

**AGENDA**  
**Ordinance Committee Meeting**  
**Hybrid Meeting**

**Wednesday, April 10, 2024 – 6:00 P.M.**  
**Public Safety Building - Classroom**

**TO VIEW THE ORDINANCE COMMITTEE MEETING AND OFFER PUBLIC  
COMMENT:**

<https://scarboroughmaine.zoom.us/j/85470459236>

**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 March 13, 2024.

**Item 4.** Public Comment.

**Item 5.** Chapter 1081: Cannabis Establishments.

**Item 6.** Environmental Standards.

**Item 7.** Future Agenda Items.

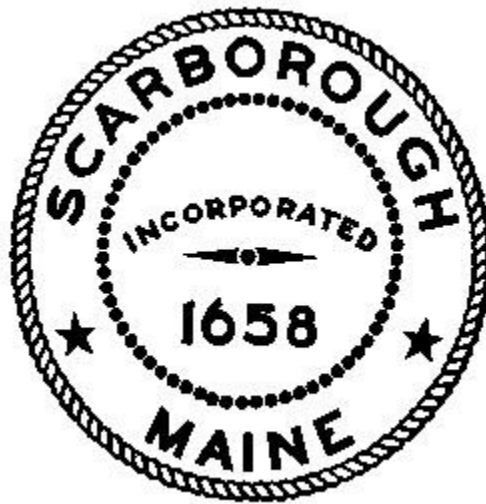
**Item 8.** Adjournment.

**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 than 50%, improvements to odor mitigation plans, enhancements to security plans, or changes to ownership interest or officers of not greater than 50%. [Adopted 08/18/2021]

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

## **Section 5. License Application.** [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 31<sup>st</sup>, immediately following said granting of said license, except that new licenses granted during July and August shall be valid until August 31<sup>st</sup> of the following calendar year. [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 flower 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, include 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.
- 
- After the fifth (5<sup>th</sup>) violation, the licensee(s) shall have their license referred to the Town Council for a suspension or revocation hearing within thirty (30) days of the complaint being verified.

~~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.

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.

# MEMO

**To: Ordinance Committee**

**From: Autumn Speer, Director of Planning and Codes**

**Date: March 13, 2024**

**Re: Environmental Standards Ordinance**

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## PROPOSED AMENDMENTS

In collaboration with the Conservation Commission, the Planning Department proposes environmental standards be added to Chapter 405B, Site Plan Review Ordinance, to enhance protections to Scarborough's saltmarshes, freshwater wetlands, rivers and streams, vernal pools, and coastal bluffs.

The Comprehensive Plan Vision Statement 1 speaks to the necessity of this ordinance:

***The Scarborough Marsh is central to the Town's identity, creating a special awareness by our residents of the importance of all of the Town's natural resources. Future land use will follow a pattern of development that is sensitive to protecting our beaches, dunes, rivers, open spaces, farmlands, and other elements that comprise our unique ecosystem.***

Several Town Ordinances mention a desire to protect environmental resources. However, outside of the Shoreland Zoning Ordinance and Conservation Subdivisions, requirements are not consistent or specific in regards to resource protection. During the development process, staff and Planning board often find themselves in a situation where state agencies have permitted a development plan that is not in line with the Town vision. Providing clear requirements for resource protections will create understanding with Developers, Staff and the Planning Board.

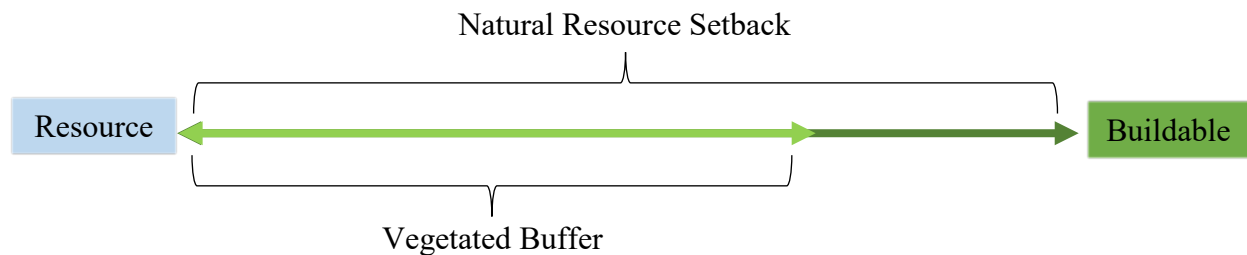
The proposed standards include the following:

- Protections for all new development requiring site plan or subdivision approval
- Definitions relating to natural resources
- Natural resource setbacks for wetlands, vernal pools, rivers, streams and brooks, coastal marshes and coastal bluffs

## Planning & Code Enforcement

- Vegetated buffers for wetlands, vernal pools, rivers, streams and brooks, coastal marshes and coastal bluffs
- Permitted activities within natural resource setbacks and vegetated buffer areas
- Specifications for natural resource protection plan
- Placeholder for potential waivers

The proposed ordinance designates specific distances from a natural resource for the overall natural resource setback and the vegetated buffer. The ordinance also specifies what is permitted in each.



Environmental Resource	Natural Resource Setback	Vegetated Buffer
Contiguous Wetlands $\leq$ 1,000 SF	25'	15'
Contiguous Wetlands $\geq$ 1,000 SF $\leq$ 10,000 SF	50'	25'
Contiguous Wetlands $\geq$ 10,000 SF	100'	75'
Vernal Pools	250'	100% of Natural Resource Setback
Coastal Bluff Zone (unstable or unmapped)	HAT + 4' + 150'	35'
Coastal Bluff Zone (stable)	HAT + 4' + 100'	25'
River, stream or brook	100'	75'
Marsh Migration Zone	HAT + 4' or HAT + 250' (whichever is greater)	100% of Natural Resource Setback

Permitted Activity	Natural Resource Setback Area – Inside of Vegetated Buffer	Natural Resource Setback Area - Outside of Vegetated Buffer
Pesticides Permitted	NO	NO
Fertilizer Permitted	NO	P
Forest Management Activities	NO	P
Invasive Species Control	P	P
Planting/establishment of Non-invasive species	P	P
Outdoor Lighting	NO	P
Fences	NO	P
Stormwater Retention or Detention Basin	NO	NO
Stormwater Conveyance Structures	NO	P
Sewage Disposal Facilities	NO	NO
Soil Erosion and Sediment Control Measures	NO	P

Shoreline Stabilization	NO	NO
Living Shorelines	P	P
Maintenance to existing structures and improvements within existing footprint	P	P
Repair, maintenance and improvements to existing public rights-of-way, utilities and sidewalks	P	P
Installation of piers or docks, provided that all required local, state, and federal approvals have been granted	P	P
Wildlife refuges, parks and recreational uses, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations	P	P
Trailhead Parking	NO	P
Grading, Fill or Excavation Activities	Only for permitted activities listed above	Only for permitted activities listed above

A [WebGIS application](#) has been developed to better understand how the proposed standards may impact parcels in Scarborough. Undeveloped parcels are those defined as having less than \$25,000 assessed value when the application was created. There may be more parcels that would be affected by the proposal with redevelopment or additional wetland mapping.

## EXISTING TOWN REGULATIONS

### Chapter 405 Zoning Ordinance

- **Section VII Conservation Subdivision Standards**

*1. The open space areas shall be contiguous areas that encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. In addition to these wetlands and natural features, the open space may also include agricultural fields, farming activities, forest lands, wildlife corridors and habitat areas, or recreation areas that will be preserved or established as part of the subdivision as well as land designed to buffer these areas. In order to be counted toward the 50% requirement, an open space area must be at least one acre in size and include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary.*

- **Section IX Performance Standards – Private Way Residential Development**

*No-disturb buffer: An area within 25 feet, horizontal distance, of the upland edge of a wetland, as defined under Section VIIA(1), which is not otherwise regulated under the Town of Scarborough Shoreland Zoning Ordinance. Disturbance of the no-disturb buffer by clearing, mowing or construction of a structure is prohibited. The no-disturb buffer shall be delineated in compliance with Section IX(1)(9)(1) below.*

- **Section XIV Village Residential Districts VR4**

*7. In the VR4 District development shall be clustered away from wetlands, watercourses and water bodies and impacts to these resources shall be avoided. Contiguous wetland*

*areas of 15,000 square feet or greater shall be protected as common open space. These open space areas shall include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary. The open space lands may include a trail system for walking, hiking, biking or similar activities subject to Planning Board approval. Where no practical alternative exists, the Planning Board may allow the crossing of wetlands for roads, driveways or utilities to provide access to, or use of, an upland area within a development.*

## **Chapter 406 Subdivision Ordinance**

Section 4 Review Criteria below requires identification for wetlands, stream, rivers or brooks and floodplain delineation. However, no specific parameters are required for the protection of such.

- K. Whenever situated in whole or in part, within 250 feet of any pond, lake, stream, river, wetland or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or wetland or unreasonably affect the shoreline of such body of water or wetland;*
- L. The proposed subdivision will not, alone or in conjunction with existing activities, Adversely affect the quality or quantity of ground water;*
- M. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;*
- N. All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district. Boundary locations of wetlands must be permanently marked;*
- O. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 M.R.S.A., section 480-B, subsection 9;*

## **Chapter 405B Site Plan Review Ordinance**

Submission requirements include a description of method to delineate wetlands and buffer. However, no specific parameters are required for the protection of such.

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

Performance and Design Standards include goals concerning site layout in regard to wetlands, but again have no specific parameters defined.

### *A. Site Utilization & Layout*

*The primary goal of the site plan review process is to produce attractive and functional sites that compliment and conform to both the natural and built environment in which they are proposed. To this end, the built portions of a site shall be laid out in only the most*

environmentally suitable locations for development. Structures and impervious areas shall be designed around, and away from, resource areas such as wetlands, steep slopes, water bodies and other unique natural features.

## **Chapter 405C Shoreland Zoning Ordinance**

The Shoreland zoning ordinance applies to all land areas within 250 feet, horizontal distance, of the

- *normal high-water line of any great pond or river*
- *upland edge of a coastal wetland, including all areas affected by tidal action, or*
- *upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream*

.....as shown in the Stream Protection Overlay District, Stream Protection 2 Overlay District Shoreland and Resource Protection districts.

- *Stream Protection Overlay District and Stream Protection 2 Overlay District applies in addition to the Zoning Ordinance*
- *Resource Protection District, this Ordinance applies in place of the Scarborough Zoning Ordinance*

Shoreland Zoning stipulates activities that are permitted in the different districts.

### **PROCESS TIMELINE**

The Conservation Commission began the ordinance drafting at their meeting on August 9, 2023. Revised drafts were presented and discussed at their meetings on October 16, 2023, November 13, 2023, and December 11, 2023.

On January 24, 2024, the Conservation Commission voted to recommend the final draft be presented to Ordinance Committee. On February 28, the Conservation Commission made an amendment to the final draft addressing the marsh migration zone to be more in line with the Resource Protection Standards.

Staff has a review scheduled with SEDCO later this month.

### **ATTACHMENTS**

1. Draft Environmental Standards



**Conservation Commission Approved Draft 1.24.24  
Amended 2.28.24**

**SECTION XXXX. ENVIRONMENTAL STANDARDS – NATURAL RESOURCE PROTECTIONS**

**A. PURPOSE**

The Scarborough Marsh is central to the Town's identity, creating a special awareness by our residents of the importance of all of the Town's natural resources. Future land use will follow a pattern of development that is sensitive to protecting our beaches, dunes, rivers, open spaces, farmlands, and other elements that comprise our unique ecosystem. Natural resource protections are established to:

- Maintain, and where possible improve, the quality of surface waters and ground water by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen.
- Protect, and where possible improve, potential water supplies and aquifers and aquifer recharge areas.
- Protect, and where possible improve, wildlife habitats and maintain ecological balance.
- Protect, and where possible improve, unique or unusual natural areas and rare and endangered plant and animal species.
- Protect, and where possible improve, shellfish and fisheries.
- Prevent the destruction of, or significant changes to, wetlands, related water bodies and adjoining land which provide flood protection, and to protect persons and property against the hazards of flood inundation by assuring the continuation of the natural or existing flow patterns of streams and other water courses within the Town.
- Prevent the expenditure of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.

The provisions and criteria set forth in this Section are in addition to the provisions of applicable state and federal laws and regulations, other sections of this Site Plan Ordinance, Zoning Ordinance, and other local ordinances and regulations.

Where any provision of this Section conflicts with a state or federal law or regulation, another section of this Site Plan Ordinance, Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.

Nothing in this Section shall permit a use or activity which is contrary to any other provision of the Zoning Ordinance.

**B. APPLICABILITY**

These requirements shall apply to all **new development requiring site plan or subdivision approval** affecting any of the following natural resources:

- All vernal pools.
- All wetlands.
- All non-tidal perennial river, stream, or brook.
- All tidally influenced waterways.
- All coastal bluffs.

## **C. DEFINITIONS**

### **Coastal Bluff:**

Defined as a steep shoreline slope formed in sediment (loose material such as clay, sand, and gravel) that has three feet or more of vertical elevation just above the high tide line. Cliffs or slopes in bedrock (ledge) surfaces are not bluffs and are not subject to significant erosion in a century or more. Beaches and dunes do not form bluffs, except along the seaward dune edge as a result of erosion.

### **Coastal Wetlands:**

Coastal Wetland means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest astronomical in which an activity is proposed. Coastal wetlands may include portions of coastal sand dunes.

### **Diameter at Breast Height (DBH):**

DBH is the diameter of a tree measured 4.5 feet above the ground.

### **Forested Wetland:**

Forested wetland means a regulated wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

### **Fresh Water Wetland:**

Freshwater wetland means freshwater swamps, marshes, bogs, and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and not considered part of a great pond, coastal wetland, river, stream, or brook.

### **Highest Astronomical Tide (HAT):**

Highest Astronomical Tide is the elevation of the highest predicted astronomical tide expected to occur at a specific tide station over the National Tidal Datum Epoch (NTDE). The NTDE is a specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values for tidal datums. The Maine Geological Survey has defined the HAT, and approximated its extent along the Maine coastline.

**Marsh Migration Area:**

Marsh migration area are inland areas where salt marsh vegetation will likely expand into as a result of sea level rise.

**Natural Resource Setback:**

A natural resource setback is a defined distance between a river, stream, or brook; wetland; or vernal pool, and any upland development and may include a vegetated buffer as required.

**River, Stream or Brook:**

River, stream or brook means a channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics:

- It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- The channel bed is primarily composed of mineral material such as sand and gravel, parent material, or bedrock that has been deposited or scoured by water.
- The channel contains aquatic animals such as fish, aquatic insects, or mollusks in the water or, if no surface water is present, within the stream bed.
- The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch, grassy swale, or other drainage way constructed, or constructed and maintained, solely for the purpose of draining stormwater.

**Vegetated Buffer:**

A vegetated buffer is part of the natural resource setback area that maintains the natural vegetation cover from the natural resource for a specified distance. Limited activity may take place in the vegetated buffer.

**Vernal Pool:**

Vernal pools or "spring pools" are shallow depressions that usually contain water for only part of the year. "Significant vernal pools" are a subset of vernal pools with particularly valuable habitat. Vernal pools must be identified between April 10 and May 10 by a qualified wetland scientist.

**D. NATURAL RESOURCE SETBACKS AND BUFFERS REQUIRED**

A natural resource setback is a defined distance between a river, stream, or brook; wetland; or vernal pool, and any upland development. Depending upon the type of resource, the natural resource setback may also contain a vegetated buffer. The required minimum vegetated buffer is a portion of the natural resource setback area directly adjacent to the resource and maintains the natural vegetation cover from the natural resource for a specified distance. Minimum vegetated buffers must include appropriate native vegetation. Lawn areas are not permitted.

If the required vegetated buffer area contains an area that has a slope of 10% or more for at least 10 feet in a direction perpendicular to the edge of the jurisdictional area, the required width of the natural resource setback and vegetated buffer shall be increased by 10 feet respectively.

All natural resource setbacks and vegetated buffers shall be marked with permanent pins every 50-100' and signage as determined by the Planning Board. All required boundary markers shall be installed before project construction commences.

The following required natural resource setbacks and minimum vegetated buffer width standards apply in accordance with the type of resource identified as follows:

Environmental Resource	Natural Resource Setback	Vegetated Buffer
Contiguous Wetlands $\leq$ 1,000 SF	25'	15'
Contiguous Wetlands $\geq$ 1,000 SF $\leq$ 10,000 SF	50'	25'
Contiguous Wetlands $\geq$ 10,000 SF	100'	75'
Vernal Pools	250'	100% of Natural Resource Setback
Coastal Bluff Zone (unstable or unmapped)	HAT + 4' + 150'	35'
Coastal Bluff Zone (stable)	HAT + 4' + 100'	25'
River, stream or brook	100'	75'
Marsh Migration Zone	HAT + 4' or HAT + 250' (whichever is greater)	100% of Natural Resource Setback

\*Where any provision of this Section conflicts with a state or federal law or regulation, another section of this Site Plan Ordinance, Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.

The starting point for measuring setbacks for stream and rivers shall be the normal high water line.

The starting point for measuring setbacks for vernal pools shall be the outer depression edge of the vernal pool as identified by a qualified wetland scientist.

The starting point for measuring setbacks for coastal bluffs shall be the highest point of the bluff.

## E. PERMITTED ACTIVITIES

Activities that do not involve the erection or construction of any structure or impervious surface, will not alter the natural surface configuration by the addition of fill or by dredging, will not result in site alterations, and is otherwise permitted by the Zoning Ordinance are permitted as shown in the following table. Uses not specifically identified shall be prohibited.

Standards and Permitted Activity use table abbreviations are as follows:

P – Permitted by Right  
 NO – Not a Permitted Activity  
 NA – Not Applicable

Permitted Activity	Natural Resource Setback Area – Inside of Vegetated Buffer	Natural Resource Setback Area - Outside of Vegetated Buffer
Pesticides Permitted	NO	NO
Fertilizer Permitted	NO	P
Forest Management Activities	NO	P
Invasive Species Control	P	P
Planting/establishment of Non-invasive species	P	P
Outdoor Lighting	NO	P
Fences	NO	P
Stormwater Retention or Detention Basin	NO	NO
Stormwater Conveyance Structures	NO	P
Sewage Disposal Facilities	NO	NO
Soil Erosion and Sediment Control Measures	NO	P
Shoreline Stabilization	NO	NO
Living Shorelines	P	P
Maintenance to existing structures and improvements within existing footprint	P	P
Repair, maintenance and improvements to existing public rights-of-way, utilities and sidewalks	P	P
Installation of piers or docks, provided that all required local, state, and federal approvals have been granted	P	P
Wildlife refuges, parks and recreational uses, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations	P	P
Trailhead Parking	NO	P
Grading, Fill or Excavation Activities	Only for permitted activities listed above	Only for permitted activities listed above

Permitted fertilizers must be low phosphate slow release in areas of fresh water impact and slow release nitrogen in areas of coastal water impacts, both at a rate recommended from a soil test

Depending on the buffer type, revegetation of buffers must use appropriate native plants.

Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered landscape Architect, or Qualified Resource Buffer Professional.

When forest management activities are permitted, harvesting up to 20% of the total volume of each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed.

Reconstruction and modifications of existing structures is permitted; however, footprint expansion must move landward to the greatest extent practical.

Fences may be constructed along the vegetated buffer line; however, they must have no footings and no ground disturbance within five feet (5') of the vegetated buffer.

## **F. NATURAL RESOURCE PROTECTION PLAN REQUIRED**

When natural resources exist on a site proposed for development, a Natural Resource Protection Plan shall be submitted as part of the Site Plan Application and/or Subdivision Application and include the following information:

- Written narrative to accompany plans on how impacts to natural resources have been minimized through the project design to the maximum extent possible and how the resource and resource buffers will be maintained and/or improved. .
- Location of protected resource(s) and wetland delineation (completed in the last five years), if applicable. The exact location of a wetlands boundary shall be determined through a field investigation by a qualified professional.
- Location of all required setbacks, buffer areas and associated easements required for access for long term maintenance and management needs.
- Location of all existing and proposed buildings, structures, streets, driveways, and other site improvements.
- Location and type of permanent resource boundary markers shall be shown on the plan.
- A note stating the limits of fertilizer application required.
- A note stating no pesticides shall be used.

## **G. WAIVERS – NATURAL RESOURCE PROTECTIONS**

The Planning Board may review waivers to natural resource protection standards for the following:

- 1.