AGENDA

ORDINANCE COMMITTEE MEETING

Wednesday, March 13, 2024 – 6:00 P.M.
Public Safety Building - Classroom
Hybrid Meeting

TO VIEW THE ORDINANCE COMMITTEE MEETING & OFFER PUBLIC COMMENT:
https://scarboroughmaine.zoom.us/j/83511229571

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

Item 1. Call to Order.

Item 2. Roll Call.

Item 3. Approval of minutes from February 14, 2024.

Item 4. Public Comment.

Item 5. Chapter 1081: Cannabis Establishments.

Item 6. Commercial Property Assessed Clean Energy (C-PACE).

Item 7. Chapter 415: Impact Fees Ordinance.

Item 8. Future Agenda Items.

Item 9. Adjournment.

TOWN OF
SCARBOROUGH, MAINE

MEMORANDUM

DATE:	March 8, 2023
TO:	Town Council – Ordinance Committee
FROM:	Liam Gallagher, Assistant Town Manager
RE:	Cannabis Ordinance Changes

Per the Ordinance Committee's request please find enclosed proposed changes to Chapter 1018, the Cannabis Establishment Licensing Ordinance, for discussion and consideration. In addition to the zoning changes, which will be drafted separately by legal counsel, the Committee requested an enforcement process modeled after the Town's existing Good Neighbor ordinance intended to address other public nuisance issues e.g. sound and light.

Additionally, previously staff recommended changes to the application requirements for identification and security plans are included.

Administrative - require a Photo or Governmental ID (not both)

Security - Clarify and refine security standards as recommended by the Police Department liaison.

Odor Enforcement – While the Council adopted a comprehensive and progressive enforcement process in August with other Ordinance changes, concerns expressed by residents and abutters persist. While there is an ample amount of odor reports (73 reports from 8/16 – 2/14), staff have not verified a complaint as set forth in the existing ordinance to date. While this record may be suggestive of the problem, or lack thereof, we have at the committee's request included parallel language from the good neighbor ordinance, which would require Town staff to investigate any reports of odor. This change would provide a greater opportunity for staff to verify odor reports. To accomplish this, we have expanded the enforcement authority to include the Scarborough Police Department in addition to the Code Enforcement division.

There are two primary considerations the Committee has expressed interest in better understanding; what businesses would be subject to the zoning change and what is a responsible time period to allow those businesses to phase out their operations.

Zoning Change – With regard to what businesses would be subject to the zoning change, there remains some questions in this regard.

In conversations with counsel, cannabis businesses operating with local approval, prior to December 13, 2018, are likely protected by the state statute and therefore could continue to operate irrespective of the underlying zoning. This assertion comes with a few caveats; first, medical cultivation is not a recognized cannabis operation under the statute but given the statutes listing of other cannabis operations (manufacturing, testing, and retail), it is safe to presume that medical cultivation would be included in the statutory protection. Second, the businesses that enjoy this statutory protection would still be subject to the Town's licensing regulations, including odor requirements, which, should the odor concerns persist, would likely test the Town's regulatory authority against the statutory protections to operate. A cursory

review of documentation on file would suggest we have four businesses in the Pine Point Overlay that have been in continuous operation since December 13, 2018.

We also have a level of confidence that businesses established after December 13, 2018 would not have the same statutory protections to continue operating and would be subject to the underlying zoning change and phase out.

An area that appears less clear are businesses that began operating after December 13, 2018 in spaces that were previously operating with local authorization as cannabis establishments. Said differently, these are commercial spaces that had locally authorized cannabis businesses prior to December 13, 2018 but have since changed owners or tenants after that date. This scenario would apply to multiple spaces in the Pine Point Overlay District and Pleasant Hill Corridor and would limit the long-term impact of the zoning change.

Amortization Process - As for determining a period for the amortization process, the standard that the Council should apply should be informed by what a reasonable period would be for the business owner to satisfy their business expectations. In essence, what is the period necessary for the business owner to recoup the investment made under the previous rules. While much has been made of a five-year period, that was simply based on a previously upheld amortization process. The Council should solicit public comment and input from business owners to better understand what standard and timeline should apply for existing non-confirming businesses.

2 Am. Law. Zoning § 12:23 (5th ed.)

American Law of Zoning | November 2023 Update
Patricia E. Salkin

Chapter 12. Nonconforming Uses *

§ 12:23. Amortization

Although it was initially believed that nonconforming uses would gradually disappear due to obsolescence and restrictions on their change and expansion, it soon became clear that more stringent measures were necessary to eliminate nonconforming uses. Amortization arose as the most popular solution. As one commentator explained:

> The beginnings of amortization can be traced from the birth of zoning ordinance in 1916, but it was not until the early 1950's that amortization began to be more widely adopted. The technique was used sporadically until 1965. During this period, it became apparent that amortization was most effective in eliminating uses having structures with relatively low values, like non-conforming signs or sheds with outdoor storage. [1]

The New York Court of Appeals provided an excellent explanation of the mechanics and legal underpinnings of amortization in the 1994 case *Village of Valatie v. Smith*. As the court stated in one section of its decision:

> Most often, elimination has been effected by establishing amortization periods, at the conclusion of which the nonconforming use must end. As commentators have noted, the term "amortization period" is somewhat misleading. "Amortization" properly refers to a liquidation, but in this context the owner is not required to take any particular financial step. "Amortization period" simply designates a period of time granted to owners of nonconforming uses during which they may phase out their operations as they see fit and make other arrangements. It is, in effect, a grace period, putting owners on fair notice of the law and giving them a fair opportunity to recoup their investment. [2]

Municipalities have devised a variety of techniques for fixing amortization periods and implementing amortization procedures. [3] Typically, amortization ordinances provide a specific period of time that applies to the amortization of all nonconforming uses. Extensions may also be offered under amortization ordinances. [4] Ordinances need not adopt a uniform amortization period, however, and they may instead determine amortization periods on a case-to-case basis using a schedule or formula based on the value of nonconforming property and time needed to recoup the investment. [5]

In addition to providing a fixed period or schedule for amortization, an ordinance may also specify that a nonconforming use will be terminated upon the occurrence of a condition precedent, such involuntary destruction [6] or removal [7] of the use. Ordinances occasionally specify that a nonconforming use will be discontinued upon transfer of the property to a subsequent owner, but such provisions are of questionable validity given the character of nonconforming use rights as vested property interests. [8]

Most of the states have accepted amortization as a constitutional method of terminating nonconforming uses. In these jurisdictions, amortization provisions will be upheld so long as they provide a reasonable time period for amortization. [9] As the New York Court of Appeals explained, "courts have declared valid a variety of amortization periods. Indeed, in some circumstances, no amortization period at all is required. In other circumstances, the amortization period may vary in duration

among the affected properties. We have also held that an amortization period may validly come to an end at the occurrence of an event as unpredictable as the destruction of the nonconforming use by fire. … We have never required that the length of the amortization period be based on a municipality's land use objectives. To the contrary, the periods are routinely calculated to protect the rights of individual owners *at the temporary expense of* public land use objectives. Typically, the period of time allowed has been measured for reasonableness by considering whether the owners had adequate time to recoup their investment in the use. Patently …, the setting of the amortization period involves balancing the interests of the individual and those of the public." [10]

Although reasonableness thus depends on the circumstances of each case, the courts have upheld amortization periods of six months, [11] one year, [12] two years, [13] three years, [14] five years, [15] 10 years, [16] and 20-25 years. [17] The Ninth Circuit even held in one case that the owner of a card room operation was not entitled to any amortization period because under Washington law, a gambling license cannot create a vested right, and as such, there was no constitutional entitlement to amortization. [18] A Pennsylvania court found that a 90 day amortization period was unreasonable, however, noting that "A gradual phasing out of nonconforming uses which occurs when an ordinance only restricts future uses differs in significant measure from an amortization provision which restricts future uses *and* extinguishes a lawful nonconforming use on a timetable which is not of the property owner's choosing." [19] In another case, a Connecticut court found that a four year amortization provision was unreasonable as applied to an excavation operation. [20]

Determining whether an amortization period is reasonable requires a balancing of the public and private interests at stake as well as any additional factors specified in the ordinance. Most courts agree that the property owner's ability to recoup its losses is a significant factor. [21] As a California court noted, "Relevant factors to be considered in determining whether an amortization period is unreasonable as applied to a particular property include amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, 'remaining useful life, the length and remaining term of the lease under which it is maintained, and the harm to the public if the structure remains standing beyond the prescribed amortization period.'" [22] The failure of an amortization ordinance to allow the full depreciation of the property owner's investment does not automatically render the provision unreasonable, however. [23]

Aside from the recoupment of investment costs, other considerations that may be taken into account include the municipality's land use objectives, [24] depreciation for tax purposes, [25] and the costs associated with termination or relocation. [26]

Amortization requirements are generally presumed to be reasonable and the property owner carries a heavy burden of overcoming that presumption by demonstrating that its loss is so substantial that it outweighs the public benefit to be gained by the elimination of the nonconformity. [27] Substantial evidence of the property owner's injuries is required in most cases to satisfy this burden. [28]

An amortization period may be held unreasonable if the municipality failed to the weight relevant factors in determining the length of the period or failed to rely on substantial evidence. [29] In a New Mexico case, for example, the court found that a one-year amortization period was unreasonable because it was only enacted on a temporary basis to give the city time to accumulated evidence in support of a permanent reduction of the ordinance's standard 40 year amortization period. The record, the court found, reflected no weighing of the interests as they affected the property owner's helicopter pad, and the matter was accordingly remanded to city for a consideration of such evidence. [30]

An amortization provision may also be held invalid if is applied in a discriminatory manner, [31] but equal protection challenges will usually be dismissed if the only claim is the amortization requirement applies to some types of nonconforming uses but not others. A Minnesota court, for instance, upheld an amortization ordinance that applied to the property owner's nonconforming concrete plant but exempted nonconforming bars. As the court explained, the ordinance did not treat similarly situated entities differently because there were no other concrete plants in the city and because the property owner's plant was a heavy industrial use that significantly more severe and disruptive impacts than nonconforming bars. [32]

State or federal preemption may be another ground for invalidation of an amortization ordinance. [33] A 2006 Colorado case, for example, held that a local amortization requirement was superseded by a state law that prohibited municipalities from

terminating or amortizing nonconforming uses that were lawful at their inception. [34] In another case, a New York court held that a zoning amendment which restricted the location of check cashing businesses and imposed a five year amortization provision was preempted by state law, which delegated the task of determining appropriate locations for such businesses to the state superintendent of banks. [35]

Substantive due process challenges are rarely asserted against amortization ordinances because as long as the zoning ordinance that rendered the property nonconforming was based on a proper public purpose, there is no requirement that the amortization ordinance be predicated on an independent public purpose. [36] Takings challenges, on the other hand, are frequently made, but their analysis is closely intertwined with and often subsumed by the issue of whether the amortization period is reasonable. [37] Where billboards and adult uses are involved, amortization ordinances may also raise constitutional concerns under the First Amendment. [38] The amortization of these uses is discussed in more detail in other sections of this treatise. [39]

Footnotes

* The 2014 update chapter was prepared by Amy Lavine, Esq.

1 Margaret Collins, Methods of Determining Amortization Periods for Non-Conforming Uses, Festschrift Vol. 3:215, 216 (2000), available at https://law.wustl.edu/journal/3/pg215to239.pdf.

2 Village of Valatie v. Smith, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994).

3 See generally Margaret Collins, Methods of Determining Amortization Periods for Non-Conforming Uses, Festschrift Vol. 3:215, 216 (2000), available at https://law.wustl.edu/journal/3/pg215to239.pdf ("The use of amortization to eliminate non-conforming uses has been fragmented and, for the most part, limited to uses where there has been little or no substantial investment in structures. There is no general consensus on methods of setting amortization periods, particularly for major structures; this is partly because the technique has rarely been applied to high value buildings.").

4 See, e.g.,

Arkansas: Fisher Buick, Inc. v. City of Fayetteville, 286 Ark. 49, 689 S.W.2d 350 (1985) (holding that where an amortization provision was reasonable, the lessees were not entitled to a variance or extension simply because their leases extended past the amortization date).

Illinois: Cook County v. Renaissance Arcade and Bookstore, 122 Ill. 2d 123, 118 Ill. Dec. 618, 522 N.E.2d 73 (1988) (amortization provision allowing adult businesses six months to relocate, with six-month extension available, was not unconstitutional).

New York: Suffolk Asphalt Supply, Inc. v. Zoning Bd. of Appeals of Village of Westhampton Beach, 59 A.D.3d 452, 873 N.Y.S.2d 138 (2d Dep't 2009) (Termination of the nonconforming asphalt plant was reasonable where the village had adopted an ordinance in 2000 providing that the nonconforming use would be terminated in one year and the plant had applied for and received a five-year extension; "Since the petitioner received from the ZBA all of the relief to which it was entitled under the local law, the Supreme Court properly denied the petition and dismissed the proceeding.").

Washington: World Wide Video of Washington, Inc. v. City of Spokane, 125 Wash. App. 289, 103 P.3d 1265 (Div. 3 2005) (upholding an extension process where the discretion of the planning director was limited by the requirement that applicants had to demonstrate "extreme economic hardship based

upon an irreversible financial investment or commitment" and upholding that planning director's finding that the property owner failed to establish such hardship).

5 See, e.g.,

Connecticut: WFS Earth Materials, LLC v. Planning and Zoning Com'n of Town of Haddam, 2010 WL 5065107 (Conn. Super. Ct. 2010) (discussing an amortization requirement that limited the excavation use not to a set period of time, but to a lifetime limit on the volume of excavated materials and a yearly limit on the operation's acreage).

Utah: M & S Cox Investments, LLC v. Provo City Corp., 2007 UT App 315, 169 P.3d 789 (Utah Ct. App. 2007) (Upholding an amortization formula which provided that "The time period during which an owner may recover the amount of his investment in property affected by [the Ordinance] shall be determined by dividing the residual value of the property by the average monthly net rental income from the property.").

6 See, e.g.,

Iowa: Newt v. City of Dubuque, 725 N.W.2d 659 (Iowa Ct. App. 2006) (although the property was a nonconforming industrial property established before a planned unit development ordinance was passed, its nonconforming use status did not entitle it to relocate and rebuild a storage building which was condemned in order to build a bridge; the ordinance provided that nonconforming structures could not be rebuilt after destruction of 50% or more, and as such, reconstruction of the storage building would be an illegal expansion).

New York: Village of Valatie v. Smith, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994) ("We have also held that an amortization period may validly come to an end at the occurrence of an event as unpredictable as the destruction of the nonconforming use by fire. …").

7 See, e.g.,

Indiana: Cracker Barrel Old Country Store, Inc. v. Town of Plainfield ex rel. Plainfield Plan Com'n, 848 N.E.2d 285 (Ind. Ct. App. 2006) ("It is undisputed under the definitions that Cracker Barrel moved its 'sign' and 'sign structure,' i.e., the cabinet and framework that housed the sign surface. Hence, under the plain language of the Ordinance, that movement caused the pole sign to lose its non-conforming use status.").

8 See, e.g.,

Idaho: O'Connor v. City of Moscow, 69 Idaho 37, 202 P.2d 401, 9 A.L.R.2d 1031 (1949) (holding that an ordinance which terminated nonconforming uses upon change of ownership was invalid because there was no reasonable relationship between change of ownership and the purposes of the zoning ordinance and noting that enforcement of this type of provision would affect not only the current owner, but also mortagees, heirs, devisees, and legatees).

9 See, e.g.,

Indiana: Board of Zoning Appeals, Bloomington, Ind. v. Leisz, 702 N.E.2d 1026 (Ind. 1998) (Overruling an earlier decision of the Indiana Supreme Court which had held that amortization provisions were per se unconstitutional and noting that "Most states allow local zoning authorities to phase out nonconforming uses with amortization provisions that require the owner to discontinue the nonconforming use after a certain period of time.").

Maryland: Trip Associates, Inc. v. Mayor and City Council of Baltimore, 392 Md. 563, 898 A.2d 449 (2006) ("So long as it provides for a reasonable relationship between the amortization and the nature of the nonconforming use, an ordinance prescribing such amortization is not unconstitutional.").

Texas: Swain v. Board of Adjustment of City of University Park, 433 S.W.2d 727 (Tex. Civ. App. Dallas 1968), writ refused n.r.e., (May 7, 1969) ("[I]n recent years the trend of authorities has been to grant to municipalities the right and power to provide in their comprehensive zoning ordinances provisions for the discontinuance of nonconforming uses provided such were reasonable and a proper exercise of police power. Thus if the ordinance extended to the nonconforming user a reasonable time within which the full value of the investment could be amortized then such would be considered valid."); Baird v. City of Melissa, 170 S.W.3d 921 (Tex. App. Dallas 2005) ("Concerning the City's enactment of the Amortization Ordinance, we conclude that Baird fails to meet the "extraordinary burden" of showing that "no conclusive or even controversial or issuable fact" was raised on the question whether the zoning regulation has a substantial relationship to the protection of the public's health, safety or welfare.").

10 Village of Valatie v. Smith, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994).

11 See, e.g.,

Illinois: Cook County v. Renaissance Arcade and Bookstore, 122 Ill. 2d 123, 118 Ill. Dec. 618, 522 N.E.2d 73 (1988) (amortization provision allowing adult businesses six months to relocate, with six-month extension available, was not unconstitutional).

12 See, e.g.,

Eighth Circuit: PAO Xiong v. City of Moorhead, Minn., 641 F. Supp. 2d 822 (D. Minn. 2009) ("In this case, the amortization provision allows non-conforming adult uses one year to relocate. Adult establishments may also apply for an additional one-year extension. It is clear that a municipality may require a non-conforming adult business to relocate, and the Court concludes that the time periods in the ordinance are not an unreasonable period of time for adult establishments to accomplish this.").

New York: Suffolk Asphalt Supply, Inc. v. Zoning Bd. of Appeals of Village of Westhampton Beach, 59 A.D.3d 452, 873 N.Y.S.2d 138 (2d Dep't 2009) (Termination of the nonconforming asphalt plant was reasonable where the village had adopted an ordinance in 2000 providing that the nonconforming use would be terminated in one year and the plant had applied for and received a five-year extension; "Since the petitioner received from the ZBA all of the relief to which it was entitled under the local law, the Supreme Court properly denied the petition and dismissed the proceeding.").

13 See, e.g.,

Fourth Circuit: A Helping Hand, LLC v. Baltimore County, MD, 355 Fed. Appx. 773 (4th Cir. 2009) (Refusing to extend a two-year injunction against enforcement of an ordinance restricting methadone clinics because "The County's enforcement of the ordinance against the Clinic could require the Clinic to relocate. Undoubtedly, relocation would result in some costs and inconvenience for the Clinic. That injury, however, does not constitute irreparable (rather than temporary) injury, and money damages could compensate any cost to the Clinic. … In sum, the Clinic has failed to demonstrate entitlement to injunctive relief. We therefore vacate the injunction. Thus the ordinance, including its amortization provision, will apply to the Clinic from the date of the entry of our mandate.").

14 See, e.g.,

Eighth Circuit: Ambassador Books & Video, Inc. v. City of Little Rock, Ark., 20 F.3d 858, 865 (8th Cir. 1994) (upholding application of three-year amortization period to existing adult businesses).

15 See, e.g.,

Eighth Circuit: Outdoor Graphics, Inc. v. City of Burlington, Iowa, 103 F.3d 690 (8th Cir. 1996) (five-year amortization period, which was designed to eliminate billboards in residential districts, was a reasonable regulation).

Maryland: Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore, 89 Md. App. 54, 597 A.2d 503 (1991) (noting that Maryland courts have upheld four and five year amortization periods, as well as longer ones, and finding that the amortization period was reasonable in this case because the billboard owners had at least 19 years to amortize their signs).

16 See, e.g.,

Colorado: Trailer Haven MHP, LLC v. City of Aurora, 81 P.3d 1132 (Colo. App. 2003) (upholding a code amendment which increased the required spacing between mobile homes and required all nonconforming mobile homes to comply with the new spacing requirement within 10 years).

Montana: Montana Media, Inc. v. Flathead County, 2001 ML 3937 ("The long [ten year] amortization period provided by both the City and the County regulations meet any constitutional test and do not constitute a taking of Plaintiff's property rights without compensation.").

New York: Astoria Landing, Inc. v. New York City Environmental Control Bd., 148 A.D.3d 1141, 50 N.Y.S.3d 448 (2d Dep't 2017), leave to appeal denied, 29 N.Y.3d 913, 2017 WL 2743245 (2017) ("Here, the Supreme Court properly determined that the [Environmental Control Board] had a rational basis for rejecting the petitioner's contention that the sign was valid …. New York City Zoning Resolution § 52-731 expressly sets forth a 10-year time restriction for any nonconforming advertising sign such as the sign at issue, which time restriction had long since expired.").

17 See, e.g.,

California: County of Los Angeles v. Ivanov, 2013 WL 4814999 (Cal. App. 2d Dist. 2013) ("Under the Zoning Code, all properties developed as a mobilehome park prior to 1978 received either a 20-year or 25-year amortization period, after which time the affected property owners were required to either discontinue the nonconforming use or apply for and secure a CUP. … In challenging the amortization …, defendants assert that the amortized schedule amounts are illegal. Again, however, defendants neglect to offer any legal authority in support of their contention. And, other than unfounded hyperbole, there is no evidence or argument to support defendants' claim that the 25-year period to eliminate its nonconforming status was anything less than reasonable.").

18 *Ninth Circuit:* Star Northwest Inc. v. City of Kenmore, 280 Fed. Appx. 654 (9th Cir. 2008), opinion amended on denial of reh'g, 308 Fed. Appx. 62 (9th Cir. 2009).

19 PA Northwestern Distributors, Inc. v. Zoning Hearing Bd. of Tp. of Moon, 526 Pa. 186, 584 A.2d 1372, 8 A.L.R.5th 970 (1991).

20 *Connecticut:* WFS Earth Materials, LLC v. Planning and Zoning Com'n of Town of Haddam, 2010 WL 5065107 (Conn. Super. Ct. 2010) ("[T]he Commissions's order that a maximum of 240,000 cubic yards of excavated material can be removed during the lifetime of the operation, which defendant's counsel estimates will serve to shut down the operation in four years, constitutes an illegal amortization of the plaintiff's nonconforming use, as does the limitation of the operation to five acres within one year. … While the Commission's imposition of the 240,000 cubic yard maximum literally may not serve to terminate plaintiff's excavation operation within a specific period of time, its constructive effect is the relatively imminent elimination of the operation. As a result, the lifetime cubic yard restriction and the acreage limitation, as it applies to the original parcel, constitute illegal amortizations imposed by the Commission.").

21 See, e.g.,

South Carolina: Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000) ("The Zoning Administrator testified in determining an appropriate amortization period, he considered the cost of the video poker machines. He stated he believed a machine costs between $ 3,500 and $8,000 and he used a 'high amount.' … The record indicates the two year amortization period reasonably allowed Bugsy's to recoup the rental cost of its machines. There is no evidence to the contrary. Bugsy's failed to prove its loss outweighed the public gain.").

22 Tahoe Regional Planning Agency v. King, 233 Cal. App. 3d 1365, 285 Cal. Rptr. 335 (3d Dist. 1991).

23 See, e.g.,

Fourth Circuit: Naegele Outdoor Advertising, Inc. v. City of Durham, 803 F. Supp. 1068 (M.D. N.C. 1992), aff'd, 19 F.3d 11 (4th Cir. 1994) ("Although a number of the signs are not fully depreciated and have useful lives remaining after the expiration of the amortization period, the reasonableness of an amortization period does not necessarily depend on the recovery of all value of the property during the allotted time.").

California: Tahoe Regional Planning Agency v. King, 233 Cal. App. 3d 1365, 285 Cal. Rptr. 335 (3d Dist. 1991) ("It is not required that the nonconforming property have no value at the termination date.").

24 See, e.g.,

Minnesota: AVR, Inc. v. City of St. Louis Park, 585 N.W.2d 411 (Minn. Ct. App. 1998) ("AVR further contends that in determining the length of the amortization period, the city gave undue deference to the opinions of area residents instead of applying the factors required by the city's ordinance. … [However,] the record shows that the city's decision was based on more than neighborhood opposition to AVR's plant and expression of concern for public safety. … AVR further argues that the two-year period is unreasonable because amortization periods should be lengthened 'when the amortization is not consistent with the surrounding area or any solid redevelopment plan,' noting that the area surrounding the plant is not exclusively residential. But the record shows that the city's rezoning of AVR's property from I-4 Industrial to R-4 Multifamily Residential is consistent with its plans for the surrounding area.").

New York: Village of Valatie v. Smith, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994) ("We have never required that the length of the amortization period be based on a municipality's land use objectives. To the contrary, the periods are routinely calculated to protect the rights of individual owners *at the temporary expense of* public land use objectives. Typically, the period of time allowed has been measured for reasonableness by considering whether the owners had adequate time to recoup their investment in the use. Patently, such protection of an individual's interest is unrelated to land use objectives. Indeed, were land use objectives the only permissible criteria for scheduling amortization, the law would require immediate elimination of nonconforming uses in all instances.").

25 See, e.g.,

California: National Advertising Co. v. County of Monterey, 1 Cal. 3d 875, 83 Cal. Rptr. 577, 464 P.2d 33, 35–36 (1970) (holding that amortization was reasonable where the billboards had been fully depreciated for tax purposes).

Illinois: Village of Skokie v. Walton on Dempster, Inc., 119 Ill. App. 3d 299, 74 Ill. Dec. 791, 456 N.E.2d 293, 297 (1st Dist. 1983) (concluding that amortization period was reasonable where property was completely depreciated for tax purposes).

New York: Philanz Oldsmobile, Inc. v. Keating, 51 A.D.2d 437, 381 N.Y.S.2d 916, 920 (4th Dep't 1976) (concluding that amortization was reasonable where nonconforming signs had been fully depreciated for tax purposes because their financial loss was nonexistent).

26 See, e.g.,

Ninth Circuit: Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara, 911 F. Supp. 2d 884 (C.D. Cal. 2012) (finding that the plaintiff adequately stated a claim for violation of its due process rights; "As a general matter, an amortization 'is insufficient only if it puts a business in an impossible position due to a shortage of relocation sites.' Here, the ordinance itself creates such 'a shortage of relocation sites.' In fact, the Revised Ordinance limits the number of dispensaries … to a total of three. This total includes those dispensaries which are open and operating in a legal, non-conforming manner at the time of the adoption of the ordinance. … The court concludes that Plaintiff has made a strong showing that the amortization period provided by the Revised Ordinance has put Plaintiff in 'an impossible position,' forcing Plaintiff to close its business and lose its permit without due process.").

Texas: Board of Adjustment of City of Dallas v. Winkles, 832 S.W.2d 803 (Tex. App. Dallas 1992), writ denied, (Nov. 11, 1992) (defining full value of the structure for amortization purposes to include the actual dollars invested in the nonconforming structure, and the costs associated with its removal and establishment in another location, but not including the value of the land).

27 See, e.g.

New York: Village of Valatie v. Smith, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994) ("[T]he owner must carry the heavy burden of overcoming that presumption by demonstrating that the loss suffered is so substantial that it outweighs the public benefit to be gained by the exercise of the police power.").

California: Tahoe Regional Planning Agency v. King, 233 Cal. App. 3d 1365, 285 Cal. Rptr. 335 (3d Dist. 1991) ("The central issue in cases involving the termination of nonconforming uses is the reasonableness of the amortization period allowed. The burden is on the advertiser to establish the unreasonableness of the amortization period with regard to each structure declared to be nonconforming.").

South Carolina: Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000) ("The burden is upon the petitioner to prove the unreasonableness of the amortization period. The period is presumed valid unless the petitioner demonstrates its loss outweighs the public gain.").

28 See, e.g.,

California: South Lake Tahoe Property Owners Group v. City of South Lake Tahoe, 92 Cal. App. 5th 735, 310 Cal. Rptr. 3d 9 (3d Dist. 2023), as modified on denial of reh'g, (July 12, 2023) and review filed, (July 31, 2023) ("Plaintiff did not submit sufficient evidence that created a triable issue of material fact regarding the reasonableness of the three-year amortization period. As already set forth, plaintiff's declarations did not include sufficient detailed information to create a disputed issue on the reasonableness of the amortization period. Nor did they discuss the ability to recover some or all of their investment by using or selling the properties for their permitted uses.").

New York: Suffolk Asphalt Supply, Inc. v. Board of Trustees of Village of Westhampton Beach, 59 A.D.3d 429, 872 N.Y.S.2d 516 (2d Dep't 2009) ("Inasmuch as the plaintiff failed to submit any evidence as to the amount that it actually invested in the business, there remains a question of fact regarding whether the amortization period provided in the local law was reasonable and thus constitutional as applied to the plaintiff. With respect to the plaintiff's contention that the brevity of the amortization period rendered the local law unconstitutional on its face, 'a litigant cannot sustain a facial challenge to a law when that law is constitutional in its application to that litigant.'").

South Carolina: Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000) ("The Zoning Administrator testified in determining an appropriate amortization period, he considered the cost of the video poker machines. He stated he believed a machine costs between $ 3,500 and $8,000 and he used a 'high amount.' … The record indicates the two year amortization period reasonably allowed Bugsy's

to recoup the rental cost of its machines. There is no evidence to the contrary. Bugsy's failed to prove its loss outweighed the public gain.").

29 See, e.g.,

Minnesota: AVR, Inc. v. City of St. Louis Park, 585 N.W.2d 411 (Minn. Ct. App. 1998) ("AVR also argues that the city's findings with respect to the factors it adopted by ordinance are not supported by sufficient evidence, claiming that the city virtually ignored the ordinance factors in favor of other factors and considerations. But the record shows that in establishing the amortization period for AVR's plant, the city considered each of the factors in its amortization ordinance and that the city's findings regarding these factors are supported by record evidence.").

30 KOB-TV, L.L.C. v. City of Albuquerque, 137 N.M. 388, 2005-NMCA-049, 111 P.3d 708 (Ct. App. 2005).

31 See infra.

32 AVR, Inc. v. City of St. Louis Park, 585 N.W.2d 411 (Minn. Ct. App. 1998).

33 See, e.g.,

Illinois: City of Oakbrook Terrace v. Suburban Bank and Trust Co., 364 Ill. App. 3d 506, 301 Ill. Dec. 135, 845 N.E.2d 1000 (2d Dist. 2006) (holding that just compensation rather than amortization was required where the city attempted to enforce its ordinance pursuant to the eminent domain statute and noting that "'Amortization' has nothing to do with fair market value of the property at its highest and best use on the date the property is deemed condemned. The City's claim, that amortization *is* just compensation, fails.").

New York: Town of Macedon v. Hsarman, 17 Misc. 3d 417, 844 N.Y.S.2d 825 (Sup 2007) (holding that under the a section of the state highway law, just compensation and not amortization was required for the termination of a preexisting billboard).

34 JAM Restaurant, Inc. v. City of Longmont, 140 P.3d 192 (Colo. App. 2006).

35 Sunrise Check Cashing and Payroll Services, Inc. v. Town of Hempstead, 91 A.D.3d 126, 933 N.Y.S.2d 388 (2d Dep't 2011), appeal dismissed, leave to appeal denied, 19 N.Y.3d 848, 946 N.Y.S.2d 102, 969 N.E.2d 220 (2012) and aff'd, 20 N.Y.3d 481, 964 N.Y.S.2d 64, 986 N.E.2d 898 (2013).

36 See, e.g.,

Minnesota: AVR, Inc. v. City of St. Louis Park, 585 N.W.2d 411 (Minn. Ct. App. 1998) ("AVR argues that the two-year amortization period is unreasonable because the city was motivated by aesthetic rather than health and safety considerations. But 'a desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance.' In addition, the city enacted the ordinance establishing the two-year amortization period for several reasons, including improvement of the general welfare by reducing noise, dust, and traffic.").

New York: Cioppa v. Apostol, 301 A.D.2d 987, 755 N.Y.S.2d 458 (3d Dep't 2003) ("so long as the zoning that resulted in the use becoming nonconforming was based upon a proper public purpose, there is no requirement that the amortization of the nonconforming use be predicated upon establishing a nuisance or any other ground that independently places the viability of the nonconforming use in jeopardy").

37 See, e.g.,

Fourth Circuit: Georgia Outdoor Advertising, Inc. v. City of Waynesville, 900 F.2d 783 (4th Cir. 1990) (holding that there is no black-letter rule which immunizes a land-use ordinance from a takings

challenge simply because it contains an amortization period; rather, amortization provisions are only one of the factors to be taken into account in determining whether a compensable taking occurred).

California: Tahoe Regional Planning Agency v. King, 233 Cal. App. 3d 1365, 285 Cal. Rptr. 335 (3d Dist. 1991) (courts must engage in a particularized analysis of the challenged ordinance to determine whether a taking has occurred, and the existence of a reasonable amortization period as an alternative to just compensation does not immunize an municipality from this analysis).

38 See, e.g.,

Ninth Circuit: Isbell v. City of San Diego, 450 F. Supp. 2d 1143 (S.D. Cal. 2006) ("Defendant failed to provide both an accurate list of sites available for an adult use in the city of San Diego and evidence demonstrating that the available sites sufficiently satisfy demand for adult entertainment in San Diego. … Therefore, without more, the Court finds that [the ordinance] is unconstitutional for lack of reasonable alternative avenues of communication.").

39 See infra.

End of Document

CHAPTER 1018

TOWN OF SCARBOROUGH

CANNABIS ESTABLISHMENT

LICENSING ORDINANCE

Adopted 01-22-2020 - Effective Date: 02-22-2020
Amended 08-18-2021 – Amended 08-16-2023

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Chapter 1018
Town of Scarborough
Cannabis Establishments Licensing Ordinance

Section 1. Purpose.

The purpose of this Ordinance is to regulate and license Cannabis Establishments as defined in this Ordinance and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, and the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended, in order to promote the health, safety, and general welfare of the residents of Scarborough. [Amended 08/16/2023]

Persons or entities wishing to establish a Cannabis Establishment within the Town of Scarborough shall first obtain a license from the Scarborough Town Council (hereinafter "the Town Council") and shall be subject to the provisions of this Ordinance. [Amended 08/16/2023]

Section 2. Authority.

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

Section 3. Definitions.

The following definitions shall apply to this Ordinance:

Adult use cannabis shall mean "adult use cannabis" as that term is defined in 28-B M.R.S.A. §102(1), as may be amended. [Amended 08/16/2023]

Adult Use Cannabis Cultivation Facility shall mean a "cultivation facility" as that term is defined in 28-B M.R.S.A. §102(13), as may be amended. [Amended 08/16/2023]

Adult use cannabis product shall mean "adult use cannabis product" as that term is defined in 28-B M.R.S.A. §102(2), as may be amended. [Amended 08/16/2023]

Adult Use Cannabis Products Manufacturing Facility shall mean a "products manufacturing facility"
as that term is defined in 28-B M.R.S.A. §102(43), as may be amended. [Amended 08/16/2023]

Adult Use Cannabis Testing Facility shall mean a "testing facility" as that term is defined in 28-B M.R.S.A. §102(54), as may be amended. [Amended 08/16/2023]

Applicant shall mean a person that has submitted an application for licensure as a Cannabis Establishment pursuant to this Ordinance. [Amended 08/16/2023]

Cannabis Odor Panel shall mean the panel of municipal staff tasked with investigating odor complaints in sections 11; 3 and 11;4. The Odor Panel shall include three of the following positions; Assistant Town Manager, a representative of the Fire Department, a representative of the Police Department, the Zoning Administrator, and a Code Enforcement Officer. [Adopted 08/16/2023]

Cultivate or *cultivation* shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of Cannabis for use or sale. It does not include manufacturing. [Amended 08/16/2023]

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

Licensed premises shall mean the premises, or facility, specified in an application for a State or Local License pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use cannabis, adult use cannabis products, medical cannabis or medical cannabis products in accordance with the provisions of this Ordinance and the requirements of State law and regulations. [Amended 08/16/2023]

Licensee shall mean a person licensed pursuant to this Ordinance.

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

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

Manufacture or manufacturing shall mean the production, blending, infusing, compounding or other preparation of cannabis products, including, but not limited to, cannabis extraction or preparation by means of chemical synthesis. It does not include cultivation. [Amended 08/16/2023]

*Cannabis s*hall mean "cannabis" as that term is defined in 28-B M.R.S.A. §102(27) as may be amended. [Amended 08/16/2023]

Cannabis concentrate shall mean the resin extracted from any part of a cannabis plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of cannabis concentrate in a cannabis product, the weight of any other ingredient combined with cannabis to prepare a cannabis product may not be included. [Amended 08/16/2023]

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. [Amended 08/16/2023]

Medical Cannabis shall mean the medical use of cannabis, with the term "medical use" as defined in 22 M.R.S §2422(5), as amended. [Amended 08/16/2023]

Medical Cannabis caregiver shall mean a "caregiver" as that term is defined in 22 M.R.S.A. §2422(8-A), as may be amended. [Amended 08/16/2023]

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

Medical Cannabis cultivation area shall mean a "cultivation area" as that term is defined in 22 M.R.S.A. §2422(3), as may be amended. [Amended 08/16/2023]

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 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. [Amended 08/16/2023]

Medical Cannabis Dispensary shall mean a "registered dispensary" as that term is defined in 22 M.R.S.A. §2422(6), as may be amended. [Amended 08/16/2023]

Medical Cannabis product shall mean a "cannabis product" as that term is defined in 22 M.R.S.A. §2442(4-L), as may be amended. [Amended 08/16/2023]

Medical Cannabis Products Manufacturing Facility shall mean a "manufacturing facility" as that term is defined in 22 M.R.S.A. §2422(4-R), as may be amended. [Amended 08/16/2023]

Medical cannabis qualifying patient shall mean a "qualifying patient" as that term is defined in 22 M.R.S.A. §2422(9), as may be amended. [Amended 08/16/2023]

Medical cannabis registered caregiver shall mean a "registered caregiver" as that term is defined in 22 M.R.S.A. §2422(11), as may be amended. [Amended 08/16/2023]

Medical Cannabis Testing Facility shall mean a "cannabis testing facility" as that term is defined in 22 M.R.S.A. §2422(5-C), as may be amended. [Amended 08/16/2023]

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

Owner shall mean a person whose beneficial interest in a Cannabis Establishment is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a Cannabis Establishment and/or has a controlling interest in a Cannabis Establishment. [Amended 08/16/2023]

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

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

State Licensing Application shall mean the application form and supporting materials required by the State for the purpose of a person obtaining a State license, registration or certification for the cultivation, manufacture, distribution, testing and sale of adult use Cannabis, adult use Cannabis products, medical Cannabis and/or medical Cannabis products in this State. [Amended 08/16/2023]

State Licensing Authority shall mean the authority (or authorities) created by the State for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of adult use Cannabis, adult use Cannabis products, medical Cannabis and/or medical Cannabis products in this State. [Amended 08/16/2023]

Section 4. License Required.

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

Any grandfathered use pursuant to Section10.5.A of this Licensing Ordinance shall obtain a license from Town Council within 6 months of the adoption of this Ordinance; however, the standards of Section 10.A.(2, 3, 4) are not applicable to licensing process of these grandfathered activities.

Section 5. License Application. [Amended 08/16/2023]

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

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

A. Name of Applicant.

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

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

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

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

E. A sketch showing the configuration of the subject premises, including building footprint, plant canopy square footage calculations, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.

F. The location of the proposed Cannabis Establishment, including a legal description of the property, street address, and telephone number. The applicant must also demonstrate that the property meets the zoning requirements for the proposed use. [Amended 08/16/2023]

G. If the applicant has had a previous license under this Ordinance or other similar Cannabis Establishment license applications in another town in Maine, in the Town of Scarborough, or

in another state denied, suspended or revoked, they must list the name and location of the Cannabis Establishment for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and they must list whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose license has previously been denied, suspended or revoked, listing the name and location of the Cannabis Establishment for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation. [Amended 08/16/2023]

H. If the applicant holds any other permits/licenses under this Ordinance or other similar Cannabis Establishment license from another town, the Town of Scarborough, or state the applicant shall provide the names and locations of such other permitted/licensed businesses, including the current status of the license or permit and whether the license or permit has been revoked. [Amended 08/16/2023]

I. The type of Cannabis Establishment for which the applicant is seeking a license and a general description of the business including hours of operation.

J. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Cannabis Establishment pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.

K. A copy of a Town Tax Map depicting the property lines of any public or preexisting private school within one thousand (1000) feet of the subject property. For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program all as defined in 20-A M.R.S.A. §1, or any other educational facility that serves children from prekindergarten to grade 12, as well as any preschool or daycare facility licensed by the Maine Department of Health and Human Services.

L. Evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.

M. A copy of the security plan as required by Section 10(A)(6) of this Ordinance.

N. A copy of the odor and ventilation mitigation plan as required by Section 10(A)(7) of this Ordinance.

O. A copy of the operations plan, as required by Section 10(A)(8) of this Ordinance.

P. Consent for the right to access the property as required by Section 10(B) of this Ordinance.

Q. Evidence of insurance as required by Section 10(C)(1) of this Ordinance.

R. Medical cannabis registered caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. §2425-A(12), as may be amended, and the Maine Freedom of Access Act, 1 M.R.S.A. §402(3)(F), shall mark such information as confidential. [Amended 08/16/2023]

Section 6. Application and License Fees. **[Amended 08/18/2021; 08/16/2023]**

A. Applicant Fee. An applicant must pay a $350 application fee upon submission. Applicants are also responsible for the Town's expenses associated with the review of an application, including the cost of any third-party review if necessary.

B. License Fee. Local License fees are set forth below and shall be paid annually:

1. Adult Use Cannabis Cultivation Facility**:**

(a) Tier 1**:** 0 to 500 SF of plant canopy**:** $750.

(b) Tier 2: 501-2,000 SF of plant canopy: $3,000.

(c) Tier 3: 2,001-7,000 SF of plant canopy: $7,500.

(d) Tier 4: greater than 7,000SF of plant canopy: $10,000

2. Adult Use or Medical Cannabis Testing Facility: $1,000

3. Adult Use or Medical Cannabis Products Manufacturing Facility: $2,500

4. Medical Cannabis Cultivation Facility: $750

C. Application Change Fee: License holders seeking to make de minimum changes to an existing license: $150. [Adopted 08/18/2021]

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

A. The initial application for a license shall be processed by the Town Clerk and reviewed and approved by the Town Council.

B. Complete application. In the event that the Town Clerk determines that a submitted application is not complete, the Town Clerk shall notify the Applicant within ten (10) business days that the application is not complete and shall inform the Applicant of the additional information required to process the application.

C. Public hearing.

1. A public hearing by the Town Council on an application for a license shall be scheduled after receipt of a completed application. The Town Clerk shall publish public notice of the hearing not less than ten (10) days prior to the hearing in a newspaper of general circulation in Cumberland County.

2. When an application is determined to be complete, the Town Clerk shall, at the applicant's expense, give written notification to all abutting property owners within five-hundred (500) feet of the parcel on which the proposed license is sought of the date, time, and place of the meeting at which the application will be considered. Notification shall be sent at least ten (10) days prior to the first meeting at which the complete application is to be reviewed. Failure of any property owner to receive the notification shall not necessitate another hearing or invalidate any action of the Board. For purposes

of this section, the owners of the abutting properties shall be considered to be the parties listed by the tax assessor for the Town of Scarborough.

D. A renewal application shall be subject to the same application and review standards as applied to the initial issuance of the license. Renewal applications from applicants in good standing, with no change, or de minimis, to the original application, may be approved by the Town Manager or their designee, so long as all other criteria and requirements as outlined in this Section and Section 10, have been met. The Town as part of the renewal process, shall consider compliance from prior years, and based upon that review, may recommend conditions to any future license to correct, abate, or limit past problems to forward to the Town Council for action. [Amended 08/18/2021]

E. Responsibilities and review authority.

1. The Town Clerk shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Ordinance. The Town Clerk shall consult with other Town Departments and any appropriate State Licensing Authority as part of this investigation.

2. No Local License shall be granted by the Town Council until the Police Chief, the Fire Chief, and the Code Enforcement Officer have all made the determination that the Applicant complies with this and all other local ordinance and state laws and provides a written recommendation to the Town Clerk. Where an agent of the Town determines that is necessary for the Town to consult with a third-party expert consultation to the applicant. Before doing so, however, the Town shall give reasonable notice to the applicant of its determination of need, including the basis for the determination; the third-party that the Town propose to engage; and then estimated fee for the third-party consultation. The applicant shall have the opportunity respond for up to (10) business days from receipt of the Town's notice before the Town engages the third-party. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any ordinance provision or State law, it shall be the duty of the Applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the Town authorized to make the inspection at any reasonable time that admission is requested.

3. The Town Council shall have the authority to approve license and renewal applications, subject to the exception outlined in 7(D) above, and impose any conditions on a license that may be necessary to insure compliance with the requirements of this Chapter or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license. [Amended 08/18/2021]

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

Section 8. License Expiration and Renewal. [Amended 08/18/2021; 08/16/2023]

A. A new license, when granted, shall be valid until August 31st, immediately following said granting of said license, except that new licenses granted during July and August shall be valid until August 31st of the following calendar year. [Amended 08/16/2023]

B. Renewal applications must be submitted at least 45 days prior to the date of expiration of the annual Local License. An application for the renewal of an expired license shall be treated as a new license application.

C. Licenses issued under this Ordinance are not transferable to a new owner. A transfer in ownership interest, change in the officers of an owner, of greater than 50% of the ownership interest or officer shall require a new license. Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A Licensee who seeks to operate in a new location shall acquire a new Local License for that location. [Amended 08/18/2021]

Section 9. Denial, Suspension or Revocation of License.

A. A Local License under this Ordinance shall be denied to the following persons:

1. A person who fails to meet the requirements of this Ordinance. Where an Applicant is an entity rather than a natural person, all natural persons with an ownership interest shall meet these requirements.
2. A person who has had a license for a Cannabis Establishment revoked by the Town or by the State. [Amended 08/16/2023]
3. An Applicant who has not acquired all necessary State approvals and other required local approvals prior to the issuance of a Local License.

B. The Town may suspend or revoke a license for any violation of this Chapter, Chapter 1000a, Chapter 405, or any other applicable building and life safety code requirements. The Town may suspend or revoke a license if the licensee has a State License for a Cannabis Establishment suspended or revoked by the State. The Licensee shall be entitled to notice and a hearing prior to any suspension or revocation, except where the reason for suspension or revocation could reasonably threaten health, safety, or welfare, as long as notice and a hearing is provided as soon as practicable. [Amended 08/16/2023]

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

A. General.

1. All Cannabis Establishments shall comply with applicable state and local laws and regulations. [Amended 08/16/2023]
2. Cannabis Establishments shall only be located within the zoning districts permitted in the Scarborough Zoning Ordinance. [Amended 08/16/2023]
3. Cannabis Establishments may not be located on property within 1,000 feet of the property line of a preexisting school as required and defined in Section 5(K) of this Ordinance. [Amended 08/16/2023]
4. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the Cannabis Establishment is located. If the Cannabis Establishment is located within a commercial subdivision, the

required setback shall be measured from the closest portion of a building that is used for the Cannabis Establishment to the property line of the school. Presence of a town, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. [Amended 08/16/2023]

5. Pursuant to 22 M.R.S.A. §2429-D(3), Caregiver Retail Stores, Medical Cannabis Dispensaries, Medical Cannabis Testing Facilities, Medical Cannabis Manufacturing Facilities and Medical Cannabis Cultivation Facilities that were operating with Town approval prior to December 13, 2018, are grandfathered in their current location and current use and shall be treated as legally non-conforming uses in accordance with Article III of the Scarborough Zoning Ordinance, provided, however, that said Cannabis Establishments shall apply for and obtain a license. If any non-conforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by the Zoning Ordinance for the district in which such land is located. [Amended 08/16/2023]

6. Security measures at all Cannabis Establishment premises shall include, at a minimum, the following**:**

   a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with thirty (30) day video storage, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises; and

   b. Door and window combination video and motion detector intrusion system and contact sensors with audible alarm and remotely accessible ~~smart phone~~ monitoring, maintained in good working condition; and

   c. A mounted and non-removable locking safe or locked room with a security door and contact alarm permanently affixed to the premises that is suitable for storage of all cannabis, cannabis products, and currency ~~cash~~ stored overnight on the licensed premises; and [Amended 08/16/2023]

   d. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk to dawn, that is either constantly on or activated by motion detectors, and complies with applicable provisions of the lighting performance standards in the Town of Scarborough Zoning Ordinance and the Good Neighbor Ordinance; and

   e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars or equipped with monitored glass-break sensors; and

   f. Methods to ensure that no person under the age of twenty-one (21) shall have access to cannabis and cannabis products. [Amended 08/16/2023]

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

a. Install an activated carbon, or equivalent, odor mitigation system with a minimum air exchange rate of fifteen (15) air changes per hour in the following areas:
    1. mature flower rooms
    2. cure rooms
    3. trim rooms and packaging rooms
    4. hallways adjacent to the mature floor rooms
    5. other areas with high odor potential

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

b. Replace activated Carbon Media or other filters used to mitigate odor in accordance with the manufacturer's specifications but not less than an annual basis. Carbon Media includes but is not limited to carbon filters, carbon canister filters and pre-filters.

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

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

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

f. All windows must always remain closed.

g. Maintenance Records for all odor mitigation equipment shall be maintained for a period of two (2) years from the date of maintenance. Maintenance Records means records of purchases of replacement carbon filters or other odor mitigation equipment, performed maintenance tracking, documentation and notification of malfunctions or power outages, scheduled and performed training sessions, and monitoring of administrative controls. All Maintenance Records shall be made available for review, upon request from the Town.

h. Submit an Odor Mitigation Plan at the initial application stage of seeking a License. A License holder shall not be required to re-submit an Odor Mitigation Plan upon renewing the License unless there have been changes to the facility floor plan or

system design as described in the existing Odor Mitigation Plan. The Odor Mitigation Plan must, at a minimum, includes the following information:

1. **FACILITY ODOR EMISSIONS INFORMATION**

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

2. ADMINISTRATIVE CONTROLS

- Procedural Activities. *This section should describe activities such as building management responsibilities (e.g., isolating odor-emitting activities from other areas of the buildings through closing doors and windows).*
- Staff training procedures *This section should describe the organizational responsibility(ies) and the role/title(s) of the staff members who will be trained about odor control; the specific administrative and engineering activities that the training will encompass; and the frequency, duration, and format of the training (e.g., 60 minute in-person training of X staff, including the importance of closing doors and windows and ensuring exhaust and filtration systems are running as required).*
- Recordkeeping systems and forms *This section should include a description of the records that will be maintained (e.g., records of purchases of replacement carbon filter, performed maintenance tracking, documentation and notification of malfunctions, scheduled and performed training sessions, and monitoring of administrative controls). Any examples of facility recordkeeping forms should be included as appendices to the Plan.*

8. Cannabis Waste and Disposal. No cannabis, cannabis products, cannabis plants, or other cannabis waste may be stored outside, other than in secured, locked containers. Any

wastewater shall be treated such that it will not create excessive odors, contamination, or pollution. [amended 08/16/2023]

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

B. Right of Access /Inspection.

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

C. Insurance and Indemnification.

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

D. State Law

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

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

Section 11. Odor Observation and Enforcement [Adopted 08/16/2023]

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

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

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

C. Violations of this ordinance shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this ordinance, a written notice of violation may be given to the alleged violating owner of the licensed premises which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice of violation. If the cause of the violation is not abated or fully corrected within the time period specified in the written notice of violation, or if the licensee commits a subsequent violation of the same provision or provisions, of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation. If the alleged violating licensee cannot be identified in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violating licensee at her/his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice.

~~A cannabis odor complaint shall be defined as a receiving four (4) or more written cannabis complaints, from a minimum of two (2) parties, one of which must be from a residence or business within 750 feet of the suspected licensed premises emitting the odor. The four (4) complaints must be reported within four (4) days of each other.~~

~~1. Within forty-eight (48) hours of receiving a cannabis odor complaint, as defined above, a Code Enforcement Officer shall investigate the complaint and notify the Licensee(s) and Landlord of the licensed premises that a cannabis odor complaint has been received. The Code Enforcement Officer's investigation shall include an initial inspection and, if odor is not detected, a second inspection of the abutting properties to investigate whether the cannabis odor is present. If odor is not detected at either of the two inspections, the complaint will be recorded as unconfirmed and Licensee(s) and Landlord will be notified of this finding. If cannabis odor is detected, the Licensee(s) and Landlord will be notified that the complaint has been verified and the CEO shall provide verbal notice of violation and instruct the Licensee or Landlord to comply with this Ordinance. The Licensee or Landlord will be required to notify the Code Enforcement Department, in writing, of corrective action taken to resolve the violation within ten business days of receiving the verbal notice of violation. Failure of the Licensee and/or Landlord to provide written notification of corrective action taken within 10 business days of the verbal notice will result in penalties assessed for each day thereafter until written notice of corrective action taken is received.~~

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2. If a second cannabis odor complaint, as defined above, attributed to the same Licensee or Licensed Premises is received, the process outlined in one (1) above, will be followed.

3. If a third cannabis odor complaint, as defined above, attributable to the same Licensee or Licensed Premises is received, the Cannabis Odor Panel ("Odor Panel") will be convened to investigate the cannabis odor complaint. The Licensee (if known) and the Landlord must be notified of the date and time when the Odor Panel will meet, and be permitted to witness the Odor Panel's investigation. The Licensee and/or Landlord may send a representative to meet the Odor Panel on their behalf. The investigation of the complaint shall include an initial inspection and, if odor is not detected, a second inspection shall be conducted by a minimum of three (3) Odor Panel members within four (4) days of receiving the third complaint. If odor is not detected at either of the two inspections, the complaint will be recorded as unconfirmed and Licensee(s) and Landlord will be notified of this finding. If cannabis odor is detected at either inspection, the Licensee(s) and Landlord will be notified and subject to the following:

    a. Notify the Licensee of the third violation in writing;
    b. Assess a fine for the violation, and;
    c. Require the Licensee to submit a written report from a mechanical engineer or odor management specialist with recommendations for modification/improvement of the odor mitigation system within thirty(30) days of receipt of notice of violation, and;
    d. Require implementation of recommendations within sixty (60) days.
    e. Unless an extension to submit the report and/or notice of compliance is granted by the Code Enforcement Department, failure of the Licensee to meet the deadlines for steps c. or d. shall result in an immediate suspension of the Local License until the report or notice of compliance is submitted to the Code Enforcement Department.

4. If, after completing the process outlined in step three (3) above, a fourth complaint is received, the Cannabis Odor Panel will be convened to investigate the cannabis odor complaint. The Licensee (if known) and the Landlord must be notified of the date and time when the Odor Panel will meet, and be permitted to witness the Odor Panel's investigation. The Licensee and/or Landlord may send a representative to meet the Odor Panel on their behalf. The investigation of the complaint shall include an initial inspection and, if odor is not detected, a second inspection shall be conducted by a minimum of three (3) Odor Panel members within four (4) days of receiving the third complaint. If odor is not detected at either of the two inspections, the complaint will be recorded as unconfirmed and Licensee(s) and Landlord will be notified of this finding. If cannabis odor is detected at either inspection, the Licensee(s) and Landlord will be notified and the applicable licenses will be subject to a revocation hearing by the Town Council within 30 days of the complaint being verified.

While a licensee or landlord is within the administrative enforcement process, which shall be defined as the period between being notified a complaint has been verified and the required follow-up action or communication, complaints will continue to be verified by the CEO but they will not be subject to subsequent notices of violation or penalties.

All complaints and any related documentation associated with the investigation of the cannabis odor complaints shall be made available to the Licensee or Landlord, at no cost, within ten business days of the Town Council meeting to consider the Licensee's Local License or the Landlord's property.

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

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

Section 12. Violations and Penalties.

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

A. Any violation of this Ordinance, including the operation of a Cannabis Establishment without a valid Local License and failure to comply with any condition, shall be subject to civil penalties in the minimum amount of $100 and the maximum amount of $2,500. Every day a violation exists constitutes a separate violation. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of this Ordinance. In any court action, the Town may seek injunctive relief in addition to penalties, and shall be entitled to recover its costs of enforcement, including its attorney's fees.

B. In addition to any other remedies provided by this Ordinance, the Town may take all necessary steps to immediately shut down any Cannabis business and post the business and the space that it occupies against occupancy for the following violations: operating a Cannabis business without a Local License or State License; failure to allow entrance and inspection to any Town official on official business after a reasonable request; and any other violation that the Town determines as the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

C. The Town Manager shall inform members of the Town Council before instituting action in court, but need not obtain the consent of the Town Council, and the Town Manager may institute an action for injunctive relief without first informing members of the Town Council in circumstances where immediate relief is needed to prevent a serious public harm. In addition, the Town Manager may enter into administrative consent agreements in the name of the Town for the purposes of eliminating violations and recovering penalties without court action

Section 13. Appeals.

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

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

Section 14. Severability.

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

Section 15. Other Laws.

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

TOWN OF SCARBOROUGH, MAINE

MEMO

To: Ordinance Committee

From: Autumn Speer, Director of Planning and Codes

Date: March 13, 2024

Re: Commercial Property Assessed Clean Energy Program (C-PACE)

BACKGROUND

In 2021, the Legislature enacted **L.D. 340, An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs** (The "C-PACE Act"). The C-PACE Act authorizes Efficiency Maine Trust (the "Trust"), a third party contracted by the Trust, or a municipality that has adopted a C-PACE ordinance to establish a C-PACE program.

Commercial PACE (C-PACE) means commercial property assessed clean energy. C-PACE is an economic development tool for municipalities to encourage energy-efficient buildings and create a more competitive environment for retaining and attracting new businesses by lowering energy costs.

A Municipality can: (1) Establish its own C-PACE program and administer the functions of the C-PACE Program itself; or, (2) Participate in the Efficiency Maine Trust C-PACE Program and enter into a contract with the Trust to administer certain functions of the C-PACE Program for the Municipality.

In option 1, Municipalities would have more control over the program design within their municipality, but they would be subject to significantly greater administrative burden, including developing and implementing their own program guidelines, recruiting and registering Capital Providers, accepting project applications and reviewing and approving projects for adherence to the rules and regulations. Municipality-based programs are typically less successful in large part to the unwillingness of Capital Providers to participate in smaller market size C-PACE programs. In option 2, Municipalities are relieved of the majority of administrative burdens while still able to stimulate the adoption of energy savings improvements for commercial properties within their communities. Under both options 1 and 2, Municipalities wishing to participate in the C-PACE Program

must adopt a C-PACE Ordinance as required by the Maine C-PACE Act. The Trust has developed a model C-PACE Ordinance. A municipality that wishes to exercise option 2 must also enter into a C-PACE Municipality Participation Agreement with the Trust that establishes the Trust as the Municipality's C-PACE Program Administrator for certain designated functions.

SUSTAINABILITY COMMITTEE REVIEW

The Sustainability Committee received an overview presentation from James Neal from Efficiency Maine at their meeting on September 27, 2023. At the meeting the Sustainability Committee requested the item move to Ordinance Committee for consideration. Mr. Neal provide a brief overview of the program at the Ordinance Committee Meeting on October 12, 2023 (youtube.com)

The Ordinance Committee reviewed the proposal at their meeting on October 12, 2023. No action was taken at that time. Sustainability Committee has requested this item be reviewed again and has agreed to work on a draft ordinance for review if the Ordinance Committee is in favor.

More information is available at the following:

Commercial Property Assessed Clean Energy (C-PACE) - Efficiency Maine

ATTACHMENTS

C-Pace Model Ordinance

COMMERCIAL PROPERTY ASSESED CLEAN ENERGY (C-PACE) ORDINANCE

1. Purpose and authority

A. Purpose. By and through this Ordinance, the City/Town of _____ declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Commercial Property Assessed Clean Energy ("C-PACE") program so that owners of qualifying property can access financing for energy savings improvements to their commercial properties located in the City/Town. The City/Town declares its purpose and the provisions of this Ordinance to be in conformity with federal and state laws.

B. Enabling legislation. The City/Town enacts this Ordinance pursuant to Public Law 2021, Chapter 142 of the 130th Maine State Legislature, "An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Program," also known as "the Commercial Property Assessed Clean Energy Act" or "the Commercial PACE Act" (codified at 35-A M.R.S. §10201 *et seq*.).

2. Title

This Ordinance shall be known and may be cited as "The City/Town of _____'s Commercial Property Assessed Clean Energy ("C-PACE") Ordinance" (this "Ordinance").

3. Definitions

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings. As used in this Ordinance, the following words and phrases shall have the meanings indicated:

City/Town. The City/Town of _____.

Commercial PACE or ("C-PACE"). Means Commercial Property Assessed Clean Energy.

Commercial PACE Agreement. An agreement that authorizes the creation of a Commercial PACE Assessment on Qualifying Property and that is approved in writing by all owners of the Qualifying Property at the time of the agreement and by the municipal officers of the City/Town.

Commercial PACE Assessment. An assessment made against Qualifying Property to finance an Energy Savings Improvement.

Commercial PACE District. The area within which the City/Town establishes a Commercial PACE Program hereunder, which is all that area within the City/Town boundaries.

Commercial PACE Lien. A lien, secured against a Qualifying Property that is created by a Commercial PACE Assessment.

Commercial PACE Loan. A loan, payable through a Commercial PACE Assessment and secured by a C-PACE Lien, made to the owner(s) of a qualifying property pursuant to a Commercial PACE Program to fund Energy Savings Improvements.

Commercial PACE Program. A program established under this Ordinance pursuant to the Commercial PACE Act under which commercial property owners can finance Energy Savings Improvements on Qualifying Property.

Energy Savings Improvement. An improvement or series of improvements to Qualifying Property that are new and permanently affixed to Qualifying Property and that:

A. Will result in increased energy efficiency or substantially reduced energy use and:

(1) Meet or exceed applicable United States Environmental Protection Agency and United States Department of Energy "Energy Star" program or similar energy efficiency standards established or approved by the Trust; or

(2) Involve weatherization of commercial or industrial property in a manner approved by the Trust; or

B. Involve a renewable energy installation, an energy storage system as defined in 35-A M.R.S. § 3481(6), an electric thermal storage system, electric vehicle supply equipment or heating equipment that meets or exceeds standards established or approved by the Trust. Heating equipment that is not a Renewable Energy Installation must be heating equipment that produces the lowest carbon emissions of any heating equipment reasonably available to the property owner, as determined by the Trust, and must meet the requirements of 35-A M.R.S. §10204 (1)(B).

Qualifying Property. Real commercial property in the City/Town that:

A. Does not have a residential mortgage;

B. Is not owned by a residential customer or small commercial customer as defined in 35-A M.R.S. §3016(1)(C) and (D), respectively;

C. Consists of 5 or more rental units if the property is a commercial building designed for residential use;

D. Is not owned by a federal, state or municipal government or public school; and

E. Is located in a municipality that participates in a Commercial PACE Program.

Registered Capital Provider or Capital Provider. An approved lender proving financing for the Energy Savings Improvements through a C-PACE Program and registered with Efficiency Maine Trust.

Renewable Energy Installation. A fixture, product, system, device or interacting group of devices installed behind the meter at a Qualifying Property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including but not limited to, photovoltaic systems, solar thermal systems, highly efficient wood heating systems, geothermal systems and wind systems that do not on average generate more energy or heat than the peak demand of the property.

Trust. The Efficiency Maine Trust established in 35-A M.R.S. §10103 and/or its agents, if any.

4. Program established; Amendments.

A. Establishment. The City/Town hereby establishes a Commercial PACE Program allowing owners of Qualifying Property located in the City/Town who so choose to access financing for Energy Savings Improvements to their Qualifying Property, with such financing to be repaid through a Commercial PACE Assessment and secured by a Commercial PACE Lien.

B. The City/Town may:

(1) Administer the functions of the Commercial PACE Program, including, but not limited to, entering into Commercial PACE Agreements with commercial property owners and collecting Commercial PACE Assessments, or designate an agent to act on behalf of the City/Town for such billing and collection purposes; or
(2) Enter into a contract with the Trust to administer some or all functions of the Commercial PACE Program for the City/Town, including billing and collection of Commercial PACE Assessments, subject to the limitations set forth in Section 10205, subsection 5 of the Commercial PACE Act.

C. Amendment to or Repeal Commercial PACE Program. The City/Town may from time to time amend this Ordinance to use any funding sources made available to it or appropriated by it for the express purpose of its Commercial PACE Program, and the City/Town shall be responsible for administration of loans made from those funding sources. The City/Town may also repeal this Ordinance in the same manner as it was adopted, provided, however, that such repeal shall not affect the validity of any Commercial PACE Agreements entered into by the City/Town prior to the effective date of such repeal, or a Commercial PACE Loan or Commercial PACE Lien arising out of such Agreements.

5. Financing; Private Lenders; Terms. C-PACE Loans may be provided by any qualified Capital Provider private lender participating in the C-PACE Program and a C-PACE Agreement may contain any terms agreed to by the lender and the property owner, as permitted by law, for the financing of Energy Savings Improvements. Unless the City/Town specifically designates funding sources made available to it or appropriated by it for the express purpose of its Commercial PACE Program and agrees to provide financing for Energy Savings Improvements, the City/Town will not finance or fund any loan under the Commercial PACE Program, and shall serve only as a program sponsor to facilitate loan repayment by including the Commercial PACE Assessment on the property tax bill for the property, and shall incur no liability for the loan.

6. Program Requirements and Administration

A. Agreement Required. All commercial property owners seeking financing for Energy Savings Improvements on Qualifying Property pursuant to the Commercial PACE Program must enter into a Commercial PACE Agreement, approved as to form and substance by the City/Town, authorizing the creation of a Commercial PACE Assessment and acknowledging the creation of a Commercial PACE Lien. A notice of the Commercial PACE Agreement will be filed in the registry of deeds, which filing will create a lien until the amounts due under the agreement are paid in full.

B. Underwriting Standards. A Commercial PACE Agreement entered into pursuant to the Commercial PACE Program must satisfy the minimum underwriting requirements of the Commercial PACE Act and such additional requirements established by the Trust.

C. Collection of assessments. A commercial property owner participating in the Commercial PACE Program will repay the financing of Energy Savings Improvements through an

assessment on their property similar to a tax bill. A Commercial PACE Assessment constitutes a lien on the Qualifying Property until it is paid in full and must be assessed and collected by the City/Town or its designated agent, the Trust, or a 3rd-party administrator contracted by the Trust, consistent with applicable laws. The City/Town may, by written agreement, designate the applicable third-party Capital Provider as its agents for the billing and collection of Commercial PACE assessment payments in satisfaction of the Commercial PACE Loan. Where Commercial PACE assessment payments are received directly by the City/Town along with other municipal tax payments, such payments received from property owners shall first be applied to City/Town taxes, assessments, and charges. The City/Town shall have no ownership of the Commercial PACE assessments collected except for any administrative costs provided under the Commercial PACE Program. The City/Town shall pay all Commercial PACE assessment payments in any calendar month to the applicable Capital Provider or the Commercial PACE program administrator within 30 days after the end of the month in which such amounts are collected. The City/Town shall have no obligation to make payments to any Capital Provider with respect to any Commercial PACE repayment amounts or loan obligations other than that portion of the Commercial PACE Assessment actually collected from a property owner for the repayment of a Commercial PACE Loan.

If the Trust or a 3rd-party administrator contracted by the Trust or an agent of the City/Town collects Commercial PACE Assessments on behalf of the City/Town, the Trust or agent shall periodically report to the City/Town on the status of the Commercial PACE Assessments in the City/Town and shall notify the City/Town of any delinquent Commercial PACE Assessments. Upon receiving notification from the Trust or agent of a delinquent Commercial PACE Assessment, the City/Town shall notify the holder of any mortgage on the property of the delinquent assessment.

D. Notice; filing. A notice of a Commercial PACE Agreement must be filed in the appropriate registry of deeds. The filing of this notice creates a Commercial PACE Lien against the property subject to the Commercial PACE Assessment until the amounts due under the terms of the Commercial PACE Agreement are paid in full. The notice must include the information required by the Commercial PACE Act.

E. Priority. A Commercial PACE Lien secures payment for any unpaid Commercial PACE Assessment and, together with all associated interest and penalties for default and associated attorney's fees and collection costs, takes precedence over all other liens or encumbrances except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts. From the date of recording, a Commercial PACE Lien is a priority lien against a property, except that the priority of such a Commercial PACE Lien over any lien, except a lien for real property taxes of the City/Town or a lien of a municipal sewer, sanitary or water district, that existed prior to the Commercial PACE Lien is subject to the written consent of such existing lienholder.

F. Mortgage lender notice and consent. Any financial institution holding a lien, mortgage or security interest in or other collateral encumbrance on the property for which a Commercial PACE Assessment is sought must be provided written notice of the commercial property owner's intention to participate in the Commercial PACE Program and must provide written consent to the commercial property owner and City/Town that the borrower may participate and enroll the collateral property in the Commercial PACE Program. This written consent must be filed in the registry of deeds and must include a written acknowledgement and

understanding by the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property as required by the Commercial PACE Act.

7. Collection, default; foreclosure.

A. A Commercial PACE Assessment and any interest, fees, penalties and attorney's fees incurred in its collection must be collected in the same manner as the real property taxes of the City/Town. A Commercial PACE Assessment for which notice is properly recorded under this section creates a lien on the property. The portion of the assessment that has not yet become due is not eliminated by foreclosure, and the lien may not be accelerated or extinguished until fully repaid.

(1) If a Commercial PACE Assessment is delinquent or in default and the borrower or property owner is delinquent in any tax debt due to the City/Town, collection may occur only by the recording of liens and by foreclosure under 36 M.R.S. §§ 942 and 943. Liens must be recorded and released in the same manner as liens for real property taxes.

(2) If only a Commercial PACE Assessment is delinquent but the borrower or property owner is current on payment of all municipal taxes due to the City/Town, then a Commercial PACE lienholder shall accept an assignment of the Commercial PACE Lien, as provided in the written agreement between City/Town and the Capital Provider. The assignee shall have and possess all the same powers and rights at law as the City/Town and its tax collector with regards to the priority of the Commercial PACE Lien, the accrual of interest and fees and the costs of collection. The assignee shall have the same rights to enforce the Commercial PACE Lien as any private party or lender holding a lien on real property, including, but not limited to, the right of foreclosure consistent with 14 M.R.S.§§ 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of the Commercial PACE Lien.

B. Judicial or nonjudicial sale or foreclosure. In the event of a judicial or nonjudicial sale or foreclosure of a property subject to a Commercial PACE Lien by a lienholder that is not a Commercial PACE lienholder, the Commercial PACE Lien must survive the foreclosure or sale to the extent of any unpaid installment, interest, penalties or fees secured by the lien that were not paid from the proceeds of the sale. All parties with mortgages or liens on that property, including without limitation Commercial PACE lienholders, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established in this chapter and by applicable law. A Commercial PACE Assessment is not eliminated by foreclosure and cannot be accelerated. Only the portion of a Commercial PACE Assessment that is in arrears at the time of foreclosure takes precedence over other mortgages or liens; the remainder transfers with the property at resale.

C. Unless otherwise agreed upon by the Capital Provider, all payments on a Commercial PACE Assessment that become due after the date of transfer by judicial or nonjudicial sale or foreclosure must continue to be secured by a lien on the property and are the responsibility of the transferee.

D. Release of lien. The City/Town will discharge a Commercial PACE Lien created under the Commercial PACE Act and this Ordinance upon full payment of the amount specified in the Commercial PACE Agreement. A discharge under this subsection must be filed in the appropriate registry of deeds and must include reference to the notice of Commercial

PACE Agreement previously recorded pursuant to the Commercial PACE Act and this Ordinance.

8. Liability of municipal officials; liability of City/Town

(1) Notwithstanding any other provision of law to the contrary, City/Town officers and City/Town officials, including without limitation, Tax Assessors and Tax Collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a Commercial PACE Program, including without limitation, claims for or related to uncollected Commercial PACE Assessments under this Ordinance.

(2) Other than the fulfillment of its obligations specified in a Commercial PACE Agreement, the City/Town has no liability to a commercial property owner for or related to Energy Savings Improvements financed under a Commercial PACE Program.

9. Conformity to Changed Standards.

This Ordinance is intended to comply with the Commercial PACE Act and the administrative rules of the Trust issued in connection with the Commercial PACE Act, as the same may be amended. If the Trust or any State or federal agency adopts standards, promulgates rules, or establishes model documents subsequent to the City/Town's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the City/Town shall take necessary steps to conform this Ordinance and its Commercial PACE Program to those standards, rules or model documents.

TOWN OF
SCARBOROUGH, MAINE

MEMO

To: Ordinance Committee

From: Autumn Speer, Director of Planning and Codes

Date: March 13, 2024

Re: Impact Fee Amendments – Recreation Impact Fee and Roadway Impact Fees

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BACKGROUND – STATE STATUTE

State Statute 4354 Impact Fees (1987) authorizes municipality's to require construction of off-site capital improvements or the payment of impact fees instead. A municipality may impose an impact fee either before or after completing the infrastructure improvement.
The requirements may include construction of capital improvements or impact fees instead of capital improvements including the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities.

Applicable Infrastructure Facilities May Include:

- Wastewater collection and treatment facilities
- Municipal water facilities
- Solid waste facilities
- Public safety equipment and facilities
- Roads and traffic control devices
- Parks & other open space or recreational areas, and
- School facilities

Impact fees are intended to pay for the portion of new capital improvements that are needed to service growth. Fees must be reasonably related to the development's share of the cost of infrastructure or, if the improvements were constructed prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development. Fees are designed to pay for capital improvements, not maintenance, operating costs or service delivery.

Impact fee funds must be segregated from general revenues and a schedule to use the funds consistent with the capital investment component of the comprehensive plan must be established. A mechanism to refund impact fees that exceed costs or that were not used must also be established.

EXISTING ORDINANCES

Scarborough began imposing impact fees on development in 1990 with traffic/roadway improvement fees that applied to the Payne Road corridor, which was part of a PACTS Regional approach to the corridor. Additional traffic impact fees have been added over the last 30 years.

The School Impact Fee was added in 2002. Many existing fees are outdated, or soon will be, as the improvements contemplated as the basis for the fee will be completed

- Chapter 415 Impact Fee Ordinance (2002, 2020)
  - Chapter 1 - General Provisions
  - Chapter 2 - School Impact Fees
- Chapter 415 A – Dunstan Corner Capital Improvement District (2006, 2011)
- Chapter 415 B – Haigis Parkway / Route One Capital Improvement District (2011)
- Chapter 410 Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement District (1990, 2017)

PROPOSED AMENDMENTS

- Chapter 415 – Impact Fee Ordinance
  - Section I - General Provisions - Combined from all
  - Section II – School Impact Fees
  - Section III – Recreation Impact Fees (New)
  - Section IV - Reserved for Open Space
  - Section V - Roadway Impact Fees –
    - General Roadway Impact Fee Standards – Consolidated
    - Dunstan Corner District (MOVED)
    - Haigis Parkway / Route One District (MOVED)
    - Payne Road Area District (MOVED)
    - Payne Road / Ginn Road District (NEW)
    - Payne Road / Nonesuch River District (NEW)
- Repeal Chapter 415 A – Dunstan Corner Capital Improvement District
- Repeal Chapter 415 B – Haigis Parkway / Route One Capital Improvement District
- Repeal Chapter 410 Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement District

NEXT STEPS

Transportation Committee Review – March 26, 2024
Legal Review – On-going

ATTTACHMENTS

1. Draft Ordinance Amendments to Chapter 415
2. Recreation Fee Methodology

CHAPTER 415

TOWN OF SCARBOROUGH

IMPACT FEE ORDINANCE

ADOPTED JANUARY 02, 2002; EFFECTIVE JANUARY 03, 2002
AMENDED MARCH 3, 2003; UPDATED FEBRUARY 01, 2020
UPDATED XXXX, 2024

CHAPTER 415
TOWN OF SCARBOROUGH
DEVELOPMENT IMPACT FEE ORDINANCE

SECTION 1. IMPACT FEE GENERAL PROVISIONS~~CHAPTER I - General Provisions~~

A. Authority.

This ordinance is enacted pursuant to the authority of 30-A M.R.S.A. § 4354 and 30-A M.R.S.A. § 3001.

B. Purpose.

The Scarborough Town Council, ~~having commissioned and reviewed an Impact Fee Feasibility Analysis dated September 2001,~~ has determined that new development creates demands on municipal government to provide new public facilities and to expand, improve or replace existing public facilities. The Town Council concludes that in order to provide an equitable source of funding for such new, expanded, improved or replacement facilities, it is appropriate to establish a program of development impact fees and to charge a proportionate share of the costs of new, expanded, improved or replacement facilities to the developers and/or occupants of the developments which make the new, expanded, improved or replacement infrastructure necessary.

C. Definitions.

Unless otherwise defined in this ordinance, terms used in this ordinance shall have the same meanings as defined terms in Chapter 405, Zoning Ordinance of the Town of Scarborough, Maine. ~~("Zoning Ordinance"). The following terms shall have the following meanings:~~

~~**Affordable Housing Unit: A dwelling unit developed by a governmental agency or by a non-profit housing corporation (as defined in 30-A M.R.S.A. § 5002) which is permanently restricted by recorded deed restriction or covenant and/or regulatory restriction to occupancy only by lower income households, as that term is defined in 30-A M.R.S.A. § 5002.**~~

D. Use of Impact Fees.
~~**D.**~~

Impact fees collected by the Town pursuant to this ordinance may be used only for financing facility improvements which the Town Council has determined are made necessary by new development. The Town Council has determined that fees imposed by schedules in subsequent ~~chapters~~ sections of this ordinance are reasonably related to the demands created by new development and are reasonably related to the portion or percentage of existing infrastructure used by new development. Impact fees collected pursuant to this ordinance shall be used exclusively for capital improvements, and shall not be used for operational expenses. The Town of Scarborough shall expend funds collected from impact fees solely for the purposes for which they were collected.

E. Segregation of Impact Fees from General Revenues.

Impact fees collected pursuant to this ordinance shall be maintained by the Town Treasurer in a separate impact fee account and shall be segregated from the Town's general revenues. The Town Treasurer shall deposit impact fees in special non-lapsing accounts dedicated for funding of the improvements for which the fee is collected.

F. Collection of Impact Fees.

~~**a. Payment of Impact Fees**~~

The Code Enforcement Officer of the Town of Scarborough shall not issue any building permit required under the Zoning Ordinance until the applicant has paid any impact fees required by this ordinance ~~or has recorded an agreement for deferral of impact fees pursuant to Chapter 1, Section 6, Subsection (b) below~~. Upon collecting such impact fee, the Code Enforcement Officer shall remit the funds to the Town Treasurer who shall deposit the funds as required in Section E~~5~~ above. The Code Enforcement Officer shall make a record of the name and mailing address of the applicant paying the impact fee, the tax map and lot numbers of the property for which the impact fee is collected, the amount collected, and the date the impact fee is received, and shall maintain such record in the files relating to the property for which the impact fee was paid.

~~**b. Deferral of Impact Fees**~~

~~**Where the applicant for a building permit is over 55 years of age, has owned and occupied an existing single-family dwelling in Scarborough at any time during the previous 12 months and seeks the building permit in order to construct a new single-family dwelling which the applicant will own and occupy in place of the existing dwelling, the Town treasurer may enter into an agreement to defer collection of all or part of the impact fees imposed by this ordinance until such time as ownership of the new dwelling is transferred to any person except a person who is a surviving joint tenant or heir of the applicant and is both over 55 years of age and a resident of the dwelling at the time of the transfer. Such agreement shall be in writing, shall be joined by all owners of the property, including mortgagees and lien holders of record at the time of execution of the agreement, shall by its terms create a consensual lien on the property, shall be binding on the applicant's heirs, successors and assigns, and shall be recorded in the Cumberland County Registry of Deeds by the applicant prior to the issuance of the building permit.**~~

G. Refund of Unused Impact Fees.

Impact fees collected pursuant to this ordinance shall be utilized by the Town according to the schedules specified in subsequent sections ~~chapters~~ of this ordinance for the completion of specific capital improvements, but in no event later than ten years after the date upon which the impact fee was collected. Any impact fees which are not so utilized and any impact fees collected which exceed the Town's actual costs of implementing the infrastructure improvements for which such fees were collected may ~~shall~~ be refunded. The process for requesting refunds is outlined in each subsequent impact fee section. ~~Refunds shall be paid to the owner of record of~~

~~the property for which the impact fee was collected, determined as of the date the refund is made.~~

H. Amendment of Fees.

The impact fees established in this ordinance are based upon the Town Council's best estimates of the costs of the construction of the facilities for which the fees are collected and, where appropriate, upon estimates of state and/or federal funding contributions. The Council may, by amendments to this ordinance, change the amounts of the impact fees from time to time as warranted by new information or changed circumstances.

~~H.~~I. ~~A.~~ Inflation Adjustment.

The School and Recreation impact fees established by the Town Council in this ordinance shall be adjusted annually by the Town Treasurer to account for inflation. Commencing on February 1, 2003 and on each February 1st thereafter, the Treasurer shall increase each impact fee by the dollar amount (rounded to the nearest ten dollar increment) obtained by multiplying the amount of the fee then-in-effect by the inflation rate. As used in this paragraph, the term "inflation rate" means the percentage increase, if any, during the previous calendar year in the Consumer Price Index – All Urban Consumers, Northeast Urban Area, All Items, base period 1982-84 = 100 (not seasonally adjusted) published by the United States Department of Labor Bureau of Labor Statistics. If there has been no such increase, there shall be no adjustment under this paragraph. Each year on February 1st, the Treasurer shall publish a schedule of impact fees adjusted pursuant to this paragraph (the "adjusted impact fees") and provide a copy of such schedule to the Code Enforcement Officer. The adjusted impact fees shall apply to all building permits issued on or after March 5 in the calendar year 2003 and on or after February 1st of each calendar year thereafter, whether or not the applications for building permits were filed prior to such dates~~. [March 3, 2003].~~

~~I.~~J. Impact Fee Not Required for Replacement Dwelling Units.

An impact fee shall not be required for:

1. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which was located on the same lot at any time between January 3, 2000 and January 3, 2002;

2. the placement on a mobile home park site of a mobile home which replaces a mobile home which was located on the same site at any time between January 3, 2000 and January 3, 2002;

3. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which is or was located on the same lot and for which an impact fee has already been paid under this ordinance; or

4. the placement on a mobile home park site of a mobile home which replaces an existing mobile home which is or was located on the same site and for which an impact fee has already been paid under this ordinance.

K. Schedule of Fees.

All impact fee and charges established herein shall be specified in Chapter 311 Schedule of License, Permit and Application Fees established by the Town Council.

~~J.~~L. Severability.

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

SECTION II. SCHOOL IMPACT FEES

~~CHAPTER II - School Impact Fees~~

~~K.~~A. Use of School Impact Fees.

The fees collected under this section ~~chapter~~ of this ordinance shall be used to fund one or more of those projects identified in the major capital improvement applications submitted to the Maine Department of Education, dated July 26, 2001, for the Scarborough Middle School, the Scarborough High School, the Wentworth Intermediate School and the primary schools, the Town Council having determined that a portion of the costs of such school projects is made necessary by the projected increases in enrollment due to anticipated new residential housing construction. Those improvements are scheduled to be completed by January 3, 2012, unless the completion dates are extended by order of the Town Council.

~~L.~~B. Calculation and Collection of School Impact Fees. [Updated 02/26/2020]

Prior to the issuance of a building permit for any new dwelling unit, the Code Enforcement Officer shall collect a school impact fee according to the following schedule:

Type of Dwelling	Amount
Single family dwelling	$4,630
Two-family dwelling	$1,770 per unit
Multiplex	$1,150 per unit
Mobile home in a mobile home park	$1,150
Affordable housing unit	$2,330

~~M.~~C. Exemptions.

~~1.~~ A school impact fee is not required for a dwelling unit within a development consisting of three or more dwelling units all of which are permanently restricted by recorded deed restriction or covenant and/or regulatory restriction to occupancy by elderly households only. For this purpose, "elderly household" means a household which includes at least one person aged 55 or older and no occupant less than 55 years of age other than a full-time caregiver to or a spouse or companion of the elderly person(s).

~~N.~~D. Impact Fees to Terminate Upon Completion of Projects.

When the school projects identified in Chapter 415~~II~~, Section II~~1 above~~ have been completed and all debt incurred in connection therewith has been repaid, the Town Council shall amend this ordinance either by repeal of this chapter, or by amendment of this chapter if circumstances at the time warrant the continuation of school impact fees.

SECTION III. RECREATION IMPACT FEES

~~O.~~A. Use of Recreation Impact Fees.

Impact fees collected under the provisions of this ordinance shall only be used to pay for the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities as identified in the Parks and Facilities Master Plan accepted March 1, 2023, by the Scarborough Town Council. Those improvements are scheduled to be completed by June 30, 2034, unless the completion dates are extended by order of the Town Council. No portion of the fee shall be used for routine maintenance or operation activities.

~~P.~~B. Applicability.

This Ordinance shall apply to the issuance of any building permit for a new residential structure within the Town of Scarborough with the following exceptions:

1. This Ordinance shall not apply to the issuance of a building permit for the repair, replacement or reconstruction of a residential structure that was unintentionally damaged or destroyed by fire, flood or other natural disaster, provided the number of dwelling units is not increased.

2. This Ordinance shall not apply to additions to residential structures existing at the time of the adoption of this ordinance.

~~Q.~~C. Calculation and Collection of Recreation Impact Fees.

The amount of the recreation impact must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

The recreation impact shall be based upon the number of bedrooms per residential unit, and shall be based upon the Town's impact fee calculation methodology. This methodology has been adopted by the Town Council and is on file and available for review in the Town Planner's office.

Prior to the issuance of a building permit for any new dwelling unit, the Code Enforcement Officer shall collect a recreation impact fee according to the following schedule:

Type of Dwelling	Amount
Single Family Dwelling	$400 per bedroom, not to exceed $1,600

Two-Family Dwelling	$400 per bedroom, per unit
Multifamily	$400 per bedroom
Senior Housing Unit	$400 per bedroom
Affordable Housing Unit	$400 per bedroom

~~R.~~D. Waiver of Impact Fees.

The Town Council may, by formal vote following a public hearing, waive the payment of a required Recreation Impact fee, in whole or in part, if it finds that:

1. The developer or property owner who would otherwise be responsible for the payment of the impact fee voluntarily agrees to construct an improvement for which the impact fee would be collected, or an equivalent improvement approved by the Town Council.
2. The developer of a subdivision offers to dedicate and/or improve public lands or recreational amenities and the Town Council finds these public lands or recreational amenities to be of town-wide benefit.

~~S.~~E. Refund of Fees.

~~a.~~1. If a building permit or other relevant permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance. A request for a refund shall be made in writing to the Town Planner, and shall occur within ninety (90) days of the expiration of the permit.

~~b.~~2. If the funds collected annually are not expended or obligated by contract for their intended purpose by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid, the prorated share of the funds shall be returned to the current owner of the property for which the fee was paid, provided that a request is made in writing to the Town Planner within one hundred eighty (180) days of the expiration of the ten (10) year period.

SECTION IV. RESERVED

SECTION V. ROADWAY IMPACT FEES

A. Roadway Impact Fee Applicability

This ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, all new extractive industry operations, and to any change in use requiring site plan approval, when the proposed development, whether located within or outside of a designated Roadway Impact Fee District generates additional traffic within said district.

A. Roadway Impact Fee Exemptions

The following development and construction shall be exempt from this ordinance:

1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.

2. Construction of accessory buildings or structures which do not generate additional vehicle trips.

3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

B. Roadway Impact Fee Procedures

1. Any person who seeks a permit or approval for any development, activity or use described in Section V(A) of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.

2. Preliminary determinations regarding whether a proposed development will generate traffic within a designated Roadway Impact Fee District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis in accordance with Section V(D) of this ordinance, which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

C. Roadway Impact Fee Calculations

A roadway impact fee shall be applied to development projects located in whole or in part within the Town of Scarborough that generate additional traffic within a designated Roadway Impact Fee District. Impact fees are structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A., §4354. The process for impact fee calculation is as follows:

1. As per Section V(C) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through a designated Roadway Impact Fee District in the P.M. peak commuter hour.

2. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).

3. The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through a designated Roadway Impact Fee District within the P.M. peak commuter hour. All new trips that pass through a designated Roadway Impact Fee District, regardless of whether they pass through the specific intersections, shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.

4. For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to the specific roadway impact fee district, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.

5. For any development not requiring Planning Board review but requiring the payment of an impact fee under this ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to the specific roadway impact fee district.

6. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

D. Roadway Impact Fee Payment

The roadway impact fee amount, as determined in accordance with the specific roadway impact fee district of this ordinance, shall be paid to the Town according to the payment schedule established under Section V(D), except as follows:

1. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.

Payments shall be tendered to the Town Engineer. Upon determining that the payment is the correct amount, the Town Engineer shall issue a receipt for the payment and deliver the payment to the Town Treasurer.

E. Use of Roadway Impact Fee Funds

1. Funds generated by this ordinance will be used for the purpose of completing the capital improvements identified in the specific master plan for roadway infrastructure improvements within each Roadway Impact Fee District.

2. No funds shall be used for periodic or routine maintenance.

3. In the event that bonds or similar debt instruments are issued for advanced provision of capital improvements for which roadway impact fees may be expended, impact fee funds may be used to pay debt service on such bonds or similar debt instruments to the extent that the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section F(1) of this ordinance.

4. Funds may be used to provide refunds in accordance with Section G.

5. Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the a designated Roadway Impact Fee District. Such project and site specific improvements shall be the responsibility of the developer.

F. Refund of Roadway Impact Fees

1. If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the specific roadway impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.

2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

G. Roadway Impact Fee District - Dunstan Corner District

Purpose.

CHAPTER 415A

TOWN OF SCARBOROUGH

SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:

DUNSTAN CORNER CAPITAL IMPROVEMENT DISTRICT

~~ADOPTED AUGUST 16, 2006~~
~~AMENDED FEBRUARY 7, 2007~~
~~AMENDED NOVEMBER 16, 2011~~

TABLE OF CONTENTS

~~ROADWAY IMPACT FEE ORDINANCE:~~
~~DUNSTAN CORNER CAPITAL IMPROVEMENT DISTRICT~~
~~TOWN OF SCARBOROUGH~~

~~Section I. Title~~

~~This Ordinance shall be known and may be cited as the "Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District". It is adopted under the authority of Title 30-A M.R.S.A., § 4354, and the Town's statutory and constitutional home rule powers.~~

~~Section II. Purpose~~

1. Dunstan Corner is one of Scarborough's town centers within which four locally and regionally significant roads intersect. The capacity of Route One, and it's intersections with Pine Point Road (Route 9), Broadturn Road and Payne Road, are critical to the mobility of regional vehicular traffic through Dunstan Corner and the access of local vehicular traffic to destinations within Dunstan Corner. In order for Dunstan Corner to continue to serve and evolve as a town center, while also maintaining and increasing vehicular mobility and access, the area is in need of adequate roadway infrastructure to support future development and the accompanying traffic generation and demands.

2. **Master Plan.** The Town has completed a master plan for roadway infrastructure improvements that will accommodate the traffic growth projected for the next twenty years and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate and benefit new development. The purpose of the Dunstan Corner ~~Capital Improvement~~ District is to procure the Town's share of the cost of implementing these roadway infrastructure improvements from future development projects. The remaining roadway infrastructure improvement costs will be funded through cost sharing between PACTS (Portland Area Comprehensive Transportation System) and the Maine Department of Transportation. (amended 02/07/2007)(amended 11/16/2011)

As per Section F(1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

a. Dunstan Corner, Scarborough, Maine, PIN 17343.00, September 28, 2011, Preliminary Design Scale 1" - 40', HNTB Corporation. (amended 11/16/2011)

b. The above cited plans may be amended by the Town Council, in accordance with Chapter 302, Scarborough Town Council Rules, Policies and Procedures Manual, if the amendments to the master plan are consistent with and further the purpose of this ordinance.

3. **Dunstan Corner District Boundaries.** The Dunstan Corner District is depicted on the map below and encompasses the following sections of roadway:

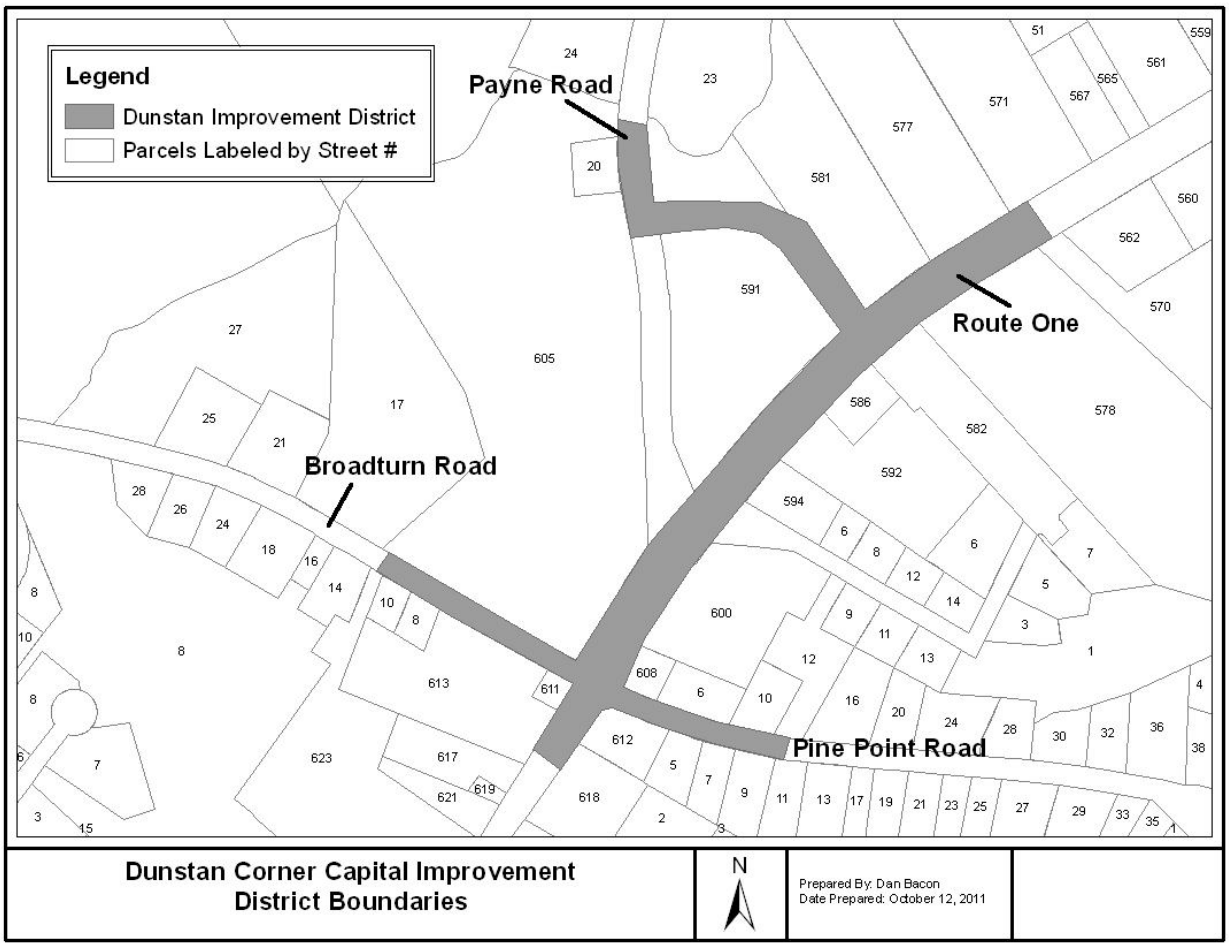
a. Route 1 beginning 550 feet south of Broadturn Road extending northerly 2000 feet.

b. Pine Point Road beginning at its intersection with Route 1 extending easterly 850 feet.

c. Payne Road beginning at its proposed relocated intersection with Route 1 extending 1550 feet to align with the existing Payne Road.

d. A proposed roadway beginning at Route 1 opposite the relocated Payne Road, westerly to Higgins Street.

e. All of Harlow Street and Higgins Street.



Dunstan Corner District Fe

~~**Section III. Applicability**~~

~~**A. This ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, all new extractive industry operations, and to any change in use requiring site plan approval when the proposed development, whether located within or without the**~~

~~Dunstan Corner Capital Improvement District, generates additional traffic within the Dunstan Corner Capital Improvement District. (amended 02/07/2007)~~

~~B. The following development and construction shall be exempt from this ordinance:~~

~~1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.~~

~~2. Construction of accessory buildings or structures which do not generate additional vehicle trips.~~

~~3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.~~

~~Section IV. Impact Fee Procedures~~

~~1. Any person who seeks a permit or approval for any development, activity or use described in Section III(A) of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance. (amended 02/07/2007)~~

~~2. Preliminary determinations regarding whether a proposed development will generate traffic within the Dunstan Corner Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis (in accordance with Section V of this ordinance), which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.~~

~~Section V. Impact Fee Calculations~~

~~An impact fee shall be applied to development projects located in whole or in part within the Town of Scarborough that generate additional traffic within the Dunstan Corner Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A., §4354. The process for this impact fee calculation is as follows:~~

~~1. As per Section IV(B) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by~~

~~additional vehicle trips to be generated by a development project that pass through the Dunstan Corner Capital Improvement District in the P.M. peak commuter hour.~~

~~2. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).~~

~~3. The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through the Dunstan Corner Capital Improvement District within the P.M. peak commuter hour. All new trips that pass through the District, regardless of whether they pass through the Dunstan Corner or Payne Road/Route One intersections, shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.~~

4. ~~e.~~ ~~The fee~~ The Dunstan Corner District fee determination shall be based on the following:

   a. The Town cost of the master plan for roadway infrastructure improvements in the Dunstan Corner ~~Capital Improvement~~ District will amount to $1,430,000, which is to be funded from this impact fee ordinance. (amended 02/07/2007)(amended 11/16/2011)

~~a.~~

   b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1020 trip ends in the P.M. peak commuter hour of traffic.

~~b.~~

   c. Each additional trip generated by new development will benefit from the 1020 trip ends of capacity and will utilize one trip end of that additional capacity.

~~c.~~

   d. The fee per trip, therefore, shall be $1,402. This fee per trip equals $1,430,000 / 1020 trip ends. (amended 02/07/2007)(amended 11/16/2011)

~~5. For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to Section V, subsections A through D above, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a~~

~~dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.~~

~~6. For any development not requiring Planning Board review but requiring the payment of an impact fee under this ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to Section V, subsections A through E above.~~

~~If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.~~

5. **Impact Fee Trust Funds.** There is hereby established a Dunstan Corner District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

~~T.~~H. Roadway Impact Fee District – Haigis Parkway / Route One District

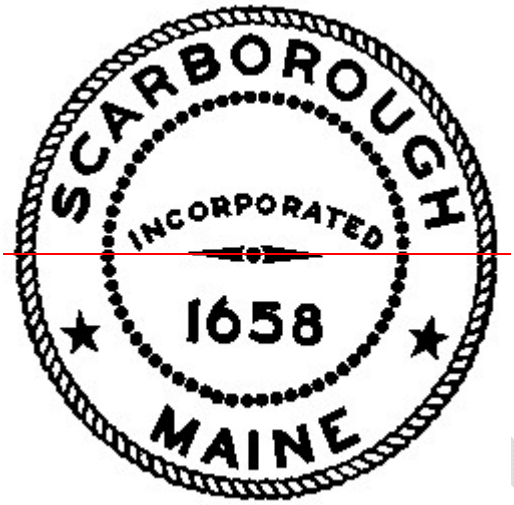
~~CHAPTER 415B~~

~~TOWN OF SCARBOROUGH~~

~~SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:~~

~~HAIGIS PARKWAY / ROUTE ONE CAPITAL IMPROVEMENT~~

~~DISTRICT~~



~~ADOPTED November 2, 2011~~

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~~**HAIGIS PARKWAY / ROUTE ONE CAPITAL IMPROVEMENT DISTRICT**~~
~~**TOWN OF SCARBOROUGH**~~

~~**Section I. Title**~~

~~**This Ordinance shall be known and may be cited as the "Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District". It is adopted under the authority of Title 30-A M.R.S.A., § 4354, and the Town's statutory and constitutional home rule powers.**~~

~~**Section II. Purpose**~~

1. **Purpose.** The Haigis Parkway / Route One / Lincoln Avenue intersection is one of the most significant intersections in the Town of Scarborough and is critical to the current and future mobility of local and regional motorists. This intersection currently serves local and regional travel on Route One, the Haigis Parkway, and Lincoln Avenue and provides important connections to Payne Road, the Maine Turnpike and the Scarborough industrial park. In addition, this intersection is an important facility for managing future traffic demands, both to provide an alternative to the high traffic volumes on Payne Road as well as to accommodate the future growth and development that is planned for land accessible from the Haigis Parkway and Route One.

   In order for the Haigis Parkway / Route One / Lincoln Avenue intersection to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and the accompanying traffic generation and demands, roadway infrastructure improvements are warranted. These improvements are highlighted in the Town-Wide Transportation Study and in the Transportation Policy Objectives of the Town's Comprehensive Plan.

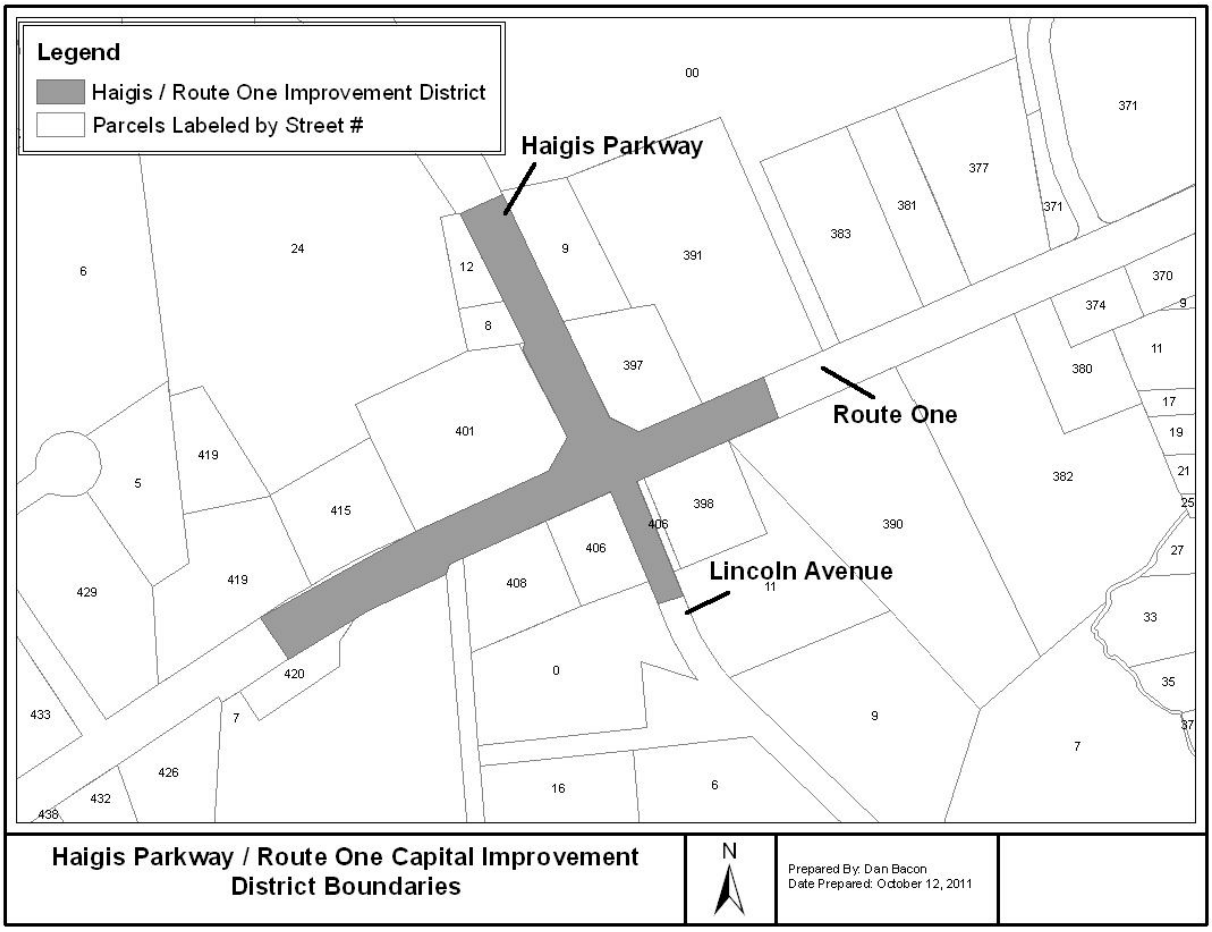
2. **Master Plan.** To that end the Town has completed a master plan for roadway infrastructure improvements that will accommodate the traffic growth projected for the next fifteen years and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. These roadway infrastructure improvements also include provisions for pedestrians in order to enhance the walk-ability and pedestrian safety of this section of Route One. The purpose of the Haigis Parkway / Route One ~~Capital Improvement~~ District is to reimburse the portion of the Town's cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

   As per Section F(1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

   a. Drawing Name: "Intersection Improvements Route 1 & Haigis Parkway, Scarborough, Maine, Cumberland County" dated August 2010 and prepared by Gorrill-Palmer Consulting Engineers, Inc.

~~1.~~ **Haigis Parkway / Route One District Boundaries.** ~~**Section III. Applicability**~~

3. The Haigis Parkway / Route One District is depicted on the map attached to this Ordinance as Appendix A.



~~C.~~ **Haigis Parkway / Route One District Fee.** ~~This Ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, new development enabled by land divisions exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), all new extractive industry operations, and to any change in use when the proposed development, whether located within or outside the Haigis Parkway / Route One Capital Improvement District, generates additional traffic within the Haigis Parkway / Route One Capital Improvement District.~~

~~**D.** The following development and construction shall be exempt from this ordinance:~~

1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.

2. Construction of accessory buildings or structures which do not generate additional vehicle trips.

3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

Section IV. Impact Fee Procedures

3. Any person who seeks a permit or approval for any development, activity or use described in Section III.A of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.

4. Preliminary determinations regarding whether a proposed development will generate traffic within the Haigis Parkway / Route One Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis (in accordance with Section V. of this ordinance), which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

Section V. Impact Fee Calculations

An impact fee shall be applied to development projects located in whole or in part within the Town of Scarborough that generate additional traffic within the Haigis Parkway / Route One Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A., §4354. The process for this impact fee calculation is as follows:

7. As per Section IV(B) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the Haigis Parkway / Route One Capital Improvement District in the P.M. peak commuter hour.

8. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or

~~data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).~~

~~**9.** The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through the Haigis Parkway / Route One Capital Improvement District within the P.M. peak commuter hour. All new trips that pass through the District shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.~~

~~**10.**~~4. The fee determination shall be based on the following:

a. The Town cost of the master plan for roadway infrastructure improvements in the Haigis Parkway / Route One ~~Capital Improvement~~ District amounts to $1,005,000, which is to be funded from this impact fee ordinance.

~~a.~~

b. *(This cost total is less than the total project cost for the Fiscal Year 2010 CIP Project because the improvements associated with the Dunstan Corner intersection plan, the Southgate intersection plan, landscaping enhancements, and the Haigis/Scottow Hill Rd. and Route One/Enterprise Dr. improvements were not included).

~~b.~~c. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1015 trip ends in the P.M. peak commuter hour of traffic.

~~c.~~d. Each additional trip generated by new development will benefit from the 1015 trip ends of capacity and will utilize one trip end of that additional capacity.

e. The fee per trip, therefore, shall be $990.00. This fee per trip equals $1,005,000 / 1015 trip ends.

~~d.~~

~~**11.** For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to Section V, subsections A through D above, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.~~

12. For any development not requiring Planning Board review but requiring the payment of an impact fee under this Ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to Section V, subsections A through E above.

13. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

Section VI. Impact Fee Payment

The impact fee amount, as determined in accordance with Sections IV and V of this Ordinance, shall be paid to the Town according to the payment schedule established under Section V, except as follows:

1. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.

2. For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.

Payments shall be tendered to the Town Engineer. Upon determining that the payment is in the correct amount, the Town Engineer shall issue a receipt for the payment and deliver the payment to the Town Treasurer.

Section VII. Haigis Parkway / Route One Capital Improvement District Boundaries

The Haigis Parkway / Route One Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A.

Section VIII. Impact Fee Trust Fund

1. There is hereby established a Haigis Parkway / Route One Capital Improvement District Trust Fund to segregate the impact fee revenue generated by this Ordinance from the Town's general revenues.

2. Funds withdrawn from this trust fund account shall be used in accordance with Section IX. of this ordinance.

Section IX. Use of Impact Fee Funds

A. Funds generated by this ordinance will be used for the purpose of financing the capital improvements identified in the master plan for roadway infrastructure improvements within the Haigis Parkway / Route One Capital Improvement District.

B. No funds shall be used for periodic or routine maintenance.

C. Given that bonds may be issued to finance the implementation of the capital improvements identified in the master plan for roadway infrastructure improvements within the Haigis Parkway / Route One Capital Improvement District, impact fee funds may be used to pay debt service on such bonds to the extent that the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section IX. A. of this ordinance.

D. Funds may be used to provide refunds in accordance with Section X.

E. Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the Haigis Parkway / Route One Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer.

Section X. Refund of Impact Fees

1. If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.

2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

Section XI. Master Plan for Roadway Infrastructure Improvements

A. As per Section IX. A. of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

Drawing Name: "Intersection Improvements Route 1 & Haigis Parkway, Scarborough, Maine, Cumberland County" dated August 2010 and prepared by Gorrill-Palmer Consulting Engineers, Inc.

~~**B.** The above cited plans may be amended by the Town Council, in accordance with Chapter 302, Scarborough Town Council Rules, Policies and Procedures Manual, if the amendments to the master plan are consistent with and further the purpose of this ordinance.~~

5. **Impact Fee Trust Funds.** There is hereby established a Haigis Parkway / Route One District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

~~**Appendix A.**~~

I. Roadway Impact Fee District – ~~Haigis Parkway / Route One~~Payne Road ~~-~~District 1

~~**U.**~~ **Purpose**

~~**CHAPTER 410**~~
~~**TOWN OF SCARBOROUGH**~~
~~**SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**~~
~~**PAYNE ROAD AREA CAPITIAL IMPROVEMENT DISTRICTS**~~

~~**ADOPTED OCTOBER 17, 1990**~~
~~**AMENDED SEPTEMBER 6, 1995**~~
~~**AMENDED DECEMBER 7, 2011**~~

~~AMENDED NOVEMBER 1, 2017~~

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~~CHAPTER 410~~
~~TOWN OF SCARBOROUGH~~
~~ROAD IMPACT FEE ORDINANCE~~

~~BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF SCARBOROUGH, MAINE, IN TOWN COUNCIL ASSEMBLED:~~

~~Section One: Purpose~~

~~This Ordinance imposes an impact fee on land development requiring review under the Town's subdivision or site plan regulations for providing new roads and related facilities necessitated by new development that impacts traffic in the Payne Road Area of the Town as defined herein. It also provides for the placement of impact fee revenues into road impact fee trust funds established for that purpose and for the administration of the impact fee ordinance, including the expenditure of funds derived from road impact fees and the refunds of unexpended funds.~~

~~Section Two: Legislative Findings~~

~~The Town Council of Scarborough, Maine finds, determines and declares as follows:~~

1. ~~A~~**.** The Town must expand its road system in order to provide adequate levels of service in the Payne Road Area of the Town if new development in the Payne Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare.~~;~~

Master Plan. ~~B. The State of Maine has authorized municipalities to adopt impact fees for various purposes, including the construction of off-site capital improvements, such as roads and traffic control devices pursuant to 30-A M.R.S.A. 4354;~~

~~C. The imposition of impact fees is a preferred method of insuring that new development bears a proportionate share of the cost of capital investments necessary to accommodate such development. Appropriate locations for new development in the Town and the capital improvements necessary to accommodate such development are identified in the Town's Comprehensive Plan and capital improvements program.~~

~~D. New development generates additional traffic, necessitating the acquisition of rights-of-way, road construction and road improvements;~~

~~E. The fees established by Section Six hereof are derived from, are based upon, and do not exceed the costs of providing additional rights-of-way, road construction and road improvements necessitated by the new developments for which the fees are levied.~~

~~F.~~ The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for an costs of additional rights-of-way, road construction and road improvements in the Town.

2.

~~Section Three: Title, Authority, and Applicability~~

~~V. A. Title.~~

~~This Ordinance shall be known and may be cited as the "Scarborough Road Impact Fee Ordinance".~~

~~W. B. Authority.~~

~~The Town Council of the Town of Scarborough, has the authority to enact this ordinance pursuant to 30-A M.R.S.A. 4354, and its statutory and constitutional home rule powers.~~

~~X. C. Applicability.~~

~~This ordinance shall apply to all new development seeking subdivision or site plan approval or the extension of previously approved subdivisions or site plans or to any change in use when the proposed development impacts traffic in the "Payne Road Area" if a building permit is issued on or after the date this Ordinance is enacted.~~

~~Section Four: Definitions~~

~~Y. A. "Developer"~~

~~Is a person commencing a land development activity which generates or attracts traffic in the Payne Road Area and which requires subdivision or site plan approval from the Town of Scarborough.~~

~~Z. B. "Capital improvement"~~

~~Includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project, including but not limited to:~~

~~(1) construction of new through lanes~~

~~(2) construction of new turn lanes~~

~~(3) construction of new bridges~~

~~(4) construction of new drainage facilities in conjunction with new roadway construction~~

~~(5) purchase and installation of traffic signalization (including new and upgraded signalization)~~

~~(6) construction of curbs, medians, and shoulders~~

~~(7) relocating utilities to accommodate new roadway construction~~

~~Capital improvements do not include site-related improvements defined herein.~~

~~AA. C. "Development"~~

~~Means any change in land use or any construction of buildings or structures or any change in the use of any structure that procedures vehicle trips within the Payne Road Area.~~

~~BB. D. "Expansion of road capacity"~~

~~Means all road and intersection capacity enhancements, including but not limited to: extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges.~~

~~CC. E. "Roads"~~

~~Means and includes arterial streets and transportation facilities associated with the arterial and state-aid highway network within the Payne Road Area of the Town and under the jurisdiction of the Town or the State of Maine.~~

~~DD. F. "Site-related improvements"~~

~~Are capital improvements and right-of-way dedications for direct access improvements to and/or within the development in question. Direct access improvements include but are not limited to the following:~~

~~(1) access roads leading to the development~~

~~(2) driveways and roads within the development~~

~~(3) acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways~~

~~(4) traffic control measurers for those roads and driveways~~

~~EE. G. "Independent Fee Calculation Study"~~

~~Means the traffic engineering and/or economic documentation prepared by a developer to allow the determination of the impact fee other than by the use of the methodology outlined in Section Six of this Ordinance.~~

~~FF.~~H. ~~"Mandatory or Required right-of-way dedications and/or roadway improvements"~~

~~Means such non-compensated dedications and/or roadway improvements required by the Town during subdivision or site plan review.~~

1. ~~I. "~~**Payne Road** **District 1 Boundaries**~~Area"~~**.** The Payne Road District 1 encompasses the following sections of roadway:

3.

~~Means the area of Scarborough, including Payne Road and State Route 114 as follows:~~

a. **District 1 - Payne Road, South Portland line to I-295 Bridge**

~~District 2 - Payne Road, I-295 Bridge through Route 114 intersection~~

~~District 3 - Payne Road, South of Route 114 to Holmes Road~~

~~District 4 - This District was repealed by the Scarborough Town Council on December 7, 2011, because the improvements in this district were accomplished.~~

~~District 5 - Route 114, between Maine Turnpike and Beech Ridge Road~~

~~Section Five: Imposition of Road Impact Fee~~

~~A. Any person who, after the effective date of this ordinance, seeks to develop land by applying for subdivision or site plan approval, or for an extension of subdivision or site plan approval issued prior to the effective date hereof, to make an improvement to land or to change the use of any land or building which will generate additional traffic in the Payne Road Area, regardless of whether the development itself is located within the Payne Road Area is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance. Preliminary determinations regarding whether a proposed development will generate traffic in the Payne Road Area shall be made by the Town Planner and the Town's consulting traffic engineer. Actual impacts shall be determined by a traffic study prepared by a traffic engineer at the developer's expense and approved by the Town's consulting engineer, unless the developer agrees with the Town's determination.~~

~~B. No new building permit for any activity requiring payment of an impact fee pursuant to this Ordinance shall be issued or renewed unless and until the road impact fee hereby required has been paid.~~

~~C. No extension of a building permit issued prior to the effective date of this ordinance, for any activity requiring payment of an impact fee pursuant to this Ordinance shall be granted unless and until the road impact fee hereby required has been paid.~~

Payne Road District 1 Fee~~**Section Six: Computation of Road Impact Fee.**~~

4. ~~A.~~ At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.

   a. ~~(1)~~ The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.

   b. ~~(2)~~ Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.

   c. ~~(3)~~ Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

   d. ~~(4)~~ Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.

   e. ~~(5)~~ Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use.

~~**B.**~~ **Alternative method for computation of fees.**

5. ~~A~~ A developer may prepare and submit an independent fee calculation study for the land development activity. The independent fee calculation shall be prepared and presented by professionals and shall establish to a reasonable certainty that the impact of the proposed activity differs substantially from other land use activity for which fees have been established. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable and may require the developer to submit additional or different documentation for consideration. If the independent fee calculation study is approved, the Town shall adjust the fee in accordance with that calculation. Appeals of action of the Town pursuant to this section may be taken to the Town Manager by filing a written request within 10 days of final determination.

~~**Section Seven: Payment of Fee**~~

~~A. The developer shall pay the road impact fee required by this ordinance to the Building Inspector or her/his designee prior to the issuance of a building permit. [amended 11/01/17]~~

~~B. All funds collected shall be properly identified by road impact fee district and promptly transferred for deposit in the appropriate Road Impact Fee Trust Fund to be held in separate accounts as determined in Section Nine of this Ordinance and used solely for the purposes specified in this Ordinance.~~

~~**Section Eight: Road Impact Fee Districts**~~

~~A. There are hereby established four (4) road impact fee districts as defined in Section 4(I) of this Ordinance.~~

6. **Impact Fee Trust Funds.** There is hereby established a Payne Road District 1 Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

J. Roadway Impact Fee District – Payne Road District 2

1. **Purpose.** The Town must expand its road system in order to provide adequate levels of service in the Payne Road Area of the Town if new development in the Payne Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare.

2. **Master Plan.** The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of additional rights-of-way, road construction and road improvements in the Town.

3. **Payne Road District 2 Boundaries.** The Payne Road District 2 encompasses the following sections of roadway:

   a. **District 2** - Payne Road, I-295 Bridge through Route 114 intersection

4. **Payne Road District 2 Fee.** At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.

   a. The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.

   b. Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.

c. Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

d. Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.

e. Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use.

5. **Alternative method for computation of fees.** A developer may prepare and submit an independent fee calculation study for the land development activity. The independent fee calculation shall be prepared and presented by professionals and shall establish to a reasonable certainty that the impact of the proposed activity differs substantially from other land use activity for which fees have been established. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable and may require the developer to submit additional or different documentation for consideration. If the independent fee calculation study is approved, the Town shall adjust the fee in accordance with that calculation. Appeals of action of the Town pursuant to this section may be taken to the Town Manager by filing a written request within 10 days of final determination.

6. **Impact Fee Trust Funds.** There is hereby established a Payne Road District 2 Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

K. Roadway Impact Fee District – Payne Road District 3

1. **Purpose.** The Town must expand its road system in order to provide adequate levels of service in the Payne Road Area of the Town if new development in the Payne Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare.

2. **Master Plan.** The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of additional rights-of-way, road construction and road improvements in the Town.

3. **Payne Road District 3 Boundaries.** The Payne Road District 3 encompasses the following sections of roadway:

   a. **District 3** - Payne Road, South of Route 114 to Holmes Road

4. **Payne Road District 3 Fee.** At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.

   a. The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.

   b. Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.

   c. Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

   d. Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.

   e. Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use.

5. **Alternative method for computation of fees.** A developer may prepare and submit an independent fee calculation study for the land development activity. The independent fee calculation shall be prepared and presented by professionals and shall establish to a reasonable certainty that the impact of the proposed activity differs substantially from other land use activity for which fees have been established. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable and may require the developer to submit additional or different documentation for consideration. If the independent fee calculation study is approved, the Town shall adjust the fee in accordance with that calculation. Appeals of action of the Town pursuant to this section may be taken to the Town Manager by filing a written request within 10 days of final determination.

6. **Impact Fee Trust Funds.** There is hereby established a Payne Road District 3 Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general

revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

L. Roadway Impact Fee District – Payne Road District 4

Payne District 4 was repealed by the Scarborough Town Council on December 7, 2011, upon completion of improvements in this district.

~~**Section Nine: Road Impact Fee Trust Funds Established**~~

M. Roadway Impact Fee District – Payne Road District 5

1. **Purpose.** The Town must expand its road system in order to provide adequate levels of service in the Payne Road Area of the Town if new development in the Payne Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare.

2. **Master Plan.** The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of additional rights-of-way, road construction and road improvements in the Town.

3. **Payne Road District 5 Boundaries.** The Payne Road District 5 encompasses the following sections of roadway:

   b. **District 5** - Route 114, between Maine Turnpike and Beech Ridge Road

4. **Payne Road District 5 Fee.** At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.

   a. The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.

   b. Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.

   c. Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

d. Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.

e. Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use.

5. **Alternative method for computation of fees.** A developer may prepare and submit an independent fee calculation study for the land development activity. The independent fee calculation shall be prepared and presented by professionals and shall establish to a reasonable certainty that the impact of the proposed activity differs substantially from other land use activity for which fees have been established. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable and may require the developer to submit additional or different documentation for consideration. If the independent fee calculation study is approved, the Town shall adjust the fee in accordance with that calculation. Appeals of action of the Town pursuant to this section may be taken to the Town Manager by filing a written request within 10 days of final determination.

6. **Impact Fee Trust Funds.** There is hereby established a Payne Road District 5 Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

~~**A. There are hereby established four (4) separate Road Impact Fee Trust Funds, one for each road impact fee district established by Section Eight of this Ordinance.**~~

N. Roadway Impact Fee District – Payne Road / Ginn Road District

1. **Purpose.** TBD

2. **Master Plan.** To that end the Town has completed a master plan for roadway infrastructure improvements that will accommodate the traffic growth ….

As per Section F(1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

a. Drawing Name:

3. **Payne Road / Ginn Road District Boundaries.** The Payne Road / Ginn Road District Boundary is depicted on the map below:

4. **Payne Road / Ginn Road District Fee.** The fee determination shall be based on the following:

   a. The Town cost of the master plan for roadway infrastructure improvements in the Payne Road / Ginn Road District will amount to $9,832,898, which is to be funded from this impact fee ordinance.

   b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1,766 trip ends in the P.M. peak commuter hour of traffic.

   c. Each additional trip generated by new development will benefit from the 1,766 trip ends of capacity and will utilize one trip end of that additional capacity.

   d. The fee per trip, therefore, shall be $5,568. This fee per trip equals $9,832,898/ 1,766 trip ends.

6. **Impact Fee Trust Funds.** There is hereby established a Payne Road / Ginn Road District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

~~**B. Funds withdrawn from these accounts must be used in accordance with the provisions of Section Ten of this Ordinance.**~~

O. Roadway Impact Fee District – Payne Road / Nonesuch River District

1. **Purpose.** TBD

2. **Master Plan.** To that end the Town has completed a master plan for roadway infrastructure improvements that will accommodate the traffic growth ….

   As per Section F(1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

   a. Drawing Name:

3. **Payne Road / Nonesuch River District Boundaries.** The Payne Road / Ginn Road District Boundary is depicted on the map below:

4. **Payne Road / Nonesuch River District Fee.** The fee determination shall be based on the following:

   a. The Town cost of the master plan for roadway infrastructure improvements in the Payne Road / Nonesuch River District will amount to $23,913,345, which is to be funded from this impact fee ordinance.

   b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 3,337 trip ends in the P.M. peak commuter hour of traffic.

   c. Each additional trip generated by new development will benefit from the 3,337 trip ends of capacity and will utilize one trip end of that additional capacity.

   d. The fee per trip, therefore, shall be $7,166.12. This fee per trip equals $23,913,345.73/ 3,337 trip ends.

5. **Impact Fee Trust Funds.** There is hereby established a Payne Road / Ginn Road District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section F of this ordinance.

~~**Section Ten: Use of Funds**~~

~~**A. Funds collected from road impact fees shall be used for the purpose of capital improvements to and expansion of transportation facilities associated with the Payne Road Area.**~~

~~**B. No funds shall be used for periodic or routine maintenance.**~~

~~**C. Funds shall be used exclusively for capital improvements or expansion within the road impact fee district, including district boundary roads, as identified in the Report entitled Computation Procedure, from which the funds were collected or for projects in other road impact districts which are of benefit to the road impact district from which the funds were collected. Funds shall be expended in the order in which they are collected.**~~

~~**D. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which road impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in paragraph A of this section and are located within the appropriate impact fee districts created by this Ordinance or as provided in paragraph C of this section.**~~

~~**E. At least once each fiscal period the Town Manager shall present to the Town Council a proposed capital improvement program for roads, assigning funds, including any accrued interest, from the several Road Impact Fee Trust Funds to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Road Impact Fee Trust Funds until the next fiscal period except as provided by the refund provisions of this Ordinance.**~~

~~**F. Funds may be used to provide refunds as described in Section Eleven.**~~

~~**Section Eleven: Refund of Fees**~~

~~**A. If a building permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition for its issuance except that the Town shall retain three (3) percent of the impact fee paid to offset a portion of the costs of collection. The developer must submit an application for such a refund to the Code Enforcement Officer not later than fifteen (15) days after the expiration of the permit.**~~

~~**B. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application of**~~

~~the developer, be returned to the developer, provided that the developer submits an application for a refund to the Code Enforcement Officer within 180 days of the ten (10) year period.~~

~~Section Twelve: Exemptions~~

~~A. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips shall be exempt from payment of the traffic impact fee.~~

~~B. Construction of accessory buildings or structures which to not generate additional vehicle trips shall be exempt from the payment of traffic impact fees.~~

~~C. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use shall be exempt from the payment of the impact fee.~~

~~Any claim of exemption shall be made prior to the time for payment of the impact fee. Any claim not so made shall be deemed waived.~~

~~Section Thirteen: Credits~~

~~A. Credit for the dedication of land for rights of way shall be valued at the most recent assessed value by the Town Assessor or by fair market value established by private appraisers acceptable to the Town. Credit for the dedication of land shall be provided when property has been conveyed at no charge to, and accepted by, the Town in a manner satisfactory to the Town Council.~~

~~B. Credit for construction of capital improvements shall be given only where:~~

~~(1) the Town and applicant agree in writing that it would be more cost effective or expeditious for the applicant to construct improvements authorized for funding under this Ordinance, or~~

~~(2) for the cost of constructing capital improvements as a condition of Planning Board approval under the Site Plan or subdivision ordinance of the Town, provided such capital improvements would be eligible for designation by the Town Council for funding under this Ordinance. In such cases, the applicant shall submit acceptable engineering drawings and specifications, and construction cost estimates to the Town which shall determine credit for construction based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates, if the Town determines that estimates submitted by the applicant are either unreliable or inaccurate. Upon final determination of all credits, the Town shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate and return such signed document to the Town before credit will be given. The failure of the applicant to sign, date and return such document with the balance of the impact fees and building permit fees within 60 days shall nullify the credit.~~

C. Except as otherwise provided in subparagraph D, credit against impact fees otherwise due will remain provisional until:

(1) construction is completed and accepted by the Town or the State, whichever is applicable, and

(2) a suitable maintenance and warranty bond is received and approved by the Town, were applicable.

D. Security shall be given for provisional credit in the form of a performance bond, irrevocable letter of credit or escrow agreement posted with and approved by the Town Manager and Town Attorney in an amount determined by the Town Manager. If the Project will not be constructed within two years of the acceptance of the offer by the Town, the amount of the security shall be increased by 10% compounded for each year of life of the security. If the construction project is not to be completed within five years of the date of the developer's offer, the Town Council must approve the construction project and its scheduled completion date prior to the acceptance of the offer by the Town. The security or replacement shall state the date for commencement of the project and the time period for estimated completion. This date and/or time period may be extended by the Town for good cause shown conditioned upon extension of the security.

E. Credit may also be given for the costs of constructing capital improvements required as a condition of Planning Board subdivision approval or a Department of Environmental Protection Site Location of Development License if the development was approved prior to enactment of this ordinance but building permits are issued after enactment. Credit shall be in an amount determined by the Planning Board, based upon the scope of the development approved by the Planning Board and/or DEP and the value of the capital improvements actually constructed. Credit shall be given only to the extent that the traffic impact of the proposed development, as determined at the time of construction, does not exceed the impacts anticipated by the subdivision or site location of development approval. The developer shall have the burden of establishing the cost of capital improvements constructed.

F. Any claim for credit must be made prior to the time for payment of impact fees. Any claim not so made shall be deemed waived.

G. Credits shall not be transferred from one project or development to another without the approval of the Town Council.

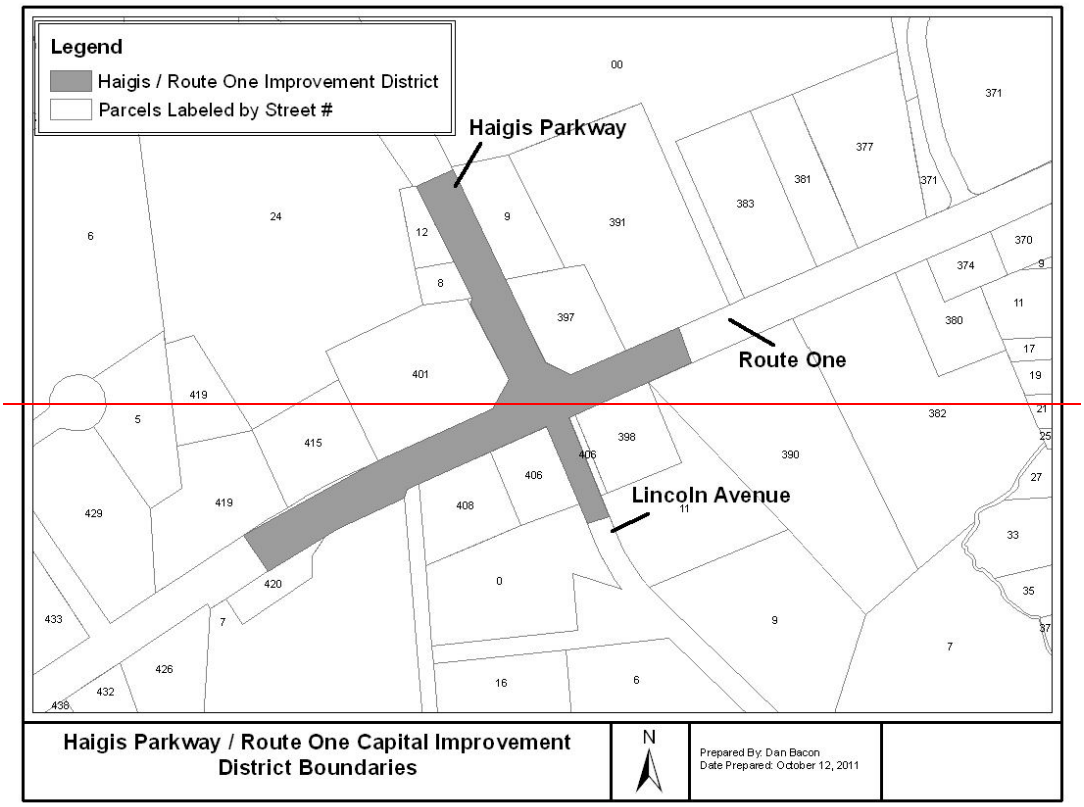
H. Determination pursuant to this Paragraph may be appealed to the Town manager by filing a written request with the Town Manager within 30 days of the determination

ORDER SETTING IMPACT FEES

AND DESIGNATING APPROVED PROJECTS

BE IT ORDERED by the Scarborough Town Council that pursuant to the Town of Scarborough Road Impact Fee Ordinance, the fees and charges shall be as specified in the

~~*Schedule of License, Permit and Application Fees* established by the Town Council for development from the Highway Impact Fee Trust Fund.~~



~~GG.~~

~~14.~~

~~Section VI. Impact Fee Payment (amended 02/07/2007)~~

~~The impact fee amount, as determined in accordance with Sections IV and V of this ordinance, shall be paid to the Town according to the payment schedule established under Section V, except as follows:~~

~~3. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.~~

~~Payments shall be tendered to the Town Engineer. Upon determining that the payment is in the correct amount, the Town Engineer shall issue a receipt for the payment and deliver the payment to the Town Treasurer.~~

~~Section VII. Dunstan Corner Capital Improvement District Boundaries~~

~~The Dunstan Corner Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A and encompasses the following sections of roadway:~~

- ~~Route 1 beginning 550 feet south of Broadturn Road extending northerly 2000 feet.~~
- ~~Pine Point Road beginning at its intersection with Route 1 extending easterly 850 feet.~~
- ~~Payne Road beginning at its proposed relocated intersection with Route 1 extending 1550 feet to align with the existing Payne Road.~~
- ~~A proposed roadway beginning at Route 1 opposite the relocated Payne Road, westerly to Higgins Street.~~
- ~~All of Harlow Street and Higgins Street.~~

~~Section VIII. Impact Fee Trust Fund~~

~~3. There is hereby established a Dunstan Corner Capital Improvement District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues.~~

~~4. Funds withdrawn from this trust fund account shall be used in accordance with Section IX of this ordinance.~~

~~Section IX. Use of Impact Fee Funds~~

~~F. Funds generated by this ordinance will be used for the purpose of completing the capital improvements identified in the master plan for roadway infrastructure improvements within Dunstan Corner Capital Improvement District.~~

~~G. No funds shall be used for periodic or routine maintenance.~~

~~H. In the event that bonds or similar debt instruments are issued for advanced provision of capital improvements for which road impact fees may be expended, impact fee funds may be used to pay debt service on such bonds or similar debt instruments to the extent that the~~

improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section IX(A) of this ordinance.

I. Funds may be used to provide refunds in accordance with Section X.

J. Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the Dunstan Corner Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer.

Section X. Refund of Impact Fees

3. If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.

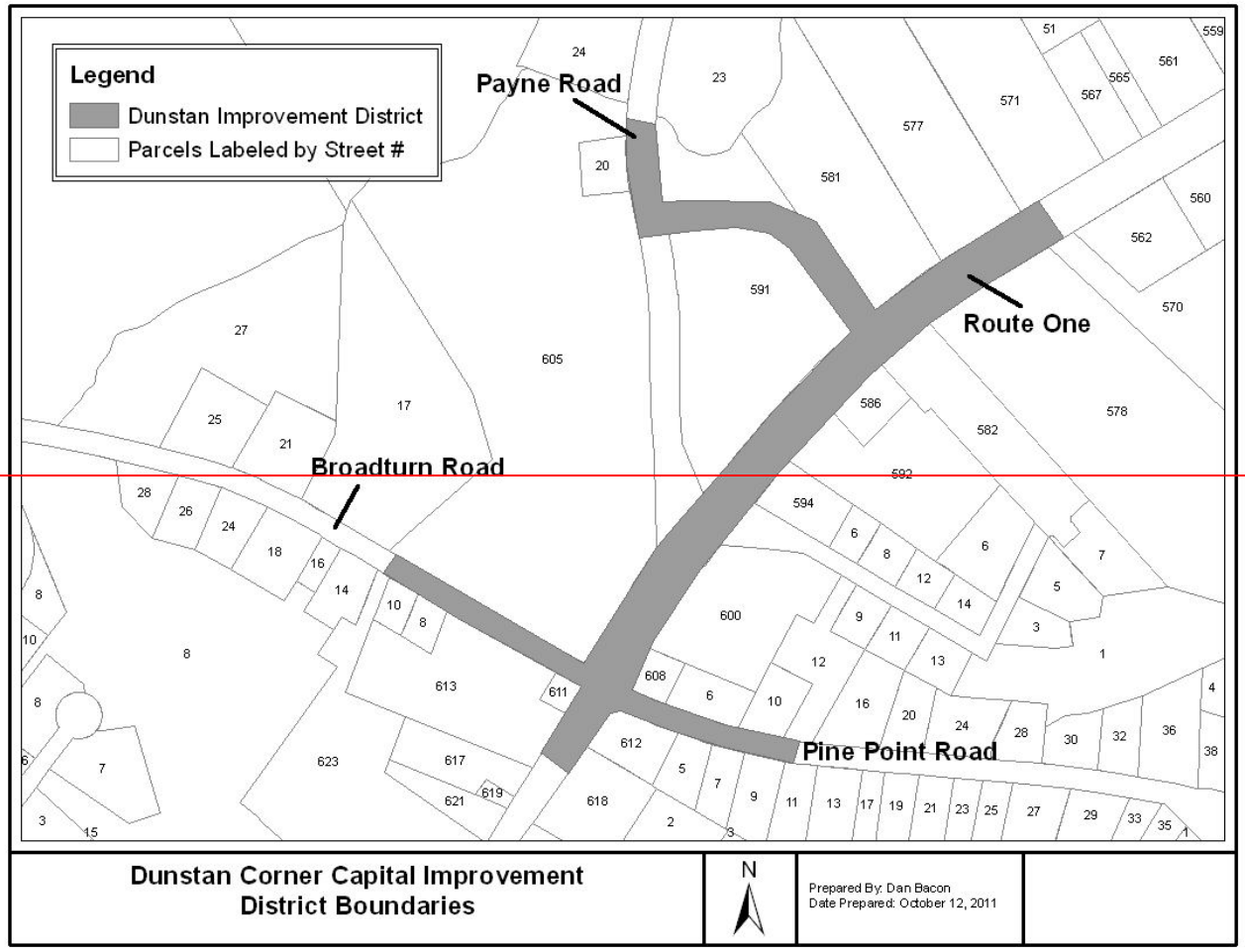
4. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

Section XI. Master Plan for Roadway Infrastructure Improvements

A. As per Section IX(A) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

Dunstan Corner, Scarborough, Maine, PIN 17343.00, September 28, 2011, Preliminary Design Scale 1" - 40', HNTB Corporation. (amended 11/16/2011)

B. The above cited plans may be amended by the Town Council, in accordance with Chapter 302, Scarborough Town Council Rules, Policies and Procedures Manual, if the amendments to the master plan are consistent with and further the purpose of this ordinance.


Legend
Dunstan Improvement District
Parcels Labeled by Street #
Payne Road
Route One
Broadturn Road
Pine Point Road
Dunstan Corner Capital Improvement District Boundaries
N
Prepared By: Dan Bacon
Date Prepared: October 12, 2011

TOWN OF SCARBOROUGH RECREATION IMPACT FEE METHODOLOGY

This methodology sets out the procedure for determining the impact fee that should be paid by development for recreational facilities and open space.

The amount of the recreation impact must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

Parks and Facilities Master Plan Applicable Cost: $10,859,900

New Projects:	$5,262,700
Expansion Projects:	$526,500
Replacement Projects:	$5,070,700

Percentage of Total Cost Assigned to New Development: 20% - $2,171,980

Total Units Per Year (10 years) – 2,610
Total Bedrooms Per Year (10 years)(assumes 3 br and under) – 5,360
Total Cost Per Bedroom (10 Years) - $405
Total Persons per Year (10 Years) – 5,243
Total Cost Per Person (10 Years) - $414

Recreation Impact Fee: $400 per bedroom

Total Captured (10 years): $2,132,000

Permit Allocation Estimates	Average Annual Permits	3 Bedroom Limits	3 Bedroom Allowed
Area 1 (Rural outside of Growth Areas) 25 per year	25	None	25
Area 2 (In Designated Growth Areas) 210 per three years	70	35%	25
Area 3 In Designated Growth Area - The Downs (400 per three years)	133	35%	47
Affordable & Workforce (100 per three years)	33	20%	7
Average Permits Available (Per Year)	261		103
Allocation by Bedroom %	**0-1 Bedroom**	**2 Bedroom**	**3+ Bedrooms**
Area 1 (Rural outside of Growth Areas)			100%

Area 2 (In Designated Growth Areas)	35%	30%	35%
Area 3 In Designated Growth Area - The Downs	34%	36%	30%
Affordable & Workforce	40%	45%	15%
Allocation by Bedroom #	**0-1 Bedroom**	**2 Bedroom**	**3+ Bedrooms**
Area 1 (Rural outside of Growth Areas)	-	-	25
Area 2 (In Designated Growth Areas)	25	21	25
Area 3 In Designated Growth Area - The Downs	45	48	40
Affordable & Workforce	13	15	5
Total Units	83	81	97
Total Units by # of Bedrooms	32%	31%	37%
Household Size	1.41	2.13	2.42
Persons Per Year	117.03	172.53	234.74
Persons per 10 Years	1,170.3	1,725.3	2,347.4
Permits per 10 Years (rounded)	830	810	970
Permits 10 years			**2,610**
Persons 10 Years			**5,243**
2021 ACS Population			**21,539**
Percentage of New			**20%**