

MINUTES
Ordinance Committee Meeting
Wednesday, March 13, 2024 – 6:00 P.M.

Item 1. Call to Order. J.M. Caterina, Chair, called the meeting to order at 6:01pm

Item 2. Roll Call. Committee members Councilor Jean-Marie Caterina (Chair), Councilor Don Hamill, and Councilor April Sither were present. Liam Gallagher, Assistant Town Manager, was also present.

Item 3. Approval of minutes from February 14, 2024. Motion by D. Hamill, seconded by A. Sither, to move approval of the February 14, 2024 meeting minutes as written.

Vote: 3 Yeas. Motion Passes.

Item 4. Public Comment. The following public comments were made:

- Jill Cohan, Cannabis Attorney with clients from Commercial Road and Snow Canning spoke in regards to Scarborough having one of best Cannabis ordinances around that was just implemented in August 2023 so it needs time to work. She also spoke in regards to the Town being unable to limit caregivers/medical cultivation so these changes would only apply to 5 adult use cultivation businesses.
- Christopher McNeil, owner of Coastal Remedies spoke in regards to his personal and professional life and the effects of phasing out his business. He also spoke in regards to the number of odor complaints, communication involved the odor complaints and giving the new ordinance time to work.
- Brandon Albert, owner of a Cannabis business in Pine Point spoke in regards to the personal and professional lives of cannabis business owners and the impacts the proposed changes would cause. He also spoke in regards to odors that omit from other businesses and how they are not required to mediate it.
- Mike Shannon, owner of Shannon’s Best Buds and Secret Stash on Snow Canning and Holly Street spoke in regards to the impact phasing out businesses would have to the personal and professional lives of cannabis business owners. He also spoke in regards to how the Town is unable to distinguish between odor coming from cannabis cultivation business vs home growers.
- Derek Shirley, spoke in regards to what is happening with Cannabis on the State level and the work Stacey Brenner is doing to help Cannabis businesses.

JM. Caterina closed public comment at 6:25pm and recommended everyone submits comments via email so it can be included in the official record.

The following comments submitted via email:

“March 13, 2024

I am writing in response to the changes to the odor ordinance being introduced at the meeting tonight.

The new ordinance was voted on by the council August 16, 2023 and as of that day till February 14, 2024 there have been 73 complaints. There are approximately 50 homes within the 750' perimeter for complaints. This does not take into account the people that walk in the area that can also make the complaints. The 4 complaints within 48 hours threshold was achieved three times. The first one was deemed as a mishap in the system. The second one the code officer investigated and found no odor detected. The third was over the weekend, no response from the town.

The same neighbors that are making the complaints state that since the new ordinance has been in effect there have been no changes in the odor. I find that very difficult to comprehend knowing the amount of time and money that went into making the changes within the building and units.

Marc and I as owners of 10-20 Snow Canning and cultivators take being a good neighbor very seriously and believe that the odor complaints are just the vehicle to get to the final destination of closing all the cannabis cultivation businesses.

Since the neighbors are not getting the results they want they are now wanting to make changes to the ordinance again. I ask myself who is being the good neighbor and who is being the nuisance and how many complaints will it take from the same people to make the town council realize who is who.

Thank You,

Shelley M. Pelletier”

“March 13, 2024

*Chair Councilor Jean Marie Caterina
Councilor Donald Hamill
Councilor April Sither*

To the Scarborough Town Council Ordinance Committee:

I am legal counsel to numerous Scarborough-based marijuana businesses, including ZGE Botanicals at 4 Commercial Road, Coastal Remedies at 3 Commercial Road, and a handful of businesses at the Snow Canning facility. I offer public comment in response to the Ordinance Committee's consideration of ordinance changes that could include an attempt to totally phase-out marijuana cultivation in Scarborough.

I have had an opportunity to review the history of odor complaints on file with the town. There have been no complaints since 2/17/2024. There have only been ten complaints in 2024. There have been no substantiated complaints. There have been no Notices of Violation issued based on odor complaints. No fines have been assessed based on odor violations. The odor ordinance in its current form has been in place since August of 2023. Scarborough has THE most robust odor ordinance in the state. I would ask that instead of trying to eradicate an industry, that Scarborough give the ordinance time to work and enforce it.

If Scarborough were to move forward to eliminate marijuana cultivation, the town would be unfairly targeting only five businesses. Towns cannot prohibit or limit the number of medical marijuana caregivers. So an ordinance phasing-out cannabis cultivation could only apply to adult use cultivation operations, of which there are only five in Scarborough. I represent two of them. My client, ZGE Botanicals, at 4 Commercial, received their first building permit in 2016, and harvested their first crop in 2017. Their facility has never had an odor complaint in nearly 8 years of operations. My client, Coastal Remedies, at 3 Commercial, acquired this facility from Port City Relief. Port City had

been cultivating marijuana at this location since 2013. Coastal Remedies has been the subject of odor inquiries, but no substantiated odor complaints. They have been working on identifying the source of and remediating any odor issue at the facility.

I understand that marijuana fatigue for the Council is real. I understand the instinct to shut it all down and end the odor controversy. However, nothing the Council does will eliminate marijuana cultivation in Scarborough. Because of the protections for medical caregivers, Scarborough would maybe be able to phase-out highly regulated adult use operators and then be left with medical caregiver cultivation that is a much less regulated program at the state level. It makes no sense. The town is unfairly targeting five businesses. Enacting an ordinance that phases out cultivation over a five-year period, or any-year period, renders these businesses instantly valueless in their current location.

My clients have built businesses and made significant financial investments in Scarborough, just to have it all wiped out with a vote and the stroke of a pen. There are ten kids being raised by the owners of ZGE Botanicals and their Scarborough facility employs fifteen (15) people. Potentially losing value in the business they've built would be devastating for their families and for their fifteen (15) employees. The owner of Coastal Remedies has three kids and the facility employees thirty (30) people. It would be equally devastating to his family, and the thirty (30) employees, for him to lose all value in his business.

I would offer two options for the Council to consider:

- Cap the size and number of adult use cultivation licenses.*
- Put effort into enforcing your odor ordinance. Give the ordinance time to work.*

If someone is not able to comply, you can force them to hire their own expert to address the odor issue. You can issue notices of violation. Ultimately you can issue fines.

Thank you for your consideration.

Sincerely,

Jill G. Cohen, Esq."

"Date: March 13, 2024 at 5:11:31 PM EDT

Subject: Ordinance Committee Meeting 3/13/24

Dear Councilor Caterina,

I hope this email finds you well. I appreciate the opportunity to provide feedback on the ongoing discussions regarding cannabis ordinances and odor enforcement in Scarborough. As a registered medical cannabis caregiver in the state of Maine and the town of Scarborough, I am deeply invested in these matters and wish to offer some insights based on my experiences and observations.

Regarding the concerns raised about odor enforcement, I want to reiterate that as a registered medical cannabis caregiver, I have never had a substantiated odor complaint against my unit. Additionally, to my knowledge, since August, there have not been any substantiated odor complaints in the Pine Point area. It's crucial to acknowledge that the number of odor complaints may not accurately reflect the actual situation, especially when they originate from a small group of abutters.

I understand the town's frustration with the ongoing odor issue, and while I acknowledge the need for action, I respectfully suggest that the proposed solution of closing small businesses may be extreme and not entirely warranted by the available data. It's essential for the town to uphold its obligation by substantiating odor complaints properly before considering such drastic measures. Furthermore, it's

important to recognize the potential consequences of forcing businesses to close, particularly those operating within the medical cannabis framework. Maine has not previously encountered a situation where medical cultivation has been discontinued, and I believe it's crucial for the council to carefully consider alternative solutions that address odor concerns while minimizing the impact on small businesses, caregivers, and license holders. It's important to remember that patients, vendors, and families relying on these services would also face significant hardship in the event of closures.

Taking away the livelihood of over ten small business owners based on unsubstantiated odor complaints is profoundly unfair. Additionally, depriving patients of access to the medicine they rely on is not only unjust but also deeply distressing. Many license holders have invested significant time and resources into improving our facilities to ensure efficient functionality and compliance with regulatory standards, making it incredibly challenging to recuperate the time and money invested. Furthermore, the prospect of relocating, both physically and financially, presents a daunting challenge that could significantly impact our ability to continue serving our community.

Scarborough has always been supportive of small businesses, and I urge the council to consider the ripple effects on license holders, patients, vendors, and families who rely on these services when making decisions about cannabis ordinances. Thank you for considering my perspective on these important matters.

*Sincerely,
Stephen Pachuta
Up North Gardens LLC”*

*“Date: Thu, Mar 14, 2024 at 1:43 AM
Subject: Attention: ordinance committee cannabis*

Thank you for taking to time to read my email and consider the opinions of both sides regarding the cannabis oder mitigation.

I have no financial stake in the cannabis industry but I am concerned about the potential hundreds of our Scarborough residents being out of work.

I live near the corner of rt1 and pine point road and drive down to pine point beach everyday to walk my dogs on the beach. Most days coming over the bridge at snow canning I can smell the sea urchin processing facilities and their numerous totes covered in sea creature biproduct baking in the sun.

I’ve also been made aware that there is a legal home grow on holly street, where the majority of the cannabis odor complaints come from.....so how can we point the blame at snow canning?

What if that facility was a brewery? They would produce smells from processed hops and yeast. Where is the line drawn at eliminating an industry in our town based on offensive smells?

Please create ordinances based on data and verified evidence. Also, please consider enforcement action based on Scarborough's current Good Neighbor ordinance.

Thank you for considering not phasing out these recreational grows as we know this will not eliminate the medical cannabis growers in the very same facilities.

*-Peter Mahar
1 Griffin rd
Scarborough Maine 04074”*

*“Date: Thu, Mar 14, 2024 at 1:43 AM
Subject: Attention: ordinance committee cannabis*

Thank you for taking to time to read my email and consider the opinions of both sides regarding the cannabis oder mitigation.

I have no financial stake in the cannabis industry but I am concerned about the potential hundreds of our Scarborough residents being out of work.

I live near the corner of rt1 and pine point road and drive down to pine point beach everyday to walk my dogs on the beach. Most days coming over the bridge at snow canning I can smell the sea urchin processing facilities and their numerous totes covered in sea creature biproduct baking in the sun.

I’ve also been made aware that there is a legal home grow on holly street, where the majority of the cannabis odor complaints come from.....so how can we point the blame at snow canning?

What if that facility was a brewery? They would produce smells from processed hops and yeast. Where is the line drawn at eliminating an industry in our town based on offensive smells?

Please create ordinances based on data and verified evidence. Also, please consider enforcement action based on Scarborough's current Good Neighbor ordinance.

Thank you for considering not phasing out these recreational grows as we know this will not eliminate the medical cannabis growers in the very same facilities.

*-Peter Mahar
1 Griffin rd
Scarborough Maine 04074”*

*“Date: Thu, Mar 14, 2024 at 6:12 PM
Subject: Ordinance Comittee r/t Cannabis*

Good afternoon members Caterina, Sither and Hamil (and hello Liam),

My name is Joanna Russell and I am a medical cannabis manufacturer at 15 Holly St. Although my business is not directly impacted by the conversations regarding cultivation and odor, I do believe I can speak to some of the concerns voiced by members of the community at the meeting last night and offer some potential solutions.

I'd like to address the use of law enforcement. The mere use of the words "law enforcement" triggers a reaction in this community that requires a level of delicacy. I could tell from Ms. Sither's comments that she was acutely aware of that. I certainly understand that as a town, it's logical and reasonable to utilize existing resources within the town to investigate complaints that could occur at any time of day or night, without warning. Law enforcement is already on the road, they are available 24/7/365, and the systems are already in place for dispatching. How this is worded within your ordinance and in communications to residents is critical. I believe the cannabis community will be more understanding, supportive, and receptive if language exists to establish that utilization of law enforcement to substantiate or invalidate a complaint is simply a cost effective and efficient use of resources rather than a decision rooted in stigma or implying guilt. Please outline that an officer is not authorized by the town to enter premises for an odor complaint, as substantiating one would not necessitate it. Outline that an officer should only investigate within the confines of that residence. Period.

I think a show of good faith while the Good Neighbor ordinance is under review/revision is also a very fair option to consider. If disruptive odor, noise, and light may be reported, having language within the good neighbor ordinance for nuisance complaints sounds perfectly placed. I would imagine that if neighbors called

and reported noise and/or light multiple times when there was none, that the neighbor making nuisance complaints would reconsider calling in unfounded reports when accountability is expected. This places accountability on both parties.

I appreciate your time reading this and am always happy to communicate further, answer questions, or attempt to liason as best I can.

Side note, I haven't smelled cannabis once since the ordinance went into effect down here.

~Joanna

*Joanna Russell
Norumbega Provisions”*

*“Date: Fri, Mar 15, 2024 at 2:10 PM
Subject: Ordinance Committee re: Cannabis*

Dear Committee Members,

According to the Tampa Bay Times regarding book banning, “Of the roughly 1,100 complaints recorded in Florida since July 2022, more than 700 came from two counties ... Together the two districts make up less than 3% of the state's total public school enrollment”

Much like banning books in Florida based upon the will of the few, Scarborough is considering giving disproportionate representation control over cannabis to appease the will of the few. While I suspect that those who complain see themselves as self-styled warriors for justice, I hope the board members who were elected to represent the entirety of Scarborough will do their thankless civic duty and support the cannabis industry that the citizens overwhelmingly support.

*Thanks,
Steve Silberberg”*

*“Date: Fri, Mar 22, 2024 at 2:56 PM
Subject: Medical Cannabis Community - Odor Ordinance*

Good afternoon,

First & foremost, I would like to thank the Town of Scarborough for being so open to hearing the concerns and statements from the Medical Cannabis Community during the most recent town council Ordinance meeting on 3/13/24. In addition, I would like to thank Assistant Town Manager Liam Gallagher for his continued openness & work on the licensing, ordinance & odor mitigation.

Approximately seven years ago, my life partner Greg Collymore & I decided we need to make a lifestyle change away from long corporate hours, business travel, constant putting out fires & increased work stress levels. Greg has previously owned his own businesses since graduating from St Joes in Windham back in 1994, He was one of the first black owned retail stores in the Maine Mall eventually moving to the Rockingham Park Mall in NH and then another store just outside of Boston. With a long commute five days a week for over 15 years, it was time for a change. During this same time, I was working in corporate disability insurance assisting disabled claimants with obtaining benefits for both small and jumbo size insurance companies locally. Although rewarding at times, the job became less about helping others and more about producing results, traveling to save accounts or

close deals and training & managing over 150 employees. I was also at a point in my life where I knew a change was needed for both my physical & mental health.

Greg & I sat down with our entire family and after discussing our interests, passions and strengths, the idea of growing medical cannabis as a business as well as the idea of being able to help people kept coming up. I have always been an avid gardener with a passion for helping others. I am 52 years old & back when I was 29 years old, I had a stroke, then shortly after was diagnosed with Lupus (an autoimmune disease). Lupus can be a debilitating disease with severe symptoms – especially when I undergo flares. Stress is the number one driver for flares. I am currently on 7 different medications and suffer many side effects from each as well. Having an alternative treatment to alleviate symptoms (naturally) from plants that you grow yourself was something I never thought possible in our time. Growing clean, quality medical cannabis for others to have as part of their treatment was a way in which we knew we could help people in our community while making a small family business working hard until our retirement (in about 15 years or so if all goes well.

Although it was one of the scariest changes we have ever made, neither of us were ever afraid of change and hard work. So, in January of 2018, we signed a lease for space that was a 7-minute commute at 10 Snow Canning Rd Scarborough Maine. This was honestly one of the best decisions we have ever made for our wellbeing, for our family and for our community as we see what a positive impact this has had on all of this. We took our entire life's savings and retirement and poured it into this business – definitely a risk. But one that would be worth it - to us.

Never would I have imagined just how rewarding this industry could be! First, being in a building with other Caregivers has been such an asset. Being newer to this industry there was a lot we needed to learn and having other Cultivators as neighbors that were more than willing to assist us has been instrumental. The compliance side of this industry is constantly changing and the growing & science side of the cultivation working with live plants always seems to present constant obstacles that are best solved by a group of us. Additionally, the landlords here at 10 snow Canning Rd are really great people who treat their employees and their tenants well. They care about what happens to the people here & work with you when you are in need – whatever that may be. This is rare, in our opinion.

In all honesty, these last years have been some of the hardest working years in my life (mostly physically) however they have also been the best years of my life as well. We have worked every single day since January 2018 without missing a day - (the plants don't know when its Thanksgiving or Christmas) & since the plants are living, they need food and eyes on them every day. Although tiring and laboring, it has not been stressful like our other jobs we have held - (in fact it's soothing to the soul & so rewarding).

One area of the business that we may have greatly underestimated was the impact of what we do & how our medical cannabis plants benefit our community. Most of these patients are people that are our local neighbors, friends, family, teachers, fishermen & veterans just to name a few. Whether patients seek medical cannabis for PTSD (Post Traumatic Stress Disorder), whether to alleviate pain & side effects from Chemo or other medications, helps them cope with depression, eases their pain from failed surgeries, assists their vertigo, helps them sleep at night, and so on & on, they all have two things in common: they are all people in our community and they all receive some level of relief from the plants we grow. This is truly amazing. We have developed special relationships with these people who count on us to help them.

Please know we definitely recognize that not everyone is on board with this concept and may be offended by the smell cannabis may give off at times of the harvest. We have always taken this concern seriously and of the mind set of wanting to help educate or do what we can to help mitigate the odor. My parents and brother & his wife lived in Scarborough for many years before moving to Apollo Beach Florida which is just south of Tampa & a town much like Scarborough that sits on the coast. About 7 years ago, an old tomato farm in Apollo Beach was turned into a huge medical Cannabis Cultivation facility which is about 150,000 sq feet. The cultivation invested millions of dollars into odor mitigation alone. The odor equipment that takes up an entire side of their facility is massive & makes a huge difference in mitigating the odor however even with all that money invested into the best equipment, you can still smell cannabis from time to time or when the wind blows a certain way or when they are harvesting at different times/days. The smell, as we know, can be pleasant to some & offensive to others.

Again, we take our neighbor's complaints about the odor they may find offensive seriously and have always wanted to find ways to help find a solution- together. I just hope folks realize that odor mitigation will never be 100% odor free.

The recent discussions and verbiage around phasing cannabis out of Scarborough and potentially rezoning the land to eliminate cannabis cultivation has been unsettling and very scary. All of the cannabis business owners, much like any small business owner, pour their hearts, souls & savings into their businesses. To potentially face elimination of your business without the ability to sell it to at least recoup your investment is something I never thought we would face. This is the first time since 2018 that we have been stressed and very concerned. We don't make a ton of money after our expenses believe it or not, but we do believe in what we do. We hope to be able to continue to serve our community and continue our passion.

Taking away the ability to help our neighbors and community would be devastating to them as well. Additionally, every penny, every hard worked hour and tear shed would all be for nothing if cannabis is phased out of Scarborough. We hope and pray this will not be the end result for us or for any of our cannabis business community. We ask that you please continue to work with us all as we believe there is a solution that we can all live with. Thank you for taking the time to read this email/letter and thank you for considering being open for solutions.

Sincerely,

*Jennifer & Greg Collymore
Unit C,D & Office #29"*

Item 5. Chapter 1081: Cannabis Establishments. Discussion ensued with committee members and Assistance Town Manager, Liam Gallagher.

Motion by D. Hamill, seconded by A. Sither, to move approval for Councilor Caterina and Assistant Town Manager, Liam Gallagher, to work on Cannabis Enforcement, Section 11 prior to the next Ordinance Committee meeting.

Vote: 3 Yeas. Motion Passes.

Item 6. Commercial Property Assessed Clean Energy (C-PACE). Jami Fitch gave an overview of this item then answered questions that the committee had when this was originally presented to them on October 12, 2023, and current questions.

Motion by A. Sither, seconded by D. Hamill, to move approval the proposed Commercial Property Assessed Clean Energy (C-PACE) Ordinance forward to Town Council, as follows:

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 providing 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.

Vote: 3 Yeas. Motion Passes.

Item 7. Chapter 415: Impact Fees Ordinance. Autumn Speer, Planning Director and Angela Blanchette, Town Engineer gave a presentation of this item and answered questions from the committee. They then went over next steps for implementation.

Item 8. Future Agenda Items.

- Cannabis—additional changes to enforcement
- Possible items from the March 14, 2024 Rules and Policies Agenda
- Environmental Standards
- Site Layout and Architecture

Item 9. Adjournment. Motion by Councilor Hamill, seconded by Councilor Sither, to move approval to adjourn the regular meeting of the Scarborough Ordinance Committee.

Vote: 3 Yeas. Motion Passes.

Meeting adjourned at 7:48p.m.

Respectfully submitted,

Kristen Barth
Deputy Town Clerk

