbird Road -- Tax Map R099, Lot 6	2
LOMA	06-01-B839A	09/19/2006	1 RIVER BEND LANE (ME)	2
LOMA	06-01-B879A	10/12/2006	14 PARTRIDGE LANE -- Lot 94, Olde Millbrook (JEG)	2
LOMA	07-01-0770A	05/29/2007	LOT 95, OLDE MILLBROOK -- 18 PARTRIDGE LANE (ME)	2
LOMA	08-01-0513A	04/29/2008	OLDE MILLBROOK, LOT 68 -- 7 HEMLOCK CIRCLE	2
LOMA	09-01-0320A	12/18/2008	446 BLACKPOINT ROAD -- TAX MAP U-17, LOT 3	2
LOMA	09-01-0404A	02/03/2009	PILLSBURY SHORES PINE POINT, LOT 69 -- 81 KING STREET	2

## FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	09-01-1276A	08/06/2009	TAX MAP U23, LOT 111 – 27 EAST GRAND AVENUE	2
LOMA	09-01-1553A	11/10/2009	Scarborough Tax map U007 Lot 34 Deed Book 10 425 Page 312	2
LOMA	10-01-1092A	06/15/2010	537 U.S. ROUTE 1	2
LOMA	10-01-1245A	07/08/2010	3 HAMPTON CIRCLE	3
LOMA	10-01-1752A	08/10/2010	LOT 62, OLDE MILLBROOK -- 19 HEMLOCK CIRCLE	2
LOMA	10-01-1980A	09/02/2010	LOT 65, OLDE MILLBROOK--13 HEMLOCK CIRCLE	2
LOMA	10-01-2044A	10/05/2010	378 Pine Point Road	4
LOMA	11-01-0332A	01/04/2011	71 EAST GRAND AVENUE	3
LOMA	11-01-0168A	01/25/2011	FISHERMANS COVE SUBD., LOTS 1, 2, & 3 – 82 KING STREET	4
LOMA	11-01-0661A	02/10/2011	LOT 1 & UNLABELED LAND FRONTING ON MOORS POINT ROAD	2
LOMA	11-01-1837A	04/25/2011	Lot 4, Plan of Sea Meadow Subdivision - 3 Sea Meadow Lane	2
LOMA	11-01-2350A	08/11/2011	MAP U-22, LOT 42 – 9 AVENUE 4	2
LOMA	12-01-0995A	02/16/2012	6 SACCARAPPA LANE	2
LOMA	12-01-1259A	04/17/2012	MAP U-1, LOT 104 --- 42 BAYVIEW AVENUE	4
LOMA	12-01-2252A	09/11/2012	TAX MAP U002, LOT 125A -- 8 MORNING STREET	2
LOMA	13-01-1165A	03/19/2013	TAX MAP R090, LOT 22A -- 1 WHISPERING SURF LANE	2
LOMA	13-01-1668A	04/11/2013	TAX MAP 4-001, PARCEL 103 -- 3 MORNING STREET	2

## FINAL SUMMARY OF MAP ACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	13-01-1912A	06/13/2013	TAX MAP U-22, PARCEL 16 -- 34 JONES CREEK DRIVE	2
LOMA	13-01-1987A	06/18/2013	LOT 3 - 38 Clay Pits Road	2
LOMA	13-01-2739A	10/17/2013	TAX MAP R-90, LOT 16C -- 6 OLD NECK ROAD	6
LOMA	13-01-3039A	10/31/2013	LOT Parcel 118D, BLOCK map U22, Pine Point - 19 East Grand Ave	6
LOMA	14-01-0677A	12/17/2013	Units 16 & 17, Pine Point Tourist Court Condos - 19 East Grand Avenue	6
LOMA	14-01-0731X	01/07/2014	LOT PARCEL 118D, BLOCK U22, PINE POINT - 19 EAST GRAND AVENUE	6
LOMA	14-01-1269A	03/11/2014	TAX MAP U21, PARCEL 15 -- 78 KING STREET	2
LOMA	14-01-1440A	04/03/2014	TAX MAP U22, PARCEL 90 -- 4 KING STREET	4
LOMA	14-01-1971A	04/22/2014	LOT PARCEL 118D, BLOCK U22, PINE POINT - 19 EAST GRAND AVENUE (UNITS 16&17)	2
LOMA	14-01-2687A	08/05/2014	TAX MAP U002, PARCEL 33 -- 36 BAYVIEW AVENUE	2
LOMA	14-01-3637A	10/07/2014	Lot 113, William Moulton's Plan of Pine Point Subdivision - 36 Jones Creek Drive	2
LOMA	14-01-3258A	10/14/2014	TAX MAP U-22, PARCEL 28 -- 62 JONES CREEK DRIVE	2
LOMA	14-01-3353A	10/21/2014	15 EAST GRAND AVENUE	2
LOMA	14-01-3331A	12/18/2014	OCEAN VIEW HARBOR, LOT 11 -- 38 OLD NECK ROAD	2
LOMA	15-01-0998A	02/19/2015	13 EAST GRAND AVENUE	2
LOMA	15-01-1434A	04/16/2015	Lot 97, Olde Mill Brook Subdivision - 19 Hawthorn Circle	4
LOMA	17-01-0173A	11/03/2016	423 Black Point Road	2

## FINAL SUMMARY OF MAPACTIONS

Community: SCARBOROUGH, TOWN OF

Community No: 230052

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	17-01-0712A	02/08/2017	3 SOUTHGATE BUSINESS PARK CONDOMINIUM- 3 SOUTHGATE ROAD	4
LOMA	17-01-1134A	03/22/2017	3 East Grand Avenue	2
LOMA	17-01-1149A	04/19/2017	5 MOORS POINT ROAD	2
LOMA	17-01-1294A	05/05/2017	Pine Point Tourist Court Condominiums Subdivision - 19 East Grand Avenue	2
LOMA	17-01-2263A	08/30/2017	8 MOORS POINT ROAD	2
LOMA	18-01-0594A	12/21/2017	5 Avenue Six	2
LOMA	18-01-0766A	01/24/2018	Lot 46, William Moulton's plan of Pine Point Subdivision - 74 King Street	2
LOMA	20-01-0276A	01/03/2020	OCEAN VIEW HARBOR, SECTION 8, LOT 49 - 3 RHONDA DRIVE	2
LOMA	22-01-0797A	09/06/2022	59 EAST GRAND AVENUE	2
LOMA	22-01-1058A	09/07/2022	35 East Grand Avenue	2

1. Insufficient information available to make a determination.
2. Lowest Adjacent Grade and Lowest Finished Floor are below the proposed Base Flood Elevation.
3. Lowest Ground Elevation is below the proposed Base Flood Elevation.
4. Revised hydrologic and hydraulic analyses.
5. Revised topographic information.
6. Superseded by another LOMC.

#### 4. LOMCs To Be Redetermined

The LOMCs in Category 2 above will be revalidated through a single revalidation letter that reaffirms the validity of the determination in the previously issued LOMC. For LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures is no longer valid, the LOMC cannot be revalidated through this administrative process. Therefore, we will review the data previously submitted for the LOMC requests listed below and if appropriate issue a new determination for the affected properties after the effective date of the revised FIRM.

LOMC	Case No.	Date Issued	Project Identifier	Original Panel	Current Panel
			NO CASES RECORDED		

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 23-140.** Move approval of the second reading on the new requests for a Cannabis Establishment License from Michael Shannon, d/b/a Shannon’s Best Buds, located at 15 Holly Street #205B for a Medical Cannabis Products Manufacturing Facility and Christopher McNeil d/b/a Rose Smoke, LLC, located at 3 Commercial Road for a Medical Cannabis Products Manufacturing Facility. [Tabled from January 3, 2024] [*Assistant Town Manager*]

*Assistant Town Manager*

*Ought to Pass*

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Sponsor

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Recommendation

*12/20/2023 – Vote: 5 Yeas, 1 Nay (Councilor Hamill)*  
*[Councilor Sither -Absent]*

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First Reading/Vote

*01/03/2024 – Due to the notice not being published*  
*By the Press Herald, the Council Voted 7 Yeas*  
*to table this item to January 17, 2024.*

*01/17/2024*

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Public Hearing

*01/17/2024 – Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 23-140.</b>
<p><b>SUBJECT:</b></p> <p><b>7:00 p.m. Public hearing</b> and second reading on the new requests for a Cannabis Establishment License from Michael Shannon, d/b/a Shannon’s Best Buds, located at 15 Holly Street #205B for a Medical Cannabis Products Manufacturing Facility and Christopher McNeil d/b/a Rose Smoke, LLC, located at 3 Commercial Road for a Medical Cannabis Products Manufacturing Facility. Item was tabled from the January 3, 2024 meeting. <i>[Assistant Town Manager]</i></p>
<p><b>PURPOSE:</b></p> <p>Approve a Medical Cannabis Products Manufacturing license for the establishments listed above.</p>
<p><b>BACKGROUND:</b></p> <p>Applications have been received. The facility located at 3 Commercial Drive has been inspected.</p>
<p><b>FISCAL IMPACT:</b></p> <p>\$2,500 (+)</p>
<p><b>STATUS / PROCESS TO DATE:</b></p> <ul style="list-style-type: none"> <li>● These applications are under review.</li> <li>● First reading before Town Council: December 20, 2023</li> <li>● Public hearing and second reading: January 3, 2024 – Item tabled due legal notices not being published by the Portland Press Herald.</li> <li>● Public hearing and second reading before the Town Council: January 17, 2024.</li> </ul>
<p><b>PROPOSED ACTION:</b></p> <p>Recommend approval of the second reading on Order No. 23-140.</p>
<p><b>ATTACHMENTS:</b></p>

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-002.** Move approval of the second reading on the proposed amendments to Chapter 1002 – the Town of Scarborough Shellfish Ordinance. [*Shellfish Conservation Commission*]

*Shellfish Conservation Commission*

*Ought to Pass*

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Sponsor

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Recommendation

*01/03/2024 – Vote: 7 Yeas.*

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First Reading/Vote

*01/17/2024*

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Public Hearing

*01/17/2024 – Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-002.</b>
<p><b>SUBJECT:</b></p> <p><b>7:00 p.m. Public hearing</b> and second reading on the proposed amendments to Chapter 1002 – the Town of Scarborough Shellfish Ordinance. [<i>Shellfish Conservation Commission</i>]</p>
<p><b>PURPOSE:</b></p> <p>To align the Ordinance with that of the Department of Marine Resources (DMR) and State Requirements</p>
<p><b>BACKGROUND:</b></p> <p>This has been a long process, which began prior to COVID. In 2022 the Shellfish Commission revisited the proposed amendments and made further recommendations and then moved the recommendations forward to the Ordinance Committee. At September 2022 meeting of the Ordinance Committee, they indicated they needed more information on the recommendations be proposed and at the Ordinance meeting in October of 2022, the recommendations were tabled. In April of 2023, the recommendations were reviewed in depth by the full Commission and sent back to the Ordinance Committee on August 24, 2023, where the Ordinance Committee voted to move the recommendations to the full Council, upon review of the Town Attorney and the Department of Marine Resources [DMR].</p> <p>DMR reviewed the proposed amendments and notified us of a few recommendations. The Town Attorney concurred.</p> <p>It was noted by DMR that the Commission needed to make some minor changes to process of how the Resident Recreational and Non-Recreational Licenses were sold. The Commission revisited the recommendation from DMR on December 12, 2023 and verbal approval was given by DMR.</p>
<b>FISCAL IMPACT:</b> N/A
<p><b>STATUS / PROCESS TO DATE:</b></p> <ul style="list-style-type: none"> <li>• Shellfish Commission approval: December 12, 2023</li> <li>• First reading before the Town Council: January 3, 2024.</li> <li>• Public hearing and second reading before the Town Council: January 17, 2024</li> </ul>
<p><b>PROPOSED ACTION:</b></p> <p>Recommend to move approval of the second reading on Order No. 24-002.</p>
<p><b>ATTACHMENTS:</b></p> <ul style="list-style-type: none"> <li>• Copy of proposed amendments.</li> </ul>

## **Chapter 1002 – the Town of Scarborough Shellfish Conservation Ordinance**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 1002 – the Town of Scarborough Shellfish Conservation Ordinance, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

### **1. Authority:**

This Ordinance is enacted in accordance with 12 M.R.S.A., Section 6671.

### **2. Purpose:**

To establish a shellfish conservation program for the Town of Scarborough which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- a. Licensing
- b. Limiting the number of shellfish harvesters
- c. Restricting the time and area where digging is permitted
- d. Limiting the minimum size of clams taken
- e. Limiting the amount of clams taken daily by a harvester
- f. Engaging in activities intended to protect and enhance the resource such as transplanting or seeding of shellfish. [Adopted 06-03-15]

### **3. Shellfish Conservation Committee:**

The Shellfish Conservation Program for the Town of Scarborough will be administered by the Shellfish Conservation Committee consisting of 7 members to be appointed by the Town Council for terms of 3 years. The Committee's responsibilities include:

- a. Establishing annually in conjunction with the Dept. of Marine Resources, the number of shellfish digging licenses to be issued.
- b. Surveying the clam flats to maintain current information on shellfish resources.
- c. Submitting to the Town Council, proposals for the expenditures of funds for the purpose of shellfish conservation.
- d. Keeping this Ordinance under review and making recommendations for its amendments.
- e. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the D.M.R.
- f. Approving conservation closures and openings in conjunction with the Area Biologists of the D.M.R. [amended 01/03/01].

g. Submitting an annual report to the Municipality and the D.M.R. covering the above topics and all other committee activities.

#### **4. Definitions:**

##### **a. Resident**

The term “resident” refers to a person who has physically resided at a fixed, permanent and principal home in the town for at least ~~six months~~ twelve months next prior to the date of application for a license under this Ordinance or, in the case of student, to a student living temporarily outside of Scarborough while enrolled in a college, university or post-secondary school, provided such student maintains his or her fixed permanent principal home in Scarborough. [amended 07/17/02]

##### **b. Non-resident**

The term “non-resident” means anyone not qualified as a resident under this Ordinance.

##### **c. Shellfish, Clams**

When used in the context of this Ordinance, the words “shellfish and clams” mean soft-shell clams MYA ARENARIA.

##### **d. Municipality**

Refers to the Town of Scarborough, Maine.

##### **e. Conservation Projects**

Conservation Projects may include seeding projects, crab projects, school projects, surveys or any other project accepted by the Shellfish Conservation Commission. [Adopted 06-03-15]

#### **5. Licensing - Municipal Shellfish Digging is required:**

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this Ordinance.

A Commercial Digger must also have a valid STATE OF MAINE COMMERCIAL SHELLFISH LICENSE issued by the Department of Marine Resources, if state law makes possession of the state license a prerequisite to issuance of a municipal license. ~~The State License must be renewed by April 30<sup>th</sup> of each year. Proof of obtaining a current State License must be presented to the Town Clerk by June 1<sup>st</sup> or the Scarborough Commercial License will be revoked~~

##### **A. Designation, Scope and Qualifications:**

###### **1. Resident Commercial Shellfish License:**

The license is available to residents of the Town of Scarborough who are 18 years or older and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.[amended 03/21/13]

###### **2. Non-resident Non-reciprocating Commercial Shellfish License:**

The license is available to non-residents of this municipality who are 18 years or older and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.[amended 03/21/13]

###### **3. Resident Student Commercial License:**

The license is available to residents of the Town of Scarborough who are full time students between the minimum age of twelve (12) years old and the maximum age of twenty-two (22) years old on May 1 of the year in which the application is made. Applicants must show proof of age and proof of school attendance and students attending college must also show proof of

a minimum of twelve (12) college credit hours per semester to be considered full-time students. Applicants under the age of 18 must also have the signature of a parent or guardian on the application for the license to be valid. This license entitles the holder to dig or take any amount of shellfish from the shores and flats of this municipality. [amended 01/03/01] [amended 07/17/02] [amended 06-03-15]

**4. Non-resident Student Commercial License:**

The license is available to non-residents of the Town of Scarborough who are full time students between the minimum age of twelve (12) years old and the maximum age of twenty-two (22) years old on May 1 of the year in which the application is made. Applicants must show proof of age and proof of school attendance and students attending college must also show proof of a minimum of twelve (12) college credit hours per semester to be considered full-time students. Applicants under the age of 18 must also have the signature of a parent or guardian on the application for the license to be valid. This license entitles the holder to dig or take any amount of shellfish from the shores and flats of this municipality. [amended 01/03/01] [amended 07/17/02]

**5. Over 60 Resident Commercial Bushel License:**

The license is available to residents of the Town of Scarborough who are 60 years old and over. Applicants must show proof of age and residence. This license entitles the holder to dig or take one (1) bushel of shellfish from the shores and flats of this municipality at each tide. [amended 02/18/98] [amended 01/20/99]

**6. Residential Recreational Shellfish License:**

The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a residential recreational shellfish license. Any holder of a recreational license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(H)(3). [amended 06-03-15]

**6-a. Non-resident Recreational Shellfish License:**

The license is available to non-residents of the Town of Scarborough and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a non-resident recreational shellfish license. Any holder of a non-resident recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(H). [03/19/03] [amended 06-03-15]

**7. 70 65 and Over Resident Complimentary Shellfish License:**

The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a 65 and over residential complimentary recreational shellfish license. Any holder of a 65 and over resident complimentary recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(J)

**7.a. 70 65 and Over Non-Resident Complimentary Shellfish License:**

The license is available to non-residents of the Town of Scarborough and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a 65 and over non-resident complimentary recreational shellfish license. Any holder of a 65 and older non-resident complimentary recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(J).

**7 8. Resident Recreational Day Licenses.**

This license entitles residents and real estate taxpayers of the Town of Scarborough to dig or take up to one peck of shellfish from the shores and flats or this municipality during a single calendar day specified in the license. The duration of this license is one calendar day only. [02/18/98]

**8. 9. Non-resident Recreational Day Licenses.**

This license entitles non-residents of the Town of Scarborough to dig or take up to one peck of shellfish from the shores and flats or this municipality during a single calendar day specified in the license. The duration of this license is one calendar day only. [02/18/98]

**9. 10. License must be signed.**

The licensee must sign the license to make it valid.

~~**-10-11. Commercial and Recreational License Applicant. may only apply for one type. A commercial and recreational license applicant may apply for those licenses that they qualify for; however, an applicant can only hold no more than one license. only apply for one type of commercial license under this Ordinance.**~~

## **B. Contents of Application:**

Any person may apply to the Town Clerk for the license required by this ordinance on forms provided by the municipality.

### **1. Contents of the Application:**

The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever other information the Town Clerk may require.

### **2. False Statements.**

Any person who provides information in support of an application under this ordinance must do so in the form of an affidavit. If the applicant provides false information, the applicant forfeits the right to a license and a license previously issued to that applicant shall become void. Any other person who gives false information in support of an application under this ordinance commits a violation of this ordinance punishable under section 5(K). [02/18/98].

## **C. Fees:**

The fees for the licenses are as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, and must accompany in full the application for the respective license. ~~Fees for non-resident licenses shall not exceed twice the amount charged for the equivalent resident licenses.~~ License fees for residents and non-residents will be established in accordance to M.R.S.A. Title 12. Section 6671.3-A.(B). The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licenses shall be used by the Town for shellfish management, conservation and enforcement. Fees are non-refundable, except that the holder of a student commercial license who surrenders the license within seventy-five (75) after the date of issuance shall receive a refund of one-half the license fee. [01/05/00]

## **D. Conservation Activities:** [Adopted 06-03-15]

The Town encourages all shellfish diggers to protect and enhance the resource by participating in conservation activities such as seeding clam beds, participating in shellfish surveys, and participating in other approved resource management activities. All Commercial License holders 18 years of age or older ~~may are be~~ required to participate in shellfish conservation projects seeding as deemed necessary by the Shellfish Conservation Committee. Seeding or other approved conservation activities also may be undertaken on a volunteer basis. Commercial License Holders who complete the specified number of hours of conservation activities which may include required shellfish seeding hours and volunteer hours for a total of twelve (12), will be eligible for priority license renewal pursuant to Section 5.E.4.(a) of this Ordinance.

The Shellfish Conservation Committee will approve all accepted conservation activities by a majority vote. The names and number of hours completed on an accepted conservation activity will be recorded in writing by the Shellfish Conservation Officer and submitted to the Shellfish Committee or to the Town Clerk on a monthly basis for their records. All conservation time must be submitted by January 15<sup>th</sup> by close of business, unless the 15<sup>th</sup> falls on a weekend, then must be submitted the following Monday.

It shall be the sole responsibility of the Commercial License holder to contact the Shellfish Committee Members or the Shellfish Officer to determine the conservation available to

participate in. The Shellfish Committee Chair, with consent of the majority membership of the Committee, may designate special conservation work during any period of State closure of the Town of Scarborough shellfish beds. The Chair may poll the Committee by telephone, email, fax or in person for the purposes of this section. Each Commercial License holder is encouraged to contribute at least half of their voluntary conservation activity in the form of low tide work. All crab trapping is considered low tide work. The conservation year will run from May 1<sup>st</sup> to November 30<sup>th</sup>. Surveys of the shellfish resource shall be conducted annually conservation activity, with the date and location to be determined by the Shellfish Commission or the Marine Resource Officer. School conservation activities have a deadline of December 31<sup>st</sup> and are limited to a maximum of three (3) hours per project and six (6) hours total allowed.

The Shellfish Conservation Committee may waive all or part of the requirement for shellfish seeding for an applicant who provides the Committee with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled shellfish seeding due to incapacitation by illness or injury. The Committee may also allow the following alternative conservation work, on an hour for hour basis, upon the request of an applicant made at a regular monthly meeting of the Committee. Such alternative work may be used to meet the shellfish seeding requirement or may be used to qualify as additional volunteer conservation activity:

- i. Another time to complete conservation time for an applicant who demonstrates to the Committee that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled conservation time; or,
- ii. Alternate, less strenuous work for an applicant who provides the Committee with a written statement from a physician indicating that the applicant is not physically able to participate in regular conservation work.
- iii. At the discretion of the Project Leader, any scheduled conservation project may be canceled and/or terminated due to severe weather or safety concerns for those involved. Any participant present or arriving within ten minutes at the designated meeting area and start time must still sign in and sign out. These participants will receive the allotted hours of conservation time for that particular project regardless of performing the activity.

**E. Issuance of Shellfish Licenses:** [amended 06-03-15]

Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the Town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's clam resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee, in consultation with the D.M.R. area biologist, will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- 1) Prior to February 1 of 1998 and each succeeding year, the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license-year to the Commissioner of Marine Resources for concurrence.
- 2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to February 21 of 1998 and each succeeding year, the

Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.

3) Notice of the number of licenses and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.

4) The Town Clerk shall accept applications for shellfish licenses annually commencing on the first ~~day of March through to the first Monday and Tuesday in April. Monday in April, or on the first town office business day thereafter if the first Monday is not a business day.~~ [03/19/03]

**(a) Commercial Renewal Licenses.**

(i): ~~On the first Monday of April and on the next subsequent business day,~~ The Clerk shall issue license only to holders of resident and non-resident commercial shellfish licenses who seek renewal and who have completed at least 12 hours of approved conservation activities which may include mandatory shellfish seeding as well as voluntary conservation work approved under this Ordinance during the term of their current licenses or at least 4 hours of such work if the holder is 70 years of age or older. Such applicants may apply by mail ~~pursuant to subparagraph (ii) below~~ or must appear in person at the office of the Town Clerk during that two day period and pay the application fee at the time of issuance of the license. The Clerk shall issue commercial licenses to such qualified applicants on a first come, first served basis during those two business days. Any holder of a commercial license whose status as a resident or non-resident has changed at the time of application or who did not complete the requisite hours of approve conservation activities shall not be entitled to apply for renewal under this subsection (a) but may apply for a new license under subparagraph (b) below. [03/16/2005][amended 06-03-15]

(ii): ~~Effective March 1, 1998 in lieu of applying in person pursuant to subparagraph (I) above, an~~ Applicants for a renewal resident or non-resident commercial license may apply by mail. Applications by mail must be received at the Town Clerk's office on a day that office is open for business no earlier than March 1 and no later than ~~the Tuesday following the first Monday in April~~ ~~March 31~~. The application must be accompanied by the required license fee, a copy of the applicant's driver's license, a copy of the applicant's motor vehicle registration certificate, and any other information upon which the applicant relies to document residency. The Clerk shall mark all applications with the date and time of receipt. If more than one application is received at the same time, the Clerk shall determine their order or receipt of random drawing and mark them accordingly. The Clerk's marks concerning order of receipt shall be conclusive for purposes of applying the first-come first-served provisions of paragraph (i) above.

**(b) Non-Renewal Resident Commercial and Non-Resident Non-Reciprocating Commercial Licenses.**

(i) On the third and fourth subsequent business days following the renewal process as noted in paragraphs 4.a (i)(ii) above, the Clerk shall accept applications for any remaining resident commercial shellfish licenses and non-resident non-reciprocating commercial shellfish licenses. Applicants must apply in person and be 18 years of age at the time of application, at the office of the Town Clerk. The Clerk shall not issue any licenses during the third and fourth business days, but shall inform each applicant that licenses will be awarded on the basis of a lottery and advise each applicant of the time and place where the lottery will be held. On the fifth subsequent business day, the Clerk shall conduct a lottery for the issuance of the remaining resident commercial shellfish licenses and a lottery for the issuance of non-resident non-reciprocating commercial shellfish licenses. In order to be entered into the lottery, an applicant must be present and must tender the application fee at the time of the lottery drawing. The Clerk shall award the remaining resident commercial shellfish licenses by drawing the names of qualified applicants at random and then shall award the non-resident non-reciprocating commercial shellfish licenses by drawing the names of qualified applicants at random.

(ii) If, after June 1 annually, any allocated licenses remain unissued, on the first consecutive Monday, Tuesday and Wednesday in June applications shall be taken and placed in a lottery pool. Applicants must apply in person and be 18 years of age at the time of application. On the following Friday, applicants' names shall be drawn at random by the Town Clerk. Physical presence and full payment are required at the time of drawing, and all applicants must meet eligibility requirements for the license category that they apply for. The lottery shall be conducted in the same fashion as the lottery under section 5(E)(4)(b)(i).

(iii) Lottery Bonus Points shall be awarded to applicants who have successfully applied in previous years, as follows:

Applicants who apply to multiple lotteries in a row without winning a permit can earn bonus points (extra chances in drawing). Points are non-transferrable and are accumulated, as follows:

0-5 Lotteries: 1 Points/Lottery

6-10 Lotteries: 2 Points/Lottery

11-15 Lotteries: 3 Points/Lottery

16+ Lotteries: 10 Points/Lottery

Bonus points are tracked by the Town Clerk using your name and date of birth. To receive bonus points, an applicant must enter the correct name and date of birth on the application. The applicant will also need to indicate that they applied for the lottery the last year that it was held. The Town Clerk upon receiving an application will review the applicant's record and provide applicants with a number of bonus points which will be entered in the lottery.

**An applicant will forfeit bonus points if the applicant:**

- Fails to apply for bonus point in any one (1) Lottery; or,
- Obtains a Municipal Residential and/or non-residential Commercial Shellfish License through the Lottery; or,
- Is selected for a Municipal Residential and/or non-residential Commercial Shellfish License, but declines it, and/or fails to meet the criteria for legally possessing it; or,
- Is found to have not legally applied in the current year; or,
- Enters the incorrect name or date of birth on the application or fails to indicate that the applicant applied for a permit in the previous year.

**(c) Resident Student Commercial Renewal Licenses, Non-Resident Student Commercial Renewal Licenses and Over 60 Resident Commercial Bushel Renewal Licenses.**

Shall be renewable in the same manner as Resident and Non-Resident Commercial Licenses under Section 5.E.4(a), except that required shellfish seeding hours and additional voluntary conservation hours shall be:

Resident & Non-Resident Student Commercial Licenses under the age of 18. [amended 06/03/15]	No conservation time required. [Voluntary participation is encouraged.] [amended 06/03/15]
Resident & Non-Resident Student Commercial Licenses 18 years of age or older at time the license is issued. [adopted 06-03-15]	Twelve (12) hours of approved conservation activities. [adopted 06/03/15]
Over 60 Resident Commercial Bushel Licenses	Eight (8) Hours of approved conservation activities. [03/16/2005] [11/02/2005][amended 06/03/15]
All Commercial License Holders 70 or Older	Four (4) hours of approved conservation activities. [03/16/2005] [11/02/2005] [amended 06/03/15]

Any holder of a student commercial license or over 60 license whose status as a resident or non-resident has changed at the time of application or who did not complete the requisite hours of approved conservation activities shall not be entitled to apply for renewal under this subsection (a) but may apply for a new license under subparagraph (d) below.

**(d) Non-Renewal Resident Student Commercial Licenses, Non-Resident Student Commercial Licenses and Over 60 Resident Commercial Bushel Licenses.**

Applications for new (non-renewal) Resident Student Commercial Licenses, Non-Resident Student Commercial Licenses and Over 60 Resident Commercial Bushel License shall be processed in the same manner as applications for non-renewal Resident Commercial and Non-Resident Non-Reciprocating Commercial Licenses under Section 5.E.4(b), except that for Resident Student Commercial Licenses and Non-Resident Student Commercial Licenses the clerk shall continue drawing names after all licenses have been awarded and until all applicants have been placed on a list in the order their

names have been drawn. Any Student Commercial License which is surrendered after issuance shall be made available to the remaining applicants on that list in the order their names were drawn, and then to other applicants on a first-come, first-served basis.

**(e) Resident Recreational Licenses.**

Commencing on the second Monday in April annually the Town Clerk shall accept applications for resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis.

(f) 65 and Over Complimentary Resident Recreation Licenses. Commencing on the second Monday in April annually, the Town Clerk shall accept application for 65 and over resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis.

**(fg) Non-resident Recreational Licenses.**

~~On Commencing on~~ the second Monday, ~~Tuesday and Wednesday until noon~~, in April annually, the Town Clerk shall accept applications for non-resident recreational licenses. Applicants must apply appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis, and shall have their names placed in a lottery pool. On that Wednesday at 3:00 p.m., the licenses shall be awarded to applicants drawn at random from the pool by the Clerk and shall not exceed ten percent (10%) of the number of allocated resident recreational shellfish licenses. Physical presence and full payment are required at the time of drawing. The lottery shall be conducted in the same fashion as the lottery under section 5(D)(4)(b)(i).

**(h) 65 and Over Complimentary Non-resident Recreational Licenses.**

~~On the Commencing on the second Monday, Tuesday and Wednesday until noon, in April annually, the Town Clerk shall accept application for the 65 and over non-resident recreational shellfish licenses. Applicants must apply appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis, and shall have their names placed in a lottery pool. On the Wednesday at 3:00 p.m., the licenses shall be awarded to applicants drawn at random from the pool by the Clerk and shall not exceed ten percent (10%) of the number of allocated 65 and over resident recreational shellfish licenses. Physical presence is required at the time of drawing. The lottery shall be conducted in the same fashion as the lottery under section 5(E)(b)(i).~~

**(g i) Remaining Licenses.**

If, after August 1 annually, any allocated licenses remain unissued, the clerk shall issue such licenses on a first-come, first served basis, without regard to the residency of the applicant or the allocation between resident and non-resident licenses. [03/16/2005] [11/02/2005]

**(h-j) Day Licenses.**

After all available resident and non-resident recreational licenses have been issued under Section 5(~~DE~~)(4)(~~d-e~~) and 5(~~DE~~)(4)(eg) above, the clerk may receive applications for and issue resident recreational day licenses and non-resident recreational day licenses, on a first-come, first-served basis ~~without regard to residency of the applicant~~. Applicants must appear in person at the office of the Town Clerk no earlier than five (5) calendar days before the day for which the license is requested. An applicant may obtain

~~only one~~ a day license for up to three (3) consecutive days at a time and must appear in person ~~on a separate day~~ for each license requested. Each license issued under this section shall specify the calendar day for which it is issued and shall be valid for that day only. If multiple licenses are requested, a license for each day shall be issued. [03/16/2005] [11/02/2005]

(i) One – Peck Day License must be used on the date listed on the license. In the event of flat closures, per the State, please contact the Town Clerk’s Office at 207-730-4020 the day of the closure to inform staff your license was not used. If the office is closed, you must leave a voicemail stating your name, contact information and date of the closure. In some cases, a credit for the unused licenses may be issued at the discretion of the Town Clerk. All credits must be used within 30 days of the original license date or the credit will be forfeited.

**F. License expiration date:**

Each license issued under authority of this Ordinance expires at midnight the 30th of April next following the date of issue. Day Licenses shall expire at midnight on the date they are issued for.

**G. Reciprocal Harvesting Privilege:**

Licenseses from any other municipality co-operating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their management program, may harvest shellfish according to the terms of their licenses.

**H. Children 16 years or younger may accompany a recreational license holder:**

The recreational license holder and accompanying children are entitled to dig no more than the previously stated amount, “one peck of shellfish in any one day for the use of the holder and his or her family.” [amended 07/17/02][amended 06/03/15]

**I. Suspension: [amended 04/18/01] [amended 03/01/06]**

1. Any shellfish licensee having one conviction for a violation of this Ordinance or for a violation occurring within the Town of Scarborough of any state statute regulating the digging or taking of shellfish shall have his or her shellfish license automatically suspended for a period of 14 days. Subsequent convictions during the same license year (May 1 - April 30) shall result in an automatic suspension of sixty (60) days. A licensee shall have his or her record cleared if there are no convictions within one year from the time of a conviction. As used in this paragraph, the term “digging” means using a shovel, spade, rake, tool or hands to uncover shellfish from the ground and the term “taking” means removing a marine organism from its natural habitat. [amended 04/18/01][amended 06/03/15]

2. Any shellfish licensee having one conviction for a violation occurring within the Town of Scarborough of 12 M.R.S.A. § 6625 (governing identification and tagging of shellfish) shall have his or her shellfish license automatically suspended for a period of seven (7) days. Subsequent convictions during the same license year (May 1 - April 30) shall result in an automatic suspension of fourteen (14) days. A licensee shall have his or her record cleared if there are no convictions within one year from the time of a conviction. [amended 04/18/01] [amended 06/03/15]

3. A licensee whose shellfish license has been suspended pursuant to this section shall automatically have his or her license reinstated after the period of suspension has been served. [amended 04/18/01] [amended 06/03/15]
4. The suspension shall be effective from the third business day after the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee or upon presentation of a Notice of Suspension by the Town Marine Resource Officer, whichever is earlier. [amended 02/18/98].
5. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon filing of a written Request for Hearing with the Town Clerk within 30 days following the effective date of suspension. Filing of the request for hearing with the Town Clerk stays the suspension until the end of the seventh day following the decision of the Shellfish Conservation Committee. The licensee may appeal the decision of the Shellfish Committee before the Town Council by filing a written Request for Appeal with the Town Clerk within 7 days of the decision of the Shellfish Conservation Committee. Filing of the Request for Appeal with the Town Clerk stays the suspension until the Town Council has rendered its decision. [amended 04/18/01]
6. No holder of a commercial license under this Ordinance shall dig or take shellfish during any time that holder's State of Maine Shellfish License is suspended. During any such period of suspension, the holder's license under this Ordinance is automatically suspended. [amended 02/18/09]

#### **J. Opening and Closing of Flats:**

The Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, may open and close the areas for shellfish harvest (the "Conservation Areas"). Except in the case of emergencies, the Shellfish Conservation Committee shall follow the following procedure prior to opening or closing a Conservation Area:

1. Upon determination by the Shellfish Conservation Committee or by the Chair of the Committee that the opening or closing of a Conservation Area should be considered, the Chair shall place the proposed opening or closing on an agenda for a public hearing.
2. No less than 7 days prior to the hearing, a notice of the hearing describing the location of the Conservation Area proposed to be opened or closed shall be: (a) posted at the Town Office; (b) published in a newspaper of general circulation in the Town of Scarborough; and, (c) communicated to the Department of Marine Resources. The notice may also be placed on the Scarborough Shellfish Conservation Officer's telephone recording.
3. At the public hearing, the Shellfish Conservation Committee shall present and entertain evidence obtained from shellfish surveys and other sources. Members of the public may then comment on such evidence and may present additional evidence relevant to the proposed opening or closing.
4. At the conclusion of the evidence, the Shellfish Conservation Committee shall make findings of fact based on the evidence presented, shall reach conclusions based on those findings of fact, shall order whether the Conservation Area in question shall be opened

or closed, and may set such time limitations and other harvesting conditions as are consistent with good conservation practices.

5. The order of the Shellfish Conservation Committee shall be forwarded to the Commissioner of Marine Resources and shall not take effect until approved by the Department of Marine Resources.

In the event the Shellfish Conservation Committee determines that an emergency closing of a Conservation Area is necessary, the Committee may take action without following the procedures described above, provided that the Committee makes a reasonable effort to give adequate public notice and allow for public participation. [amended 01/03/01]

**K. Hours Prohibited:**

It shall be unlawful to dig any shellfish anywhere in the Town of Scarborough between the hours of one half hour after sundown and one half hour before sunrise. (amended 10/17/2007)[amended 03/21/13]

**L. Penalty:**

Any person who violates any provision of this ordinance commits a crime, not a civil violation, punishable by a fine of up to \$1,500 per offense, as provided in 12 M.R.S.A. §6671(10). Any person holding a commercial license under this Ordinance who aids or abets the harvest of shellfish in violation of this Ordinance also commits a violation of this Ordinance and shall be subject to the same fines as the person he or she assisted. [amended 04/04/2007]

**M. Administrative Suspension of Recreational License:**

If the Shellfish Conservation Officer determines that the holder of a recreational license has sold or otherwise received remuneration for shellfish harvested pursuant to the recreational license, or that the holder of a license has violated Section 5(N) of this ordinance the Shellfish Conservation Officer may impose an administrative suspension of the License and of eligibility for a license in the next licensing year. The Shellfish Conservation Officer shall give written notice to the license holder of the administrative suspension, which shall be effective from the third business day after mailing of the Notice of Suspension or upon presentation of the Notice of Suspension by the Shellfish Conservation Officer, whichever is earlier. The license holder may appeal the administrative suspension in the same manner as an automatic suspension under section 5.H.(3). The Shellfish Conservation Officer may, at their discretion, employ the administrative suspension in addition to or as an alternative to the penalties provided in section 5.K. The administrative suspension process and determinations resulting from that process are separate from and shall not be affected by the pendency or outcome of any court proceeding for the imposition of penalties under section 5.K. [amended 02/18/98] [amended 06/03/15]

**N. Clam Size and Tolerance of Harvest:**

- 1) Clam size and tolerance of harvest. A person shall not harvest or possess softshell clams which are less than two (2) inches in the longest diameter to the amount of more than ten (10) percent of any lot.
- 2) The method of determining tolerance. The tolerance of ten (10) percent must be determined by a numerical count of not less than one (1) nor more than four (4) pecks taken at random from various parts of the lot. If the lot contains less than one (1) peck, the tolerance must be determined by numerical count of the entire lot.

**O. Unlawful Sale of Shellfish.**

It is a violation of this Ordinance for any holder of a license under this Ordinance to sell or otherwise receive remuneration for any shellfish dug or taken within the Town of Scarborough by any person who does not hold a valid shellfish license issued by the Commissioner of Marine Resources pursuant to 12 M.R.S.A. § 6601. [02/18/98]

**P. Method of Harvest.**

The only acceptable method of harvest shall be by use of the hand-held clamrake, with a handle no more than eighteen inches in length. Use of shovels, spades and pitch forks shall be prohibited. [03/01/06]

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-003.** Move approval of the second reading on the proposed amendment to Chapter 311 – the Town of Scarborough Schedule of Fees relating to Non-Resident Day Passes.  
*[Shellfish Conservation Commission]*

*Shellfish Conservation Commission*

*Ought to Pass*

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Sponsor

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Recommendation

*01/03/2024 – Vote: 7 Yeas.*

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First Reading/Vote

*01/17/2024*

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Public Hearing

*01/17/2024 – Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Ordinance No. 24-003.</b>
<b>SUBJECT:</b> <b>7:30 p.m. Public hearing</b> and second reading on the proposed amendment to Chapter 311 – the Town of Scarborough Schedule of Fees relating to Non-Resident Day Passes. [ <i>Shellfish Conservation Commission</i> ]
<b>PURPOSE:</b> To align the fees for the Non-Resident Recreational Day Licenses with the Resident Recreational Day Licenses.
<b>BACKGROUND:</b> Department of Marine Resources requires us to allocate 10% of what we issue to our residents to non-residents. Currently we have 10 days passes that we issue, regardless of whether you are resident of Scarborough or not. In reviewing the allocations for the 2024 season, the Commission voted to allocate 10 day passes to residents (\$10) and 10 day passes to Non-residents and to implement a fee of \$20.
<b>FISCAL IMPACT:</b> \$4,500 +/-
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Approved by Shellfish Commission: December 12, 2023</li><li>• First reading before the Town Council: January 3, 2024</li><li>• Public hearing and second reading before the Town Council: January 17, 2024</li></ul>
<b>PROPOSED ACTION:</b> Recommend move approval of the second reading on Order No. 24-003.
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Copy of the proposed amendment.</li></ul>

**CHAPTER 311  
TOWN OF SCARBOROUGH  
SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 311 - the Town of Scarborough Schedule of License, Permit and Applications Fees Ordinance, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

<b><u>Chapter 1002 - Shellfish Ordinance, Fees</u></b>	<b><u>Fee</u></b>
Resident Commercial	\$200.00
Non-resident Non-reciprocating Commercial	\$400.00
Resident Student Commercial	\$100.00
Non-resident Student Commercial	\$200.00
Over - 60 Years Resident Commercial (Bushel)	\$100.00
Resident Recreational - (Over 65 Free)	\$25.00
<del>All Day Licenses</del> — Resident <u>Recreational Day Pass</u> <del>and Non-resident</del> (amended 04/06/05)	\$10.00
<u>Non-Resident Recreational Day Pass</u>	<u>\$20.00</u>

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-005.** Move approval of the first reading and refer to the Planning Board, the proposed amendments to Chapter 405 – the Zoning Ordinance, Section XIX.D. Regional Business District. Regional Business District B-2 – D. Special Exceptions and in Section IX. Performance Standards and schedule the Town Council public hearing upon receipt of the Planning Board’s review. [*Planning Director*]

*Planning Director*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*TBD*

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Public Hearing

*TBD*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

**ACTION ITEM: Order No. 24-005.**

**SUBJECT:**

First reading and refer to the Planning Board the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance Section XIX. Regional Business District (B-2), Special Exceptions and Section IX. Performance Standards, relating to the requirements required to allow the conversion of hospitality uses into multi-family uses. *[Planning Director]*

**PURPOSE:**

To review the proposed ordinance changes and amendments required to allow the conversion of hospitality uses into multi-family uses.

**BACKGROUND:**

The Housing Alliance submitted a policy memo to Town Council and Town Manager on August 3, 2022. The subject of the memo concerned the consideration of converting hospitality uses into multi-family uses.

The Housing Alliance performed a thorough review of locations of hospitality uses and their zoning districts. The properties generally fall into three categories: coastal properties, motel/hotel lodge type properties along the Route 1 corridor and larger extended stay and national franchise type properties along the Payne Road corridor.

Within these areas, the properties fall into seven zoning districts: B2, B3, CMU1, R2, R4A, TVC and TVC3. The Housing alliance looked at compatibility factors and ultimately narrowed the focus of conversion possibility to the B2, B3, TVC and TVC3 zones. They also outlined specific standards to apply to such conversions.

Planning staff was requested to review the memo and provide opportunities and analysis how to best accommodate the request. The Planning Department recommended limiting the amendment to the B-2 district to permit multi-family with a special exception and performance standards. The B-2 zoning district includes the 5 properties on Payne Road. The Special Exception process requires approval by the Board of Appeals. This would be a 30-45 day process for applicants.

Proposed ordinance changes include adding the use as a Special Exception to the B-2 District, and adding performance standards to Section 9. The performance standards were taken from the Housing Alliance summary.

**HOUSING ALLIANCE REVIEW AND RECOMMENDATION**

The Planning Department presented the proposal to the Housing Alliance on November 30, 2022. They recommended some minor changes and that the proposal be forwarded to the Ordinance Committee for consideration.

The Ordinance Committee reviewed the proposal on both February 9 and March 9 of this year. The Ordinance Committee deferred bringing the proposal forward to Town Council until the Rate of Growth Ordinance was complete. The concern stemmed from how/if Growth Permits would be required for conversion projects.

As currently proposed, Growth Permits are not required. Projects of this nature could use the affordable growth permit allotment, if Council chooses to amend the proposal.

If the ordinance amendments are approved, any of the property owners of the five lodging establishments may pursue the special exception approval. They would then be required to follow the site plan process as stated below:

*All minor modifications to the site including parking lot modification, landscaping, pedestrian amenities, outdoor amenities and in-kind architectural changes are subject to the Minor Development Review Site Plan process requiring Town Planner approval. Any proposed alterations which increase the floor area of the building by more than 100 square feet are subject to the Major Development Review Site Plan process requiring Planning Board approval.*

Site plan approval would be followed by applicable building permit approvals.

Staff recommends amending the applicable ordinance as shown in attachment three. These same performance standards could be applied to other zoning districts in the future if so desired.

**FISCAL IMPACT:** N/A

**STATUS / PROCESS TO DATE:**

- Housing Alliance Review: November 30, 2022
- Ordinance Committee Overview: February 9, 2023
- Ordinance Committee Review: March 9, 2023
- First reading before the Town Council: January 17, 2024

**PROPOSED ACTION:**

Recommend approval of the first reading on Order No. 24-005 and refer to the Planning Board.

**ATTACHMENTS:**

- Housing Alliance Memo
- Motel/Hotel Location Map
- Proposed Section XIX. Regional Business District (B-2) Amendments
- Proposed Section IX. Performance Standards

## MEMORANDUM

**SUBJECT: POLICY CONSIDERATIONS IN THE CONVERSION OF HOSPITALITY USES TO MULTIFAMILY**

**DATE:** August 3, 2022

**FROM:** Scarborough Housing Alliance

**TO:** Scarborough Town Council

**CC:** Tom Hall, Town Manager

The Scarborough Housing Alliance is a committee of Scarborough citizens that has been appointed by the Town Council to advise on matters relating to housing policy in the Town of Scarborough, Maine. Throughout the years, the Alliance has provided project-specific advice as Town Council has considered incentive packages for affordable housing developments, it has provided input on changes to the zoning ordinance on housing related matters and it has provided critical insights and advice related to the Town's Housing Trust Fund.

Over the past 2-3 years, the emergence of a novel coronavirus has impacted all facets of life in our community. One of those impacts is on the viability of the hospitality (hotel) industry. Nationally, owners of some hospitality properties have started to consider changing the use of their properties from a hospitality use to a multifamily use; in some communities this change of use has helped to add to the much-needed supply of workforce and affordable housing.

The Town Council has requested that the Scarborough Housing Alliance study this issue and advise the Council on what types of issues it ought to consider when and if requests are made to change the use of hospitality (hotel/motel) properties to multifamily properties in a land use zone where such a use is not allowed. The Alliance has studied the issue and discussed the issue at length. **The Alliance supports the creation of a streamlined process to allow for the conversion of hospitality properties to multifamily properties in certain zoning districts.** This memorandum summarizes our feedback to the Town Council and the considerations that we recommend be included in the streamlined process.

### Applicability

The first step that the Alliance took in analyzing this issue was to do a spatial analysis of where the hospitality uses are located throughout Scarborough. We then overlaid this information with the zoning for each parcel and details of what uses are permitted as-of-right in each zone. This analysis helped to highlight that hospitality properties fall in three general areas in Scarborough: coastal properties, motel/motor lodge type properties along the Route-1 corridor and larger extended stay and national-flagged type properties located along the Payne-road corridor. Within these areas, the properties fall within 7 zones: the B2, B3, CMU1, R2, R4A, TVC and TVC3 zones. Appendix A provided a summary of the allowable uses in each zone; Appendix B shows the map of where the hospitality uses are located. This led to the first consideration.

- ***Consider the adjacent uses and the compatibility of a housing use versus a hospitality use.***

In considering the compatibility, we discussed the fact that housing benefits from a more consistent and less transient user-base. This promotes more connection to community and presumably more stability. We also discussed, however, that with this consistency comes persistent intensity. A hotel/motel may have seasonal surges in usage while a multifamily use is likely to have year-round consistent high occupancy loads. This led the Alliance to consider whether some locations might be preferable to others for these types of conversions and whether the availability of a streamlined process ought to be limited to properties in select areas. Supposing that the existing stock of hospitality uses are able to function appropriately from a traffic, noise and life-safety perspective in each of the zones that they exist in, there seems to be little good reason to limit the availability of the option to convert uses of these properties. We do believe, however, that most conversions are likely to occur where land values are lowest – away from the coast. We also recognize that certain areas lend themselves to having less residential impact than others – which may be important as a new policy tool is introduced in Town. In the initial implementation of this policy, we recommend that streamlined conversion process only be available to properties in the B1, B2, B3, TVC and TVC3 zones.

### Suitability

Properties operating as hospitality uses have presumably been functioning well for their intended use. The Alliance recognized that housing creates different needs than short- or mid-term stay lodging. Issues such as community, pedestrian circulation, recreational infrastructure, resident management and parking infrastructure all ought to be considered in these proposals. Any proposal to convert an existing use ought to make adequate provisions for these issues.

- ***Consider matters of suitability, like: promotion of community, access to shared transportation opportunities (bus routes, shuttles, park and rides) or non-vehicular transportation opportunities (bike paths, walking paths), pedestrian circulation, recreational infrastructure, resident management and parking infrastructure.***
- ***Consider type of residential units being proposed and only approve self-contained, independent living multifamily dwellings.***
- ***Consider how the proposal meets universal design and handicapped accessibility principles and laws.***

In making determinations regarding allowable unit sizes under the newly developed proposal, the Council should take care to adhere to Fair Housing laws and be careful of running afoul or disparate impact rules by unintentionally precluding housing from being created for protected classes of people.

### Policy Issues

The Alliance recognizes that the change of use requests will be made for structures and businesses that are approaching functional obsolescence and that a strong community will have an ever evolving, yet internally consistent, set of land use regulations. We also recognize that our community has an increasing need for affordable and workforce housing and the conversion of this potentially underutilized property type is an excellent opportunity to add to the stock of affordable and workforce housing in town. We have considered the following policy issues:

- ***Is there a need for there to be more or less restrictions for this to be successful?***

- ***How much of a proposed project should be affordable? How much should be restricted to workforce?***
- ***Should a proposed conversion be required to upgrade the property to current code standards? Should only life-safety issues be required to be addressed?***
- ***How should conversion proposals be treated with respect to Scarborough's Growth Management Ordinance?***
- ***What is the proper venue for reviewing these proposals in a streamlined way?***

In general, we see the next step for the Council to be to create a clear, consistent and predictable process for applicants to go through. Consistency and predictability ought to be the measure of success rather than the number of units that actually get converted. To meet this objective we recommend treating these requests as “conditional use” or “special exception” requests and insisting that applicants explain how their proposal meets the policy objectives and performance concerns of the Town. Developing a published checklist – and including it in the Zoning Ordinance – that articulates the standards by which proposals will be evaluated is one way to do this. This will balance the importance of predictability with the value of including a rigorous review process.

With respect to the percentage of the project that should be affordable or workforce, we are reminded that there is currently no existing right to convert hospitality uses to multifamily uses in these zones and that Scarborough has documented needs for workforce and affordable housing. That said, we are mindful of the social benefits to mixed income housing. In order to balance these considerations, we recommend the following:

- At least 10% of all units<sup>1</sup> must qualify as “Affordable Housing Units” per the Zoning Ordinance.
- No more than 50% of all units may be “Unrestricted Units” where an Unrestricted Unit refers to a unit that is neither a Workforce Housing Unit nor an Affordable Housing Unit under the Zoning Ordinance.
- Affordable Housing Units and Workforce Housing Units should be distributed proportionally across unit sizes and units should be of similar quality, size and amenity composition regardless of whether they are designated as Affordable, Workforce or Unrestricted Units.

The Building Code will govern any construction and renovation of these proposed conversions. We suggest that all conversions be required to contain fully operational units that provide separate kitchen, bath and sleeping space for each unit. We do not suggest that any code standards in excess of what would be required for any other multifamily renovation be required for a change in use conversion.

With respect to the Growth Management Ordinance (the “GMO”), there are several characteristics of likely conversion proposals that suggest that they ought to be exempted from limits imposed by the GMO. We note that the GMO is intended to manage the impact of future development on the resources of the Town, including fire, police, water/sewer, traffic, stormwater and others. By their nature, each of these proposals will involve the conversion of an existing structure that is already drawing on the Town’s resources. The proposed improvements to existing lodging establishments will, in many cases, reduce the draw on these resources – particularly to the extent that life safety, fire safety and energy and water

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<sup>1</sup> The measure of “all units” should be taken based on the final unit count of the development rather than the pre-construction room count of the property. This acknowledges the potential need to combine smaller rooms together to create a suitable apartment unit.

efficiency improvements are made. Because of the unique nature of these conversion activities, and the public purpose behind creating affordable and workforce housing, limited exemption seems appropriate.

- ***To the extent that the number of bedrooms in a proposed conversion is less than or equal to the number of rooms in the subject lodging facility, the proposal should be exempted from the limits imposed by the GMO.***
- ***Conversion proposals should only be required to obtain growth permits for any net units created above the number of rooms in the structure being converted. For instance, if a proposal to convert a 20-room hotel would result in the 15 apartments in a renovated structure and 12 apartments in a newly constructed building on the same parcel, growth permits should be required for 7 housing units (the 15 + 12 minus 20).***

Finally, the Town of Scarborough has several oversight boards that deal with land use, building code and other similar issues. We recommend that one of these existing boards be charged with implementing any new policies that are promulgated by the Town Council and urge the Town Council to ensure that whatever policy gets created be clear and concise – both in its intention and its content.

#### Takeaways

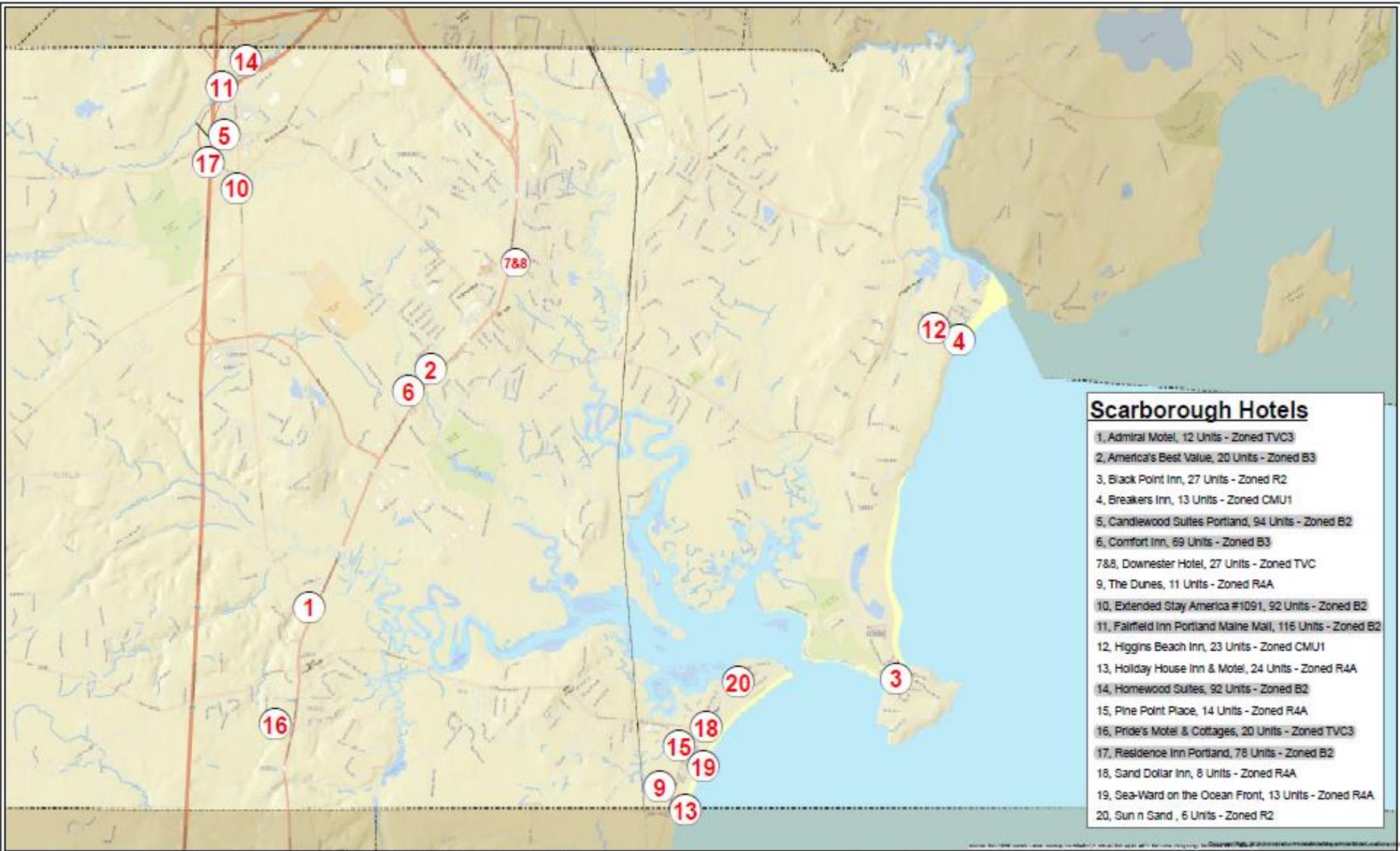
Hospitality uses are functionally similar to multifamily uses and a conversion from one use to another provides an excellent opportunity to utilize existing structures more efficiently to meet Scarborough's housing needs. Renovations and conversions are by their very nature environmentally friendly and moving from a transient use to a non-transient use will by its very nature add to the stability of the community. What's more, failing or struggling businesses often lead to underinvestment and may lead to blight – which can become a nuisance to a community like Scarborough. Creating an avenue to voluntarily convert properties from a hospitality use to a multifamily use will mitigate the risk of blight. Including an affordable or workforce component in any conversion requests will ensure that this limited opportunity contributes to one of Scarborough's other issues: its lack of dedicated affordable and workforce housing.

The Alliance recognizes and would like to highlight these factors, suggests that there is an existing infrastructure of review in town that should be utilized and recommends that the Town Council utilizes that existing infrastructure to perform any review in line with a well-articulated set of standards that relate to the policy issues outlined above.

Appendix A

Summary of allowable residential uses in each zone that hospitality uses fall within in Scarborough.

	B1	B2	B3	CMU1	R2	R4A	TVC	
Hotels/Motels or Bed & Breakfast	X	X	X				X	
Multifamily dwellings							X	
Multiplex dwellings						X	X	
Townhouses						X	X	
Senior housing							X	
Live/work units	X						X	
Long-term Care facilities							X – with special exception	
Single family units	X				X	X		
Two family dwellings	X					X		



- ### Scarborough Hotels
- 1, Admiral Motel, 12 Units - Zoned TVC3
  - 2, America's Best Value, 20 Units - Zoned B3
  - 3, Black Point Inn, 27 Units - Zoned R2
  - 4, Breakers Inn, 13 Units - Zoned CMU1
  - 5, Candlewood Suites Portland, 94 Units - Zoned B2
  - 6, Comfort Inn, 69 Units - Zoned B3
  - 7&8, Downester Hotel, 27 Units - Zoned TVC
  - 9, The Dunes, 11 Units - Zoned R4A
  - 10, Extended Stay America #1091, 92 Units - Zoned B2
  - 11, Fairfield Inn Portland Maine Mall, 116 Units - Zoned B2
  - 12, Higgins Beach Inn, 23 Units - Zoned CMU1
  - 13, Holiday House Inn & Motel, 24 Units - Zoned R4A
  - 14, Homewood Suites, 92 Units - Zoned B2
  - 15, Pine Point Place, 14 Units - Zoned R4A
  - 16, Pride's Motel & Cottages, 20 Units - Zoned TVC3
  - 17, Residence Inn Portland, 78 Units - Zoned B2
  - 18, Sand Dollar Inn, 8 Units - Zoned R4A
  - 19, Sea-Ward on the Ocean Front, 13 Units - Zoned R4A
  - 20, Sun n Sand , 6 Units - Zoned R2

## Appendix C

### Checklist of factors to include in conversion proposals

- Compatibility of surrounding uses with proposed housing use.
- Proposed unit type, configuration and amenities.
- Provides independent, self-contained, fully functional dwelling units
- ***Consider how the proposal meets universal design and handicapped accessibility principles and laws.***
- ***Promotion of community, pedestrian circulation, recreational infrastructure, resident management and parking infrastructure.***
- ***Provides housing that qualifies as Workforce Housing by Zoning Ordinance definitions.***
- ***Provides housing that qualifies as Affordable Housing by Zoning Ordinance definition.***
- ***How proposal addresses building code compliance and life safety improvements.***

## **Chapter 405 - Town of Scarborough Zoning Ordinance**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405 the Zoning Ordinance of the Town of Scarborough, Maine, as follows:

1. Amend Section XIX. Regional Business District B-2.D. Special Exceptions, by adding the new language underlined below:

D. SPECIAL EXCEPTIONS [Amended 08/19/09]

1. Public utility buildings including substations, pumping stations and sewage treatment facilities.
2. Outdoor storage, exclusive of fuel stored in bulk. [03/20/02]
3. Outdoor sales provided that all merchandise displayed for sale is located at least 1,000 feet from any public way.
4. Adjunct Uses, Place of Worship. [05/05/99]

5. Multifamily dwellings, converted from lodging uses in existence as of January 1, 2023. Subject to the Performance Standards of Section IX. (Z) of this Ordinance

2. Amend Section IX. Performance Standards, by adding a new subsection Z. MULTIFAMILY DWELLINGS – CONVERSIONS FROM LODGING USE, as follows:

### Z. MULTIFAMILY DWELLINGS – CONVERSIONS FROM LODGING USE

Existing lodging uses may be converted to multifamily dwellings in their entirety when permitted as a Special Exception in the B-2 zoning district, subject to the Special Exception approval process through the Zoning Board of Appeals and subject to the following Performance Standards.

(1) All conversions must obtain building permits and meet all applicable Building Code and life safety requirements for any renovations or modifications required.

(2) All residential units must be self-contained, independent living quarters including a separate kitchen, bath and sleeping space for each unit.

(3) Accessibility requirements shall be considered when reviewing requests for conversion.

(4) A minimum of 50% of all units must qualify as Renter-Occupied Workforce Housing or Renter-Occupied Affordable Housing units and deed restricted.

(5) A minimum of 10% of all units must qualify as Renter-Occupied Affordable Housing units as defined by the Zoning Ordinance and deed restricted.

(6) Affordable Housing and Workforce Housing units must be distributed proportionally across bedroom mix and units must be of the same quality, size and amenity composition as market rate units.

(7)– Amenities for residents must be provided and considered when reviewing requests for conversion, including resident amenities, internal pedestrian circulation, on-site management and any additional services offered.

(8) All units must require 12 months lease agreements. –

(98) Adequate on-site parking must be provided for. Each unit shall require one parking space.

~~(10)9~~ All units in a conversion proposal shall be exempt from any rate of growth requirements. Any new construction of units or additional units over the original unit count in the lodging use shall be subject to rate of growth requirements.

(110) All minor modifications to the site including parking lot modification, landscaping, pedestrian amenities, outdoor amenities and in-kind architectural changes are subject to the Minor Development Review Site Plan process requiring Town Planner approval. Any proposed alterations which increase the floor area of the building by more than 100 square feet are subject to the Major Development Review Site Plan process requiring Planning Board approval.



## Appendix D

Meeting minutes from Scarborough Housing Alliance meetings regarding conversion requests.

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JANUARY 17, 2024  
HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-006.** Move approval of the first reading on the proposed amendment to Chapter 311 – the Town of Scarborough Schedule of Fees relating to Lift Assist and schedule a public hearing and second reading for Wednesday, February 7, 2024. [*Fire Chief*]

*Fire Chief*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*02/07/2024*

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Public Hearing

*02/07/2024 – Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-006.</b>
<p><b>SUBJECT:</b></p> <p>First reading and schedule a public hearing and second reading on the proposed amendment to Chapter 311 – the Town of Scarborough Schedule of Fees relating to Lift Assist. <i>[Fire Chief]</i></p>
<p><b>PURPOSE:</b> To establish a new Emergency Medical Service Fee, billed directly to staffed medical facilities, group homes, and nursing/long term care facilities, doing business in the Town of Scarborough.</p>
<p><b>BACKGROUND:</b> Scarborough is home to large amount of medical facilities that include; Long - term care, assisted living, skilled nursing, group homes etc. Scarborough Fire/EMS, along with EMS agencies across the state have experienced an increase in these businesses relying on Ambulance responses to assist patients within these facilities for non-emergent situation, specifically lifting and moving patients. These services are not reimbursable by most insurance carriers and in most cases cannot be billed to a patient. Our EMS services are sustained by user fees generated through insurance and other reimbursements. Lifting and moving patient requests from medical facility businesses are adding pressures to our already busy service while not providing additional revenue to sustain this increase. (RCK)</p>
<p><b>FISCAL IMPACT: \$0</b></p>
<p><b>STATUS / PROCESS TO DATE:</b></p> <ul style="list-style-type: none"> <li>● Presentation before the Finance Committee: October 11, 2023</li> <li>● First reading before Town Council: January 17, 2024</li> </ul>
<p><b>PROPOSED ACTION:</b></p> <p>Recommend approval of the first reading on Order No.24-006</p>
<p><b>ATTACHMENTS:</b></p> <ul style="list-style-type: none"> <li>● Proposed changes to Chapter 311 Fee Structure.</li> </ul>

## Chapter 311 – the Town of Scarborough Schedule of Fees Ordinance

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 311 – the Town of Scarborough Schedule of Fees Ordinance, be and hereby is amended, by adding the following new recommendation (additions are underlined; deletions are struck through):

<b>Base Rescue Charges:</b>	
Based on bundled rate plan adopted May 1, 2013, these rates shall automatically adjust when and by the same % as those established and approved by the Centers for Medicare & Medicaid Services (CMS).	
Basic Life Support Non-Emergency (adopted 05/01/2013) (amended 05/07/2014)(05/20/15; amended 05/18/16; amended 03/15/17; amended 05/17/17; updated 01/01/19; updated 01/01/2020)	\$605.60
Basic Life Support Emergency (adopted 05/01/2013)(amended 05/07/2014) (05/20/15; amended 05/18/16; amended 03/15/17; amended 05/17/17; updated 01/01/19; updated 01/01/2020; amended 06/02/2021)	\$757.10
Advance Life Support Level 1 Emergency (adopted 05/01/2013) (amended 05/07/2014) (05/20/15; amended 05/18/16; amended 03/15/17; amended 05/17/17; updated 01/01/19; updated 01/01/2020)	\$930.65
Advance Life Support Level 2 Emergency (adopted 05/01/2013) (amended 05/07/2014) (05/20/15; amended 05/18/16; amended 03/15/17; amended 05/17/17; updated 01/01/19; updated 01/01/2020)	\$1,325.63
<b>Additional Rescue Charges:</b>	
Mileage/Non-Covered Mileage (adopted 05/07/2014) (05/20/1; amended 05/18/165; amended 05/17/17; updated 01/01/19; updated 01/01/2020; amended 06/02/2021)	\$15.26
Evaluation/No Transport (amended 05/05/04)(amended 05/06/09)(amended 01/18/12)	\$125.00
<u>Lift Assist – Emergency medical service response to assist lifting a person in a medical institution or facility.</u>	<u>\$300.00 per response</u>
Paramedic Intercept Fee (05/21/2008; updated 01/01/2020)	\$300.00
Fees are set by State Statutes – pursuant to Title 22, Health and Welfare, subtitle 2, §1711, pertaining to <i>Fees charges</i> , and as amended from time to time. (adopted 05/07/2014)	

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-007.** Move approval of the first reading and schedule the second reading to repeal and replace the Ordinance Establishing a Moratorium on Adult Use Marijuana Cultivation Facilities and Medical Marijuana Cultivation Facilities in the Pine Point Industrial Overlay District that the Town Council approved on August 16, 2023 and enact a new Ordinance Establishing a Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities that would apply Town-wide. [*Ordinance Committee*]

*Ordinance Committee*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*N/A*

---

Public Hearing

*02/07/2024 – Vote:*

---

Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

**ACTION ITEM: Order No. 24-007.**

**SUBJECT:**

First reading and schedule the second reading to repeal and replace the Ordinance Establishing a Moratorium on Adult Use Marijuana Cultivation Facilities and Medical Marijuana Cultivation Facilities in the Pine Point Industrial Overlay District that the Town Council approved on August 16, 2023 and enact a new Ordinance Establishing a Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities that would apply Town-wide. [*Ordinance Committee*]

**PURPOSE:**

Enact a new moratorium on any new, or expansion of existing, cannabis cultivation licenses until June 30, 2024 so that further changes to the Cannabis Licensing Ordinance can be considered.

**BACKGROUND:**

Following three (3) successive moratoriums to restrict cannabis licensing, and the enactment of increased odor mitigation standards and a revised enforcement provisions, the Town continues to receive odor reports. As a result, the Ordinance Committee and Town Council have expressed interest in considering additional revisions to the Cannabis Licensing Ordinance which may include odor mitigation requirements, enforcement, and zoning.

**FISCAL IMPACT: 0**

**STATUS / PROCESS TO DATE:**

- Long-standing concerns with cannabis odor in the Pine Point Overlay District, as well as increased concerns in the Pleasant Hill Road corridor, has resulted in two previous emergency moratoriums and the convening of a marijuana working group to study and recommend changes to the licensing ordinance. Despite revisions to the Licensing Ordinance, concerns persist.
- First reading before the Town Council: January 17, 2024

**PROPOSED ACTION:**

Recommend approval of the first reading on Order No. 24-007 and schedule the second reading for Wednesday, February 7, 2024.

**ATTACHMENTS:**

- Proposed New moratorium on Cannabis Cultivation Licenses through June 30, 2024
- Memo from Town Attorney

**TOWN OF SCARBOROUGH ORDINANCE ESTABLISHING A  
MORATORIUM ON ADULT USE CANNABIS CULTIVATION FACILITIES  
AND MEDICAL CANNABIS CULTIVATION FACILITIES**

WHEREAS, the Maine Medical Use of Cannabis Act, 22 M.R.S. § 2429-D, and the Cannabis Legalization Act, 28-B M.R.S. §§ 401-402, specifically authorize municipalities to opt-in to allow and regulate Cannabis Establishments; and,

WHEREAS, the Town of Scarborough currently allows certain Cannabis Establishments, including Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities, to operate in the Town, subject to a license under the Cannabis Establishment Licensing Ordinance and applicable approvals under the Zoning Ordinance; and,

WHEREAS, since the adoption of the above ordinances there has been an increasing number of requests regarding the establishment or expansion of Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities through Town; and,

WHEREAS, operations related to Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities raise a number of concerns related to public safety and welfare, including, but not limited to, potential adverse effects on neighborhoods, security of the facilities, and odors that may create a public nuisance or hazard; and,

WHEREAS, on May 3, 2023, the Town Council adopted a 90-day emergency moratorium on the acceptance, processing, or acting upon any application for any approval, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, license or any other approval, relating to the establishment, operation, or expansion of a business or operation for an Adult Use Marijuana Cultivation Facility or Medical Marijuana Cultivation (the name since changed to “cannabis” pursuant to state law and ordinance amendment) in the Pine Point Overlay District, in the Town, and voted to extend the moratorium for an additional 180-days on August 16, 2023 which is set to expire on February 12, 2024; and,

WHEREAS, the Town’s existing ordinances do not provide an adequate mechanism to regulate and control Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities in the Town and are inadequate to prevent the potential for serious public harm from the development of future Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities; and,

WHEREAS, the Town needs a reasonable amount of time to continue to study the land use and licensing implications of Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities and to develop reasonable regulations governing their location and operation; and,

NOW THEREFORE, pursuant to the authority granted to it by 30-A M.R.S. § 4356, be it hereby ordained by the Town Council of the Town of Scarborough, Maine, as follows:

1. DEFINITIONS.

As used in this Ordinance, the following terms have the following meanings:

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

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

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

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

“Medical Cannabis Cultivation Facility” shall mean a medical cannabis cultivation area used or occupied by one or more medical cannabis registered caregivers and a facility to cultivate, prepare and package medical cannabis at a location that is not the residence of a registered caregiver or qualifying patient.

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

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

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

2. APPLICABILITY AND PURPOSE.

Notwithstanding the provisions of 1 M.R.S. § 302, this Ordinance shall apply to any proposal to establish, operate, or expand a business or operation for an Adult Use Cannabis Cultivation Facility or Medical Cannabis Cultivation Facility in the Town of Scarborough, whether or not an application or a proceeding to establish or operate a business or operation

for a Adult Use Cannabis Cultivation Facility or Medical Cannabis Cultivation Facility would be deemed a pending proceeding under 1 M.R.S.A. § 302.

3. PROHIBITION.

During the time this Ordinance is in effect, no official, officer, board, body, agency, agent or employee of the Town of Scarborough shall accept, process or act upon any application for any approval, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, license, or any other approval, relating to the establishment, operation, or expansion of a business or operation for an Adult Use Cannabis Cultivation Facility or Medical Cannabis Cultivation Facility. No person shall establish or operate a business or operation for an Adult Use Cannabis Cultivation Facility or Medical Cannabis Cultivation Facility that was proposed on or after the effective date of this Ordinance or shall expand the operations of any Adult Use Cannabis Cultivation Facility or Medical Cannabis Cultivation Facility that was established or operated prior to the effective date of this Ordinance. This prohibition does not apply to the operation of existing licensed Adult Use Cannabis Cultivation Facilities or Medical Cannabis Cultivation Facilities as of the date of enactment of this Ordinance, although it does apply to any proposed expansion of an existing licensed business or operation.

4. ENFORCEMENT, VIOLATION AND PENALTIES.

This Ordinance shall be enforced by the Code Enforcement Officer of the Town of Scarborough. Any person who violates Section 3 of this ordinance shall be subject to civil penalties and other remedies as provided in 30-A M.R.S.A. § 4452.

5. EFFECTIVE DATE.

This Ordinance takes effect immediately upon adoption and shall expire on the 180th day thereafter, unless earlier extended, repealed or modified by the Scarborough Town Council.

6. SEVERABILITY.

Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

# Memorandum

**To:** Scarborough Town Council Ordinance Committee

**From:** Philip R. Saucier, Esq.

**Date:** January 9, 2024

**Re:** Municipal regulation of cannabis establishments

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You have asked me to briefly summarize the Council's authority to regulate both medical and adult use cannabis establishments in the Town of Scarborough under Maine law.

## I. State Law

Cannabis is regulated under state law by the Maine Medical Use of Cannabis Act (22 M.R.S. ch. 558-C) and the Cannabis Legalization Act (28-B M.R.S. ch. 1). The Legislature has given municipalities broad discretion on whether to allow cannabis establishments to operate within their boundaries and to regulate such uses.

### A. Cannabis Establishments

Both laws recognize and regulate four types of cannabis establishments:

- Medical cannabis establishments: caregiver retail stores, registered dispensaries, cannabis testing facilities, and manufacturing facilities.
  - Many municipalities also regulate “medical cannabis cultivation facilities” – a use that is not defined under state law but is defined under Scarborough’s ordinance as “a medical cannabis cultivation area used or occupied by one or more medical cannabis registered caregivers and a facility licensed under this ordinance to cultivate, prepare and package medical cannabis at a location that is not the residence of the Registered Caregiver or Qualifying Patient.”
- Adult use cannabis establishments: cannabis stores, cultivation facilities, testing facilities, and products manufacturing facility.

## **B. Opt-In and Regulatory Options**

Under both laws, cannabis establishments are prohibited from operating in a municipality unless the legislative body votes to allow such uses to operate within the municipality.

- Medical cannabis exceptions:
  - Municipalities cannot prohibit caregiver retail stores, registered dispensaries, cannabis testing facilities and manufacturing facilities that were operating with municipal approval prior to December 13, 2018. “Municipal approval” means an examination and approval of the type of medical cannabis establishment, not simply the issuance of a building permit or other approval that does not address the use of the facility or structure. 22 M.R.S. § 2429-D(2).
  - Municipalities can regulate registered caregivers but cannot prohibit or limit the number of registered caregivers. Cannabis cultivation facilities are not one of the “opt-in” establishments, but municipalities do have the authority to regulate such uses.
- Adult use cannabis: This law does not contain any “grandfathering” provisions for establishments operating prior to a certain date. 28-A M.R.S. §§ 401, 402.

Municipalities are given broad discretion and have a wide variety of options to regulate cannabis establishments:

1. Prohibit such establishments by choosing not to opt-in.
2. Allow some, but not all, categories of cannabis establishments to operate in the municipality.
3. Limit the number of cannabis establishments that can operate.
4. Adopt land use regulations (such as zoning, performance standards, and space and bulk requirements).
5. Adopt licensing requirements and associated reasonable fees.

The Town currently allows the following cannabis establishments to operate, subject to licensing and zoning requirements: adult use and medical cultivation facilities, adult use and medical manufacturing facilities, adult use and medical testing facilities, and medical cannabis dispensaries. Adult use and caregiver retail stores are not permitted to operate in the Town.

## **II. Nonconformance**

### **A. Scarborough Zoning Ordinance.**

In the event the Council decides to “opt-out” and not allow certain types of cannabis establishments that are currently permitted to operate in the Town, such establishments would be subject to the nonconforming use provisions in the Zoning Ordinance. Once a nonconforming use is established, the right to continue the use is considered to be a vested property right, and such provisions are thus included in land use ordinances to avoid any constitutional issues. While nonconforming uses are allowed to continue to operate, they can be restricted from being

enlarged, increased, or extended to occupy a greater area of land. Under the Town's Zoning Ordinance, once a nonconforming use is abandoned for more than one year, it loses its legal nonconforming status and the land and structure can only be used for conforming uses, which is consistent with the goal to eventually eliminate nonconforming uses.

The following are the relevant nonconforming use provisions in Section III of the Zoning Ordinance:

A. Continuation of Non-Conformance

Any lawful use of buildings, structures, land, or parts thereof existing at the time of adoption or amendment of this Ordinance, and made non-conforming by the provisions of this Ordinance or any amendments thereto, may be continued, subject to the provisions of this Section.

B. Non-Conforming Use of Land

1. No non-conforming use of land shall be enlarged or increased nor extended to occupy a greater area of land than that occupied at the effective date of adoption or amendment of this Ordinance.
2. No non-conforming use of land shall be moved in whole or in part to any portion of the lot, which was not occupied by such use at the effective date of adoption of this Ordinance.
3. 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 this Ordinance for the district in which such land is located.

C. Non-Conforming Uses of Structure

1. No existing structure devoted to a non-conforming use shall be enlarged, extended, or expanded except in changing the use of the structure to conforming use.
2. Any non-conforming use may be extended throughout any parts of a building, which were manifestly in existence and arranged or designed for such use at the time of the adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
3. If a non-conforming use of a structure is superseded by a permitted use, the non-conforming use shall not thereafter be resumed.
4. If any non-conforming use of a structure ceases for any reason for a period of more than one year, any subsequent use of such structure shall conform to the regulations specified by this Ordinance for the District in which such structure is located.

## **B. Amortization**

You have also asked if the Council could gradually phase out a legally nonconforming use, notwithstanding the nonconformance provisions in the Zoning Ordinance. The phasing out of a legally nonconforming use over time is called “amortization.” The legal justification is that because the phasing out of the nonconforming use has been set over a period of time, it is not an unconstitutional taking of property and no compensation is payable at the expiration of the period, as the operator of the use is given a grace period to recoup any funds spent on a particular use before it is terminated.

There is legal support for a phasing out/amortization program in Maine, articulated in a case from the 1970s that upheld the gradual phasing out of billboards. *See State v. National Advertising Co.*, 409 A.2d 1277 (Me. 1979). In that case, the Maine Supreme Judicial Court concluded that the use of an amortization period to eliminate nonconforming billboard signs was a legislative object of the exercise of the police power and was not an unconstitutional taking of property – and concluded that a five-year amortization period was sufficient for that program.

If the Council chooses to move forward with a phasing out of certain cannabis establishments, it should determine a phasing out period that is sufficient and reasonable to allow for a change of use and for the operator of the business to recoup its investment. Under the *National Advertising* case, we have some guidance that a five-year period may be sufficient, but it will depend on the particular circumstances of these uses. Finally, given the explicit restriction in 22 M.R.S. § 2429-D(2), the Town cannot gradually phase out any medical cannabis establishment operating with municipal approval prior to December 13, 2018.

PRS/jm

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JANUARY 17, 2024  
HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-008.** Move approval on the request from the Police Chief to accept a \$1,500 donation from Stacey Woigt to be used for basic necessities for individuals or families in need.  
*[Police Chief]*

*Police Chief*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*N/A*

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Public Hearing

*N/A*

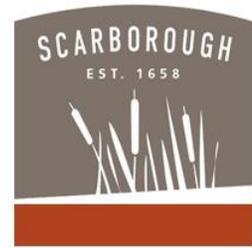
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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-008.</b>
<b>SUBJECT:</b> Act on the request from the Police Chief to accept a \$1,500 donation from Stacey Woidt to be used for basic necessities for individuals or families in need. <i>[Police Chief]</i>
<b>PURPOSE:</b> To receive a donation in the amount of a \$1,500 donation from Stacey Woidt to be used for basic necessities for individuals or families in need .
<b>BACKGROUND:</b> The Department received notification of a donation on behalf of a Scarborough resident from the Bank of America Charitable Gift Fund.
<b>FISCAL IMPACT:</b>
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Police Chief received notification of donation: December 28, 2023</li><li>• Final Action before the Town Council: January 17, 2024</li></ul>
<b>PROPOSED ACTION:</b> Recommend to move approval of Order No. 24-007.
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Memo from the Police Chief.</li></ul>



**TO:** Thomas Hall, Town Manager

**FROM:** Mark Holmquist, Chief of Police

**DATE:** January 8, 2024

**RE:** Donation to Scarborough Police Department (Check# 781)

I am writing this memorandum to respectfully request Town Council approval to accept a \$1,500.00 donation from Stacey Woidt of 22 Cumberland Way in Scarborough. On December 28, 2023, the Scarborough Police Department received a personal check from Ms. Woidt to be donated to the Social Services Division. The Social Services Manager has designated the donation to be used towards the purchase of gift cards for basic necessities for individuals or families in need.

With council approval, I would like to accept this generous donation on behalf of the Scarborough Police Department.

Respectfully submitted,

Mark A. Holmquist  
Chief of Police

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JANUARY 17, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-009.** Move approval on the request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance, to approve the acceptance of public infrastructure, as noted and recommended by the Town Engineer. [*Town Engineer*]

*Town Engineer*

*Ought to Pass*

---

Sponsor

---

Recommendation

*01/17/2024 – Vote:*

---

First Reading/Vote

*N/A*

---

Public Hearing

*N/A*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-009.</b>
<p><b>SUBJECT:</b></p> <p>Act on the request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance, to approve the acceptance of public infrastructure, as noted and recommended by the Town Engineer. <i>[Town Engineer]</i></p>
<p><b>PURPOSE:</b></p> <p>To allow the transition of built roadways to go from private to public infrastructure as was planned and approved by the Planning Board, and as recommended by the Town Engineer. Approved roadway infrastructure will be the responsibility of the Town of Scarborough if approved by Town Council.</p>
<p><b>BACKGROUND:</b></p> <p>Prior to any street being accepted by the Town Council, Town Staff must review materials that have been submitted by a developer to ensure they have met the requirements under the Town of Scarborough Ordinance and MRSA Title 23 §3025. Dedications and Acceptance.</p> <p>The public infrastructure associated with any street must be inspected by the Town Engineer and a 3rd- party engineering consultant during construction. Based on these inspections and supplemental documentation provided by the applicant, it will be determined whether the work associated with a project is in compliance with the Planning Board Subdivision approval and the Street Acceptance Ordinance specifications and all necessary documents must be reviewed by Town staff, and are found to be satisfactory. The Public Works Director has final inspection of the streets prior to a recommendation of acceptance going to Town Council for consideration.</p>
<b>FISCAL IMPACT:</b> N/A
<p><b>STATUS / PROCESS TO DATE:</b></p> <ul style="list-style-type: none"> <li>• Initial request by the Developer and the development of a punchlist of remaining items.</li> <li>• Developer completed the list of outstanding items.</li> <li>• Developer provided necessary documentation including deeds and easements.</li> <li>• Presented to Council for action: January 17, 2024.</li> </ul>
<p><b>PROPOSED ACTION:</b></p> <p>Recommendation is to move approval of Order No. 24-008.</p>
<p><b>ATTACHMENTS:</b></p> <ul style="list-style-type: none"> <li>• Memo from the Town Engineer</li> <li>• Deeds and Easements</li> </ul>

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-009.</b>
<b>SUBJECT:</b> Act on the request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance, to approve the acceptance of public infrastructure, as noted and recommended by the Town Engineer. <i>[Town Engineer]</i>
<b>PURPOSE:</b> To allow the transition of built roadways to go from private to public infrastructure as was planned and approved by the Planning Board, and as recommended by the Town Engineer. Approved roadway infrastructure will be the responsibility of the Town of Scarborough if approved by Town Council.
<b>BACKGROUND:</b> Prior to any street being accepted by the Town Council, Town Staff must review materials that have been submitted by a developer to ensure they have met the requirements under the Town of Scarborough Ordinance and MRSA Title 23 §3025. Dedications and Acceptance. The public infrastructure associated with any street must be inspected by the Town Engineer and a 3rd- party engineering consultant during construction. Based on these inspections and supplemental documentation provided by the applicant, it will be determined whether the work associated with a project is in compliance with the Planning Board Subdivision approval and the Street Acceptance Ordinance specifications and all necessary documents must be reviewed by Town staff, and are found to be satisfactory. The Public Works Director has final inspection of the streets prior to a recommendation of acceptance going to Town Council for consideration.
<b>FISCAL IMPACT:</b> N/A
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Initial request by the Developer and the development of a punchlist of remaining items.</li><li>• Developer completed the list of outstanding items.</li><li>• Developer provided necessary documentation including deeds and easements.</li><li>• Presented to Council for action: January 17, 2024.</li></ul>
<b>PROPOSED ACTION:</b> Recommendation is to move approval of Order No. 24-009.
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Memo from the Town Engineer</li><li>• Deeds and Easements</li></ul>

# MEMO

**To:** Scarborough Town Council

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

**Date:** January 17, 2024

**Re:** Street Acceptance – Downs Town Center Residential Subdivision  
(Phases 1, 2, 4A, & 4B)  
Portions of Hackamore Avenue & Pacer Way

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Pursuant to 23 MRSA 3025 and to the requirements of Section 4 of Scarborough Street Acceptance Ordinance, Crossroads Holdings, LLC petitions the Scarborough Town Council to accept the public infrastructure within the Scarborough Downs Town Center Residential Subdivision, as shown on the plan titled, Subdivision Plan Town Center Residential, approved by the Scarborough Planning Board and most recently amended (6<sup>th</sup> Amendment) on June 25, 2020. Phase 1, 2, 4A, and 4B of this subdivision include a portion of the following streets: Hackamore Avenue and Pacer Way.

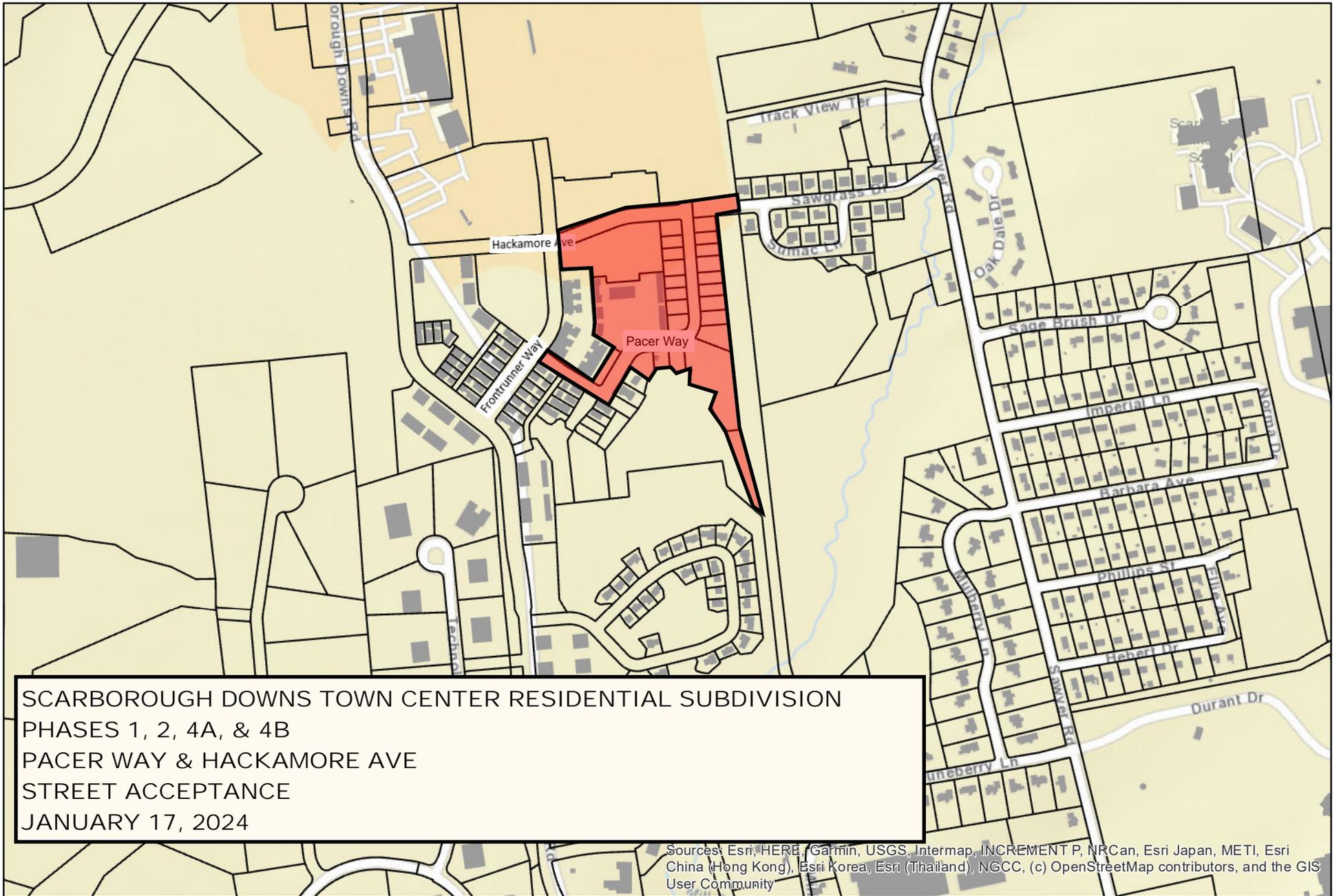
The total number of centerline road miles currently maintained by the Town of Scarborough is 182.3 miles. The acceptance of these streets as public infrastructure will increase the overall miles by 0.4 mile.

Town Staff has reviewed the submitted materials and has concluded that Crossroads Holdings, LLC has provided the necessary information to move forward to street acceptance of the highlighted portions of Hackamore Avenue and Pacer Way.

The public infrastructure associated with these streets have been inspected by this office, the Public Works Department, and a 3rd-party engineering consultant during construction. Based on these inspections and supplemental documentation provided by the applicant, it has been determined that the work associated with this portion of the project meet the intent of the Planning Board Subdivision approval and the Street Acceptance Ordinance specifications. Further, all necessary documents have been submitted, reviewed by Town staff, and are found to be satisfactory.

Attached for your review is an excerpt from the Town's GIS database showing the location of the proposed public streets, as well as the associated deeds.

**Engineering & Technical Services**



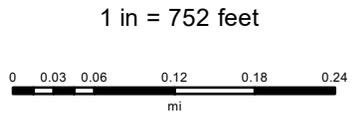
SCARBOROUGH DOWNS TOWN CENTER RESIDENTIAL SUBDIVISION  
 PHASES 1, 2, 4A, & 4B  
 PACER WAY & HACKAMORE AVE  
 STREET ACCEPTANCE  
 JANUARY 17, 2024

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community



Town Of  
**Scarborough**  
 Maine  
<http://www.scarboroughmaine.org>

Disclaimer: The data contained within the Scarborough GIS is intended as a public resource of general information. The Town of Scarborough makes no warranty or representation as to the accuracy, timeliness or completeness of any of the data, and shall assume no liability for the data contained, for omissions, or any decision made or action taken or not taken in reliance upon any of the data. Parcel data is intended for general map reference only and is a general representative of approximate lot configuration, and is not intended for boundary determination, legal description, delineation, or transfer. Any service utility information shown is intended for general information only. Other utilities may be present, and the appropriate utility owner should be contacted for detailed information. GIS data is not intended for engineering design. Field verification is recommended.



## WARRANTY DEED

[Pacer Way and Hackamore Avenue, Scarborough]

KNOW ALL PERSONS BY THESE PRESENTS, that, **CROSSROADS HOLDINGS LLC**, a Maine limited liability company with mailing address of 175 Scarborough Downs Road, Suite 113, Scarborough, Maine 04074, for good and valuable consideration, grants to the **TOWN OF SCARBOROUGH**, a Maine municipal corporation, with a mailing address of P.O. Box 360, Scarborough, Maine 04070, with **WARRANTY COVENANTS**, the land in the Town of Scarborough, County of Cumberland and State of Maine, described as follows:

Certain road rights of way known as "Pacer Way" and "Hackamore Avenue," situated northerly of but not adjacent to U.S. Route One, and easterly side of Frontrunner Way, in the Town of Scarborough, County of Cumberland, State of Maine, and being more particularly described as follows:

Beginning at the intersection of the southeasterly sideline of Frontrunner Way and the northerly sideline of Pacer Way as shown on plan titled "Sixth Amended Subdivision Plan Town Center Residential Subdivision Scarborough Downs Road Scarborough, Maine Made for Crossroads Holding, LLC by Owen Haskell, Inc. dated August 3, 2022 recorded in the Cumberland County Registry of Deeds in Plan Book 222, Pages 446 through 448, inclusive;

Thence, the following courses and distances along the northerly and westerly sideline of said Pacer Way:

Following a non-tangent curve to the left which bears a radius of 10.00 feet, an arc length of 15.71 feet, a chord bearing of S 08°01'43" E, and a chord length of 14.14 feet;

Thence, S 53°01'43" E a distance of 86.39 feet;

Following a curve to the left which bears a radius of 125.00 feet, an arc length of 12.68 feet, a chord bearing of S 55°56'02" E, and a chord length of 12.67 feet;

Thence, S 58°50'21" E a distance of 150.21 feet;

Following a curve to the left which bears a radius of 10.00 feet, an arc length of 15.71 feet, a chord bearing of N 76°09'03" E, and a chord length of 14.14 feet;

Thence, N 31°08'27" E a distance of 156.00 feet;

Following a non-tangent curve to the right which bears a radius of 133.63 feet, an arc length of 111.09 feet, a chord bearing of N 61°33'53" E, and a chord length of 107.92 feet;

Thence, N 85°43'04" E a distance of 117.90 feet;

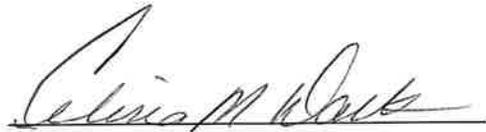
**DRAINAGE AND MAINTENANCE EASEMENT DEED**

[Lot 40, Town Center Residential]

KNOW ALL PERSONS BY THESE PRESENTS that **FRONTRUNNER PARK CONDOMINIUMS LLC**, a Maine limited liability company with a principal place of business and mailing address at 6 Washington Avenue, P.O. Box 485, Scarborough, Maine 04070 (hereinafter "Grantor") for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY unto the **TOWN OF SCARBOROUGH**, a Maine municipal corporation with a principal place of business and mailing address of 259 U.S. Route 1, P.O. Box 360, Scarborough, Maine 04070, its successors and assigns forever (hereinafter "Grantee"), a perpetual right and easement across portion of Lot 40 depicted as "Maintenance and Access Easement" (the "Easement Area") on a plan entitled "Sixth Amended Subdivision Plan Town Center Residential Subdivision, Scarborough Downs Road, Scarborough, Maine," prepared for Crossroads Holdings, LLC by Owen Haskell, Inc., dated August 3, 2022, approved by the Town of Scarborough Planning Board, and recorded in the Cumberland County Registry of Deeds in Plan Book 222, Pages 446 through 448 (the "Subdivision Plan"), for the purposes of collection, diversion and flow of storm and surface waters, and the maintenance, repair and replacement of any storm water infrastructure and drainage pipes, with all necessary fixtures and appurtenances, from Pacer Way, and other adjoining land as deemed appropriate by the Grantee, together with a right of entry on foot or in vehicles, with all the equipment necessary or reasonably required to accomplish the purposes of this easement, over, on, across and under the Easement Area.

TO HAVE AND TO HOLD, the aforegranted rights and easements, with all the privileges and appurtenances thereof to the Grantee, its successors and assigns, to its and their use and behoof forever.

IN WITNESS WHEREOF, Frontrunner Park Condominiums LLC has caused this instrument to be signed and sealed in its company name by Rocco C. Risbara III, its Manager, thereunto duly authorized, on December 27<sup>th</sup>, 2022.



Witness:

FRONTRUNNER PARK  
CONDOMINIUMS LLC

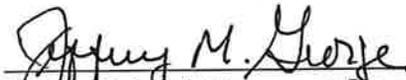
By: 

Rocco C. Risbara III  
Its: Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

December 27, 2022

Personally appeared before me, the above named Rocco C. Risbara III, Manager of Frontrunner Park Condominiums LLC, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of Frontrunner Park Condominiums LLC.

  
Notary Public/Attorney-at-Law

Printed Name:

**Jeffrey M. George**  
Notary Public, State of Maine  
My Commission Expires March 7, 2026

Following a curve to the left which bears a radius of 75.00 feet, an arc length of 117.81 feet, a chord bearing of N 40°43'02" E, and a chord length of 106.07 feet;

Thence, N 04°16'56" W a distance of 403.99 feet;

Following a curve to the left which bears a radius of 10.00 feet, an arc length of 15.71 feet, a chord bearing of N 49°16'56" W, and a chord length of 14.14 feet to the southerly sideline of Hackamore Avenue;

Thence, the following courses and distances along the southerly sideline of Hackamore Avenue:

Thence, S 85°43'04" W a distance of 181.80 feet;

Following a curve to the left which bears a radius of 270.00 feet, an arc length of 77.62 feet, a chord bearing of S 77°28'54" W, and a chord length of 77.36 feet;

Thence, S 69°14'45" W a distance of 215.63 feet;

Following a curve to the right which bears a radius of 165.00 feet, an arc length of 34.27 feet, a chord bearing of S 75°11'47" W, and a chord length of 34.21 feet;

Following a curve to the left which bears a radius of 10.00 feet, an arc length of 14.91 feet, a chord bearing of S 38°25'57" W, and a chord length of 13.57 feet;

Thence, N 04°16'56" W a distance of 80.47 feet to the northerly sideline of Hackamore Avenue;

Thence, the following courses and distances along the northerly sideline of Hackamore Avenue:

Following a non-tangent curve to the left which bears a radius of 10.00 feet, an arc length of 17.18 feet, a chord bearing of S 53°30'11" E, and a chord length of 15.14 feet;

Following a curve to the left which bears a radius of 105.00 feet, an arc length of 14.72 feet, a chord bearing of N 73°15'40" E, and a chord length of 14.71 feet;

Thence, N 69°14'45" E a distance of 215.63 feet;

Following a curve to the right which bears a radius of 330.00 feet, an arc length of 94.87 feet, a chord bearing of N 77°28'54" E, and a chord length of 94.55 feet;

Thence, N 85°43'04" E a distance of 241.80 feet to said Pacer Way;

Thence, the following courses and distances along the easterly and southerly sideline of said Pacer Way:

Thence, S 04°16'56" E a distance of 473.99 feet;

Following a curve to the right which bears a radius of 125.00 feet, an arc length of 196.35 feet, a chord bearing of S 40°43'02" W, and a chord length of 176.78 feet;

Thence, S 85°43'04" W a distance of 110.79 feet;

Following a curve to the left which bears a radius of 70.00 feet, an arc length of 66.68 feet, a chord bearing of S 58°25'45" W, and a chord length of 64.19 feet;

Thence, S 31°08'27" W a distance of 215.42 feet;

Thence, N 58°50'21" W a distance of 220.24 feet;

Following a curve to the right which bears a radius of 175.00 feet, an arc length of 17.74 feet, a chord bearing of N 55°56'02" W, and a chord length of 17.74 feet;

Thence, N 53°01'43" W a distance of 86.39 feet;

Following a curve to the left which bears a radius of 10.00 feet, an arc length of 15.71 feet, a chord bearing of S 81°58'18" W, and a chord length of 14.14 feet to the southeasterly sideline of said Frontrunner Way;

Thence, N 36°58'17" E along the southeasterly sideline of Frontrunner Way a distance of 70.00 feet to the point of beginning.

Containing 100,477 s.f. or 2.31 acres, more or less.

Reserving to Crossroads Holdings LLC, its successors and assigns, the right, but not the obligation, to maintain, repair and replace the landscaping located within Pacer Way and Hackamore Avenue.

The conveyance of Pacer Way and Hackamore Avenue is of the fee simple interest for highway purposes, and made without claim for damages.

Being a portion of the premises conveyed to Crossroads Holdings LLC by virtue of a Quitclaim Deed with Covenant from Davric Maine Corporation, dated January 3, 2018 and recorded in the Cumberland County Registry of Deeds in Book 34573, Page 150.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Crossroads Holdings LLC has caused this instrument to be signed and sealed its company name by \_\_\_\_\_, its Manager thereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

CROSSROADS HOLDINGS LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Title: Manage

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss. \_\_\_\_\_, 202

Then personally appeared before me the above named \_\_\_\_\_, Manager of Crossroads Holdings LLC, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Crossroads Holdings LLC.

\_\_\_\_\_  
Notary Public  
Print name: \_\_\_\_\_  
Commission Expiration: \_\_\_\_\_

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JANUARY 17, 2024  
HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-010.** Move approval on the request from the Shellfish Conservation Commissions to approve the Shellfish Allocations for the 2024 Season. [*Shellfish Conservation Commission*]

*Shellfish Conservation Commission*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*N/A*

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Public Hearing

*N/A*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-010.</b>
<b>SUBJECT:</b> Act on the request from the Shellfish Commission to approve the Allocations of Shellfish Licenses for 2024. [ <i>Shellfish Conservation Commission</i> ]
<b>PURPOSE:</b> To approve the Shellfish Allocations for the 2024 Season.
<b>BACKGROUND:</b> Per Chapter 1002 of the Scarborough Shellfish Ordinance the Commission shall annually report to the Commissioner of Marine Resources the recommendations for the allocation of commercial and recreational licenses to be made available for the upcoming license year. Upon approval from DMR the recommendations will be brought before the Town Council for final approval. After much discussion with DMR Represents regarding surveys and other data, the Commission voted to reduce the number of Resident Commercial Licenses by 1 and the Non-Resident Commercial Licenses by 1. These reductions do not have an effect on current license holders. There were individuals who did not do their conservation time, which is a requirement of the renewal process in order to retain commercial licenses.
<b>FISCAL IMPACT:</b> Revenue from the sale of Commercial and Recreational Shellfish Licenses.
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Commission approved Shellfish Allocations: December 12, 2023</li><li>• Recommendations sent to DMR: December 13, 2023</li><li>• DMR approval letter: December 15, 2023</li><li>• Final action before the Town Council: January 17, 2024</li></ul>
<b>PROPOSED ACTION:</b> Recommend approval of the 2024 Shellfish Allocations.
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Memo from the Department of Marine Resources.</li></ul>



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
MARINE RESOURCES LABORATORY  
P.O. BOX 8, 194 MCKOWN POINT RD  
W. BOOTHBAY HARBOR, MAINE  
04575-0008

PATRICK C. KELIHER  
COMMISSIONER

December 15, 2023

Tody Justice, Town Clerk  
P.O. Box 360  
Scarborough, ME 04070-0360

Re: 2024 Allocation Approval

Dear Ms. Justice:

We have reviewed the proposed shellfish license allocations for 2024, and hereby approve them as follows:

<i>Class</i>	<i>Subclass</i>	<i>Amount</i>	<i>Cost</i>
Commercial	Resident	30	\$200.00
Commercial	Nonresident	3	\$400.00
Commercial	Senior Resident – 1 bushel	2	\$100.00
Commercial	Junior/Student Resident	10	\$100.00
Commercial	Junior/Student Nonresident	1	\$200.00
Recreational	Resident	200	\$25.00
Recreational	Nonresident	20	\$50.00
Recreational	Senior Resident	140	\$0.00
Recreational	Senior Nonresident	14	\$0.00
Recreational	Day- Resident	10 per day	\$10.00
Recreational	Day- Non-resident	10 per day	\$20.00

Licenses may be issued starting on April 8, 2024, following a minimum of 10 days advertising pursuant to Title 12. §6671 3-A. C.

Sincerely,

Meredith White  
Nearshore Marine Resources Program Supervisor

cc: Ari Leach, Marine Resource Biologist II

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JANUARY 17, 2024  
HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-011.** Move approval on the request to approve the names to the Ad-Hoc Open Space Committee. [*Councilor Shupe*]

*Councilor Shupe*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*N/A*

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Public Hearing

*N/A*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: January 17, 2024

<b>ACTION ITEM: Order No. 24-011.</b>																					
<b>SUBJECT:</b> Act to appoint members to the Ad-Hoc Open Space Committee. [ <i>Councilor Shupe</i> ]																					
<p><b>PURPOSE:</b></p> <p>The purpose of the Ad-Hoc Open Space Committee is to create a broadly-based community group to work with the Town staff, Town Council, and consultants to support and guide the development of an Open Space Plan that will help Scarborough meet the Town Council’s goal of achieving 30x30 (conserving 30% of Scarborough’s land by 2030).</p>																					
<p><b>BACKGROUND:</b></p> <p>The Conservation Commission requested the creation of an Ad-Hoc Open Space Committee to explore strategies to achieve 30x30 at a 4/19/23 Town Council workshop. Subsequent meetings with Councilors Caterina and Shupe indicated their support for such an Ad-Hoc Committee, and they recommended its make up include representatives from various related Town committees and organizations.</p> <p>The Ad-Hoc Open Space Committee will serve as a steering committee to guide the development of the Open Space Plan set to begin in Spring 2024.</p> <p>Staff has received the following nominees for the applicable Boards and Commissions:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: center;">Committee</th> <th style="text-align: center;">Nominee</th> </tr> </thead> <tbody> <tr> <td>Conservation Commission</td> <td>Maggie Vishneau</td> </tr> <tr> <td>Parks and Conservation Land Board</td> <td>Doug Williams</td> </tr> <tr> <td>Community Services Advisory Committee</td> <td>Patricia Brigham</td> </tr> <tr> <td>Long Range Planning Committee</td> <td>Robyn Saunders (Marvin Gates and Robert Odlin alternates)</td> </tr> <tr> <td>Shellfish Committee</td> <td>Daryen Granata</td> </tr> <tr> <td>Coastal Waters and Harbor Advisory Committee</td> <td>Liam Erickson</td> </tr> <tr> <td>Scarborough Land Trust</td> <td>Andrew Mackie</td> </tr> <tr> <td>Friends of Scarborough Marsh</td> <td>Crescencia (Crescie) Mauer</td> </tr> <tr> <td>Scarborough Fish and Game Association</td> <td>Mike Kane</td> </tr> </tbody> </table>		Committee	Nominee	Conservation Commission	Maggie Vishneau	Parks and Conservation Land Board	Doug Williams	Community Services Advisory Committee	Patricia Brigham	Long Range Planning Committee	Robyn Saunders (Marvin Gates and Robert Odlin alternates)	Shellfish Committee	Daryen Granata	Coastal Waters and Harbor Advisory Committee	Liam Erickson	Scarborough Land Trust	Andrew Mackie	Friends of Scarborough Marsh	Crescencia (Crescie) Mauer	Scarborough Fish and Game Association	Mike Kane
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Scarborough Fish and Game Association	Mike Kane																				
<b>FISCAL IMPACT:</b> 0																					
<p><b>STATUS / PROCESS TO DATE:</b></p> <ul style="list-style-type: none"> <li>• Charge approved by the Town Council: November 8, 2023</li> <li>• Action before the Town Council: January 17, 2024</li> </ul>																					
<b>PROPOSED ACTION:</b> Recommend approval of Order No. 24.009.																					
<p><b>ATTACHMENTS:</b></p> <ul style="list-style-type: none"> <li>• Ad-Hoc Open Space Committee Charge</li> </ul>																					

## **Ad-Hoc Open Space Committee**

### **Adopted November 8, 2023**

1. **Purpose.** The purpose of the Ad-Hoc Open Space Committee is to create a broadly-based community group to work with the Town staff, Town Council, and consultants to support and guide the development of an Open Space Plan that will help Scarborough meet the Town Council's goal of achieving 30x30.

**Expectations:**

- Participate in educational opportunities presented by the selected consultant to aid in review and decision making throughout the Open Space Plan development process and act as a sounding board for the consultant team, weighing in with the best interests of the community in mind.
  - Willingness to view the project holistically to ensure the final product is something for the entire community now and in the future.
  - Ensure the process considers all opportunities to support land conservation within the community as well as potential partnerships to achieve the Town's 30x30 goal.
2. **Membership.** The membership will include a full and fair representation of key stakeholders and where possible have unique expertise. In all cases, membership should include individuals who possess specific expertise and prior experience to the task at hand, if possible representing professions in conservation, natural resource management, community engagement, and real estate acquisition. Appointees to the Committee shall be nominated by their respective committee or organization to the Town Council. The Town Council shall appoint the members of the Committee. It shall be comprised of nine (9) voting members; one (1) member from each of the following, and one (1) member of the Town Council (non-voting).

**Voting Members (9)**

Conservation Commission  
Parks and Conservation Land Board  
Community Services Advisory Committee  
Long Range Planning Committee  
Shellfish Committee  
Coastal Waters and Harbor Advisory Committee  
Scarborough Land Trust  
Friends of Scarborough Marsh  
Scarborough Fish and Game Association

**Non-voting members (ex-officio) (1)**

Town Council

Although official membership is limited to ten (10) members (9 voting, 1 non-voting Town Councilor), the Committee is encouraged to draw upon other resources and invite other key stakeholders to participate in their proceedings as they feel appropriate.

3. **Timeframe.** It is anticipated it will take nine (9) months to complete the Open Space Plan; therefore, this Committee shall be in place from January through September 2024.
4. **Staff Resources Available.** The Director of Planning will serve as support to this Committee and other Town resources will be made available as may be necessary for the Committee to complete its task. In particular, it is anticipated that the Committee will involve the Town

Manager, Community Services Director, Town Engineer, and Sustainability Manager to supplement their efforts.

5. **Vacancies and Removal.** Any vacancies shall be recommended by the vacating committee to the Town Council. The Town Council may remove any member of the Committee by vote of a majority of its members for misconduct or nonperformance.
6. **Officers.** The Committee shall elect a Chair and Vice Chair as well as a Recording Secretary from among its members. The Chair shall be counted to determine a quorum and shall have the same rights as other members of the Committee, including the right to vote.
7. **Quorum and Voting.** A quorum shall consist of five (5) members. The concurrence of a majority of the members present and voting shall be necessary to decide any question before the Committee.
8. **Meeting and Records.** The Committee shall meet often enough to complete its responsibilities within the timeline set and shall strive to meet on a date, time and frequency specified by a vote of the majority of the Committee at its first organization meeting. Other meetings may be called by the Chair, provided that the Chair shall call a meeting of the Committee upon the request of at least five (5) members. The Committee shall keep minutes of its meetings and submit them to the Town Clerk's Office.

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JANUARY 17, 2024  
HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-012.** Move approval on the request to approve the charge for the School Building Committee – Phase I. [*Chairman McGee*]

*Chairman McGee*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

---

First Reading/Vote

*N/A*

---

Public Hearing

*N/A*

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Second Reading/Final Approval/Vote

## **School Building Advisory Committee (Phase I)**

### **Committee Created:**

There is hereby created a School Building Advisory Committee (SBAC) to consist of all interested residents of Scarborough that meet the following criteria:

- 1) Must be a current resident of Scarborough.
- 2) Must submit an application no later than February 9, 2024.
- 3) Must commit to the attendance requirements established herein.

### **Building Committee Leadership Team Created:**

The Building Committee Leadership Team (BCLT) shall consist of nine members as follows:

- 1) Two Town Council Members or their respective designees.
- 2) Two Board of Education Members or their respective designees.
- 3) A Chairperson, elected by the full SBAC.
- 4) A Vice-Chairperson, elected by the full SBAC.
- 5) Three At-Large members, elected by the full SBAC.

### **Non-voting advisory members to BCLT**

The Superintendent of Schools and the Town Manager (or their respective designees) shall be non-voting ex-officio members and shall serve as the staff liaisons to the Committee. The Facilities Manager, the school Business Manager, and town Finance Director shall be invited to participate in Committee meetings to serve as a non-voting staff resource.

### **Committee Charge:**

The SBAC shall be a joint ad hoc advisory committee of the Board of Education and Town Council, assisting them in their respective responsibilities for development of a solution to current and future space deficiencies within the K-8 schools. The BCLT shall act as the leadership of the SBAC and implement any necessary protocols, establish meetings, sub-committees and make appointments to accomplish the following:

- 1) Organize appropriate sub-committees as necessary to evaluate the following:
  - a. Analyze the results of a town-wide school support survey and use the information to guide final recommendation to the Town Council and Board of Education
  - b. Conduct an analysis of assumptions and accuracies of:
    - i. School Enrollment projections
    - ii. Space needs analysis
    - iii. Current facilities deficiencies/opportunities
    - iv. Business Case
    - v. Any other findings that warrant review

- 2) Provide a final recommendation report on a path forward by May 1, 2024. The report will be used in a joint BOE/Town Council workshop to be held on May 15, 2024. The expectation is that the SBAC will recommend whether a renovation/expansion approach, a unified approach, a hybrid approach, or other variation should be the path pursued for the community.

### **Public Input and Outreach:**

The Committee shall seek public engagement and input in its deliberations through a multi-channel public outreach campaign, which may include websites, social media, e-mail, public signage, notices in the newspaper and direct mail. All relevant documents, meeting minutes and reports produced by the SBAC via the town website.

### **Committee Reports:**

The Committee chairs will regularly update the School Board and Town Council on the progress of the Committee.

### **Attendance Requirements:**

All SBAC members are required to participate in at least one sub-committee as appointed to by the BCLT. If a member misses more than three sub-committee and/or SBAC meetings without BCLT approval, it will result in dismissal from the SBAC. Appointments to fill vacancies are to be made at the discretion of the BCLT as necessary.

### **Other:**

It is the intent of the Town Council and Board of Education to implement a Phase II Committee Charge and scope of work after the completion of Phase I and formal acceptance of the recommendations by each respective body.

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JANUARY 17, 2024  
HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-013.** Move approval on the request for an executive session pursuant to Title 1, §405.6.(a) regarding the Town Manager’s Performance Evaluation. [*Chairman McGee*]

*Chairman McGee*

*Ought to Pass*

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Sponsor

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Recommendation

*01/17/2024 – Vote:*

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First Reading/Vote

*N/A*

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Public Hearing

*N/A*

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Second Reading/Final Approval/Vote