

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – APRIL 17, 2024**  
**WORKSHOP RE: REVALUATION UPDATE – 5:30 P.M.**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

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

<https://scarboroughmaine.zoom.us/j/81696031486>

**TO VIEW TOWN COUNCIL MEETING ONLY:**

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

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

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

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

**Order No. 24-034, 7:00 p.m. Public hearing** and second reading on the proposed amended Chapter 421, the Town of Scarborough Authorization of Outdoor Services Ordinance, amending the applicable time period for May 31, 2024 through October 31, 2024. *[Planning Director]*

**Order No. 24-036, 7:00 p.m. Public hearing** to adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough. *[Sustainability Coordinator]*

**Proclamation 24-001.** Act on the request from the Scarborough Land Trust to proclaim Saturday, May 4<sup>th</sup> as Scarborough Land Trust Day. *[Scarborough Land Trust]*

**Resolution 24-003.** Act on the request to recognize George Horrigan for his winning essay. *[Town Manager]*

### **OLD BUSINESS:**

**Order No. 24-037.** Second reading to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest. [*Parks and Conservation Land Board*]

### **NEW BUSINESS:**

**Order No. 24-040.** First reading and schedule a public hearing and second reading on the proposed changes to Chapter 1018 – the Town of Scarborough Marijuana Establishment Licensing Ordinance. [*Assistant Town Manager*]

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

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

**Item 11.** Council Member Comments.

**Item 12.** Adjournment.



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

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

- **FY25 Budget Review-**
  - Finance Committee Review Sessions - April 11 and 12
  - April 18 - Scorecard of Items/TIF Revenues/Use of Fund Balance
- **January Storm Damage-**
  - Federal Disaster Declaration issued
  - Scarborough to host two open houses for FEMA Recovery matters
  - Proceeding with public infrastructure repairs-
    - Higgins Beach work- well underway, completed by next week
    - Black Point Road- met with DEP and PNIA
      - Summer 2024 Traffic Plan
      - "Municipal Exemption"
      - Engineering Design
- **Ice Storm/Snow Storm Damage**
  - Tree damage townwide
  - Town to removal debris within Town right-of-way- efforts underway
    - Contracted with Bartlett Tree next week
    - Considering designated drop-off locations.
- **Eastern Trail - Close The Gap**
  - CSX Meeting Scheduled for April 17
- **Gorham Connector**
  - Scarborough to host public meeting in late June
- **Community Center Open House**
  - April 24 from 3 to 7 PM at Wentworth School
  - Public feedback to Ad-Hoc Committee's efforts

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- **Award of \$1.4M NOAA Coastal Zone Management Grant**
    - Private Announcement Ceremony - April 22 (Earth Day)
      - Councilor Shupe to Welcome
    - Field Exercise and Roundtable at Town Hall
  - **FEMA Disaster Recovery Center - PSB Classroom**
    - Selected Dates: 4/18, 4/30, 5/2 and 5/9 - afternoons
    - “Town Hall” Meeting - 4/18 at 6:00 PM
    - Supplement to Wells and Harpswell - open to the public







**TOWN OF SCARBOROUGH**  
**Executive Summary for the period ending March 31, 2024**

Attached is a summary of the first nine months of fiscal year 2024 results. With nine months of the fiscal year having passed, we would expect 75% of the budget to be spent (assuming proportional spending). Town departments have spent 75.8% and the School departments have spent 69.9% of their appropriations including encumbrances. The combined spending is at 72.6% of appropriations.

Revenue collections are 90.7% of the estimate for the Town and 95.2% of the estimate for the School. The Town is ahead of the prior year's collection rate due to the timing of the debt issue. The School is slightly behind last year's collection rate but still above last year's dollar amount.

**Favorable budget variances:**

Similar to reporting in January, Town revenue collections are near or above estimates in all categories except Licenses and Permits as well as Charges for Services. The Town was able to complete the issuance of General Obligation Bonds Series 2023 in October causing our Other Financing Sources revenue to far exceed the estimate. Property tax collections are on pace to equal the ten-year annual average for property tax collections of 98.82%.

The vast majority of departments are at or below expected levels of spending at the end of the third quarter. The Finance department spending is below the estimate due to unpaid leave for staff illness followed by a staff vacancy. Planning department spending is below estimate due to timing of expenditures for legal expenses and planning initiatives.

**Unfavorable budget variances:**

The Town revenue is below the estimate for building permits (\$146,040) and electrical permits (20,422). The slowdown of new construction activity at The Downs and the impact of the Growth Management ordinance are contributing factors. Charges for Services revenues are \$644,439 below the estimate; however, Community Services summer programs revenues are typically received in the second half of the fiscal year.

The Management Information Systems department is 53% more than the estimate due in part to \$42,341 remaining annual encumbrances on software and hardware maintenance contracts. The Public Works department is 3.6% more than the estimate due to \$1,217,616 remaining annual encumbrances for materials and services. County taxes are above estimate as the entire payment is made in the first quarter of the fiscal year.

Respectfully submitted,

Norman Kildow  
Finance Director

**Town of Scarborough  
Comparative Year To Date Expenditures**

	Through March 31, 2024					Through March 31, 2023				
	<u>Revised</u> <u>Appropriation</u>	<u>YTD</u> <u>Expended</u>	<u>Encumb</u>	<u>Available</u> <u>Budget</u>	<u>Percent</u> <u>Used</u>	<u>Revised</u> <u>Appropriation</u>	<u>YTD</u> <u>Expended</u>	<u>Encumb</u>	<u>Available</u> <u>Budget</u>	<u>Percent</u> <u>Used</u>
<b><u>1100 General Fund</u></b>										
55 Legislative	11,573	11,396	-	177.00	98.5%	11,573	5,786	-	5,787.00	50.0%
56 Executive	3,757,591	2,842,243	300.00	915,048.00	75.6%	3,489,687	3,057,568	752.00	431,367.00	87.6%
57 Finance	1,505,900	989,692	1,840.00	514,368.00	65.8%	1,385,174	908,502	2,336.00	474,336.00	65.8%
58 Management Information Systems	1,956,646	1,528,307	42,341.00	385,998.00	80.3%	1,798,078	1,331,204	22,693.00	444,181.00	75.3%
59 Planning	993,408	631,468	26,750.00	335,190.00	66.3%	1,343,170	883,277	2,500.00	457,393.00	65.9%
62 Community Services	3,679,996	2,703,348	14,842.00	961,806.00	73.9%	3,212,109	2,203,879	27,524.00	980,706.00	69.5%
63 Library	1,287,748	965,811	-	321,937.00	75.0%	1,108,633	831,475	-	277,158.00	75.0%
66 Public Health & Welfare	260,637	318,225	-	(57,588.00)	122.1%	116,010	195,008	-	(78,998.00)	168.1%
68 SEDCo	284,512	193,317	-	91,195.00	67.9%	268,510	181,915	-	86,595.00	67.7%
71 Fire Services	7,239,650	5,335,764	11,038.00	1,892,848.00	73.9%	6,679,161	4,964,135	3,885.00	1,711,141.00	74.4%
72 Police Services	8,289,082	5,849,050	1,414.00	2,438,618.00	70.6%	8,054,576	5,559,249	8,096.00	2,487,231.00	69.1%
81 Public Works	8,277,983	5,291,915	1,217,616.00	1,768,452.00	78.6%	7,813,928	5,557,658	994,467.00	1,261,803.00	83.9%
83 Engineering/Technical	593,640	419,327	-	174,313.00	70.6%	-	33,611	-	(33,611.00)	0.0%
85 Debt	5,061,028	3,893,993	-	1,167,035.00	76.9%	6,733,651	5,719,434	-	1,014,217.00	84.9%
91 County Tax	3,481,081	3,481,081	-	-	100.0%	3,119,411	3,119,411	-	-	100.0%
94 Capital Equipment	2,590,611	838,526	47,084.00	1,705,001.00	34.2%	3,285,713	1,891,625	495,661.00	898,427.00	72.7%
97 Other	4,382,603	3,992,732	-	389,871.00	91.1%	2,883,375	842,482	-	2,040,893.00	29.2%
<b>Total General Fund Expenditures</b>	<b>53,653,689</b>	<b>39,286,195</b>	<b>1,363,225.00</b>	<b>13,004,269.00</b>	<b>75.8%</b>	<b>51,302,759</b>	<b>37,286,219</b>	<b>1,557,914.00</b>	<b>12,458,626.00</b>	<b>75.7%</b>
Fund 7150 Adult Education	183,149	131,940	-	51,209.00	72.0%	184,370	108,812	-	75,558.00	59.0%
Fund 7100 Total School General Fund	62,052,141	43,248,555	124,445.00	18,679,141.00	69.9%	58,801,486	42,365,271	139,526.00	16,296,689.00	72.3%
<b>Total School General Fund Expenditures</b>	<b>62,235,290</b>	<b>43,380,495</b>	<b>124,445.00</b>	<b>18,730,350.00</b>	<b>69.9%</b>	<b>58,985,856</b>	<b>42,474,083</b>	<b>139,526.00</b>	<b>16,372,247.00</b>	<b>72.2%</b>
<b>Grand Total</b>	<b>115,888,979</b>	<b>82,666,690</b>	<b>1,487,670.00</b>	<b>31,734,619.00</b>	<b>72.6%</b>	<b>110,288,615</b>	<b>79,760,302</b>	<b>1,697,440.00</b>	<b>28,830,873.00</b>	<b>73.9%</b>

**9 Months = 75%**

**Town of Scarborough  
Comparative Year To Date Revenues**

	<b>Through March 31, 2024</b>			<b>Through March 31, 2023</b>		
	<b>Revised Estimated Revenue</b>	<b>Actual YTD Revenue</b>	<b>% Collected</b>	<b>Revised Estimated Revenue</b>	<b>Actual YTD Revenue</b>	<b>% Collected</b>
<b><u>1100 General Fund</u></b>						
90 Taxes	33,263,023	31,834,113	95.7%	30,941,690	29,026,584	93.8%
91 Interest On Delinquent Taxes	60,000	41,390	69.0%	68,000	25,576	37.6%
92 Licenses And Permits	1,247,284	720,312	57.8%	1,064,590	967,430	90.9%
93 Intergovernmental Revenues	6,745,567	5,476,734	81.2%	6,221,504	5,050,918	81.2%
94 Charge For Services	7,426,707	4,925,591	66.3%	6,992,661	5,188,643	74.2%
95 Fines Forfeits And Assessments	75,700	61,439	81.2%	94,700	46,004	48.6%
96 Miscellaneous Revenues	1,026,840	964,039	93.9%	806,341	512,424	63.5%
99 Other Financing Sources	3,437,310	4,294,368	124.9%	4,499,319	31,189	0.7%
<b>Total General Fund Revenues</b>	<b>53,282,431</b>	<b>48,317,986</b>	<b>90.7%</b>	<b>50,688,805</b>	<b>40,848,768</b>	<b>80.6%</b>
 Fund 7150 Adult Education	 183,149	 120,293	 65.7%	 184,370	 141,034	 79.9%
Fund 7100 Total School General Fund	62,052,141	59,133,627	95.3%	58,801,486	55,989,460	97.7%
<b>Total School General Fund Revenues</b>	<b>62,235,290</b>	<b>59,253,920</b>	<b>95.2%</b>	<b>58,985,856</b>	<b>56,130,494</b>	<b>97.6%</b>
 <b>Grand Total</b>	 <b>115,517,721</b>	 <b>107,571,906</b>	 <b>93.1%</b>	 <b>109,674,661</b>	 <b>96,979,262</b>	 <b>89.7%</b>

**Town of Scarborough  
Through March 31, 2024**

	<b><u>Original Appropriation</u></b>	<b><u>Revised Budget</u></b>	<b><u>YTD Expended</u></b>	<b><u>Encumb</u></b>	<b><u>Available Budget</u></b>
<b><u>Other Town Fund Expenditures</u></b>					
Fund 1200 Total Special Revenue Fund	-	5,091	3,479,017	11,859	(3,485,785)
Fund 1300 Total Capital Projects Fund	796,000	814,110	686,885	44,085	83,140
Fund 1310 Total Capital Projects Fund	5,519,800	4,473,010	4,327,941	19,633	125,436
Fund 1500 Total Cemetery Permanent Fund	-	-	-	-	-
<b>Total Town Other Fund Exp</b>	<b>6,315,800</b>	<b>5,292,211</b>	<b>8,493,843</b>	<b>75,577</b>	<b>(3,277,209)</b>

**Other School Fund Expenditures**

Fund 72xx Total School Special Revenue Fund	-	-	1,027,574	4,635	(1,032,209)
Fund 7300 Total School Capital Projects Fund	137,650,000	137,650,000	160,137	1,819	137,488,044
Fund 7400 Total School Capital Projects Fund	2,806,583	2,806,583	2,144,857	416,717	245,009
Fund 7600 Total School Nutrition Program	2,313,735	2,313,735	1,575,858	110,938	626,939
Fund 7800 Total School Scholarship Funds	-	-	11,250	-	(11,250)
<b>Total School Other Fund Exp</b>	<b>142,770,318</b>	<b>142,770,318</b>	<b>4,919,676</b>	<b>534,109</b>	<b>137,316,533</b>

**Through March 31, 2024**

	<b><u>Original Estimated Revenue</u></b>	<b><u>Revised Estimated Revenue</u></b>	<b><u>Actual YTD Revenue</u></b>	<b><u>Remaining Revenue</u></b>	<b><u>% Collected</u></b>
<b><u>Other Town Fund Revenues</u></b>					
Fund 1200 Total Special Revenue Fund	-	-	6,403,234	(6,403,234)	100.0%
Fund 1300 Total Capital Projects Fund	796,000	796,000	778,524	17,476	97.8%
Fund 1310 Total Capital Projects Fund	4,159,800	4,159,800	4,489,913	(330,113)	107.9%
Fund 1500 Total Cemetery Permanent Fund	-	-	5,419	(5,419)	100.0%
<b>Total Town Other Fund Rev</b>	<b>4,955,800</b>	<b>4,955,800</b>	<b>11,677,090</b>	<b>(6,721,290)</b>	<b>235.6%</b>

**Other School Fund Revenues**

Fund 72xx Total School Special Revenue Fund	-	-	418,198	(418,198)	100.0%
Fund 7300 Total School Capital Projects Fund	137,650,000	137,650,000	54,253	137,595,747	0.0%
Fund 7400 Total School Capital Projects Fund	2,806,583	2,806,583	3,528,143	(721,560)	125.7%
Fund 7600 Total School Nutrition Program	2,313,735	2,313,735	1,253,037	1,060,698	54.2%
Fund 7800 Total School Scholarship Funds	-	-	27,941	(27,941)	100.0%
<b>Total School Other Fund Rev</b>	<b>142,770,318</b>	<b>142,770,318</b>	<b>5,281,572</b>	<b>137,488,746</b>	<b>3.7%</b>

Year To Date Education Expenditures  
Through March 31, 2024

<b>Education:</b>	<b><u>Original</u></b> <b><u>Appropriation</u></b>	<b><u>Revised</u></b> <b><u>Budget</u></b>	<b><u>YTD</u></b> <b><u>Expended</u></b>	<b><u>Encumb</u></b>	<b><u>Available</u></b> <b><u>Budget</u></b>	<b><u>Percent</u></b> <b><u>Used</u></b>
Regular instruction	38,710,734	38,645,034	26,440,283	47,948	12,156,803	68.5%
Improvement of instruction	958,547	958,547	699,081	1,262	258,204	73.1%
Special services	5,803,598	5,869,298	4,061,217	42,538	1,765,543	69.9%
General & special administration	322,597	322,597	222,472	-	100,125	69.0%
Board of education	35,008	35,008	36,579	-	(1,571)	104.5%
Office of the superintendent	963,080	1,003,080	748,524	1,149	253,407	74.7%
Business administration	2,485,525	2,485,525	1,737,667	-	747,858	69.9%
Transportation	2,218,712	2,218,712	1,409,269	-	809,443	63.5%
Operation and maintenance of plant	5,005,760	5,005,760	3,274,272	31,547	1,699,941	66.0%
Adult Education	183,149	183,149	131,940	-	51,209	72.0%
Food Service Allocation	-	-	-	-	-	0.0%
Debt service	5,548,580	5,508,580	4,619,192	-	889,388	83.9%
<b>Total Education</b>	<b>62,235,290</b>	<b>62,235,290</b>	<b>43,380,496</b>	<b>124,444</b>	<b>18,730,350</b>	<b>69.9%</b>

**Town of Scarborough  
Year To Date Revenues  
Through March 31, 2024**

<b><u>Selected Revenues</u></b>	<b><u>Estimated Revenue</u></b>	<b><u>Actual YTD Revenue</u></b>	<b><u>% Collected</u></b>
Excise Tax Collections	7,250,000	6,031,004.00	83.2%
State Revenue Sharing	3,628,179	2,766,417.00	76.2%
Rescue Revenues	1,200,000	1,143,000.00	95.3%
LRAP-Local Road Assist.	317,636	366,304.00	115.3%
Building Permits	850,000	491,460.00	57.8%
Investment Interest	200,000	672,187.00	336.1%
Plumbing Permits	45,000	27,673.00	61.5%
Electrical Permits	125,000	73,328.00	58.7%
Education Subsidy	5,941,838	4,527,796.00	76.2%

**Town General Fund Revenues by Department**

Executive (TM, HR, TC)	889,328	371,451	41.8%
Finance	7,336,569	7,203,824	98.2%
Property Taxes	26,057,154	26,076,245	100.1%
MIS	805,784	417,078	51.8%
Planning	1,109,200	635,315	57.3%
Community Serv	2,850,779	1,476,517	51.8%
SEDCO	284,512	284,512	100.0%
Fire Dept	1,403,500	1,272,378	90.7%
Police Dept	911,687	716,526	78.6%
Public Works	1,760,604	1,069,224	60.7%
Technical/Engineering	43,553	2,250	5.2%
Debt	1,299,613	2,861,956	220.2%
Intergovernmental	6,742,767	5,483,362	81.3%
TIFs and Interfund Transfer	1,787,381	447,348	25.0%
	<b><u>53,282,431</u></b>	<b><u>48,317,986.00</u></b>	<b>90.7%</b>

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

**Order No. 24-034.** Move approval of the second reading on the proposed amended Chapter 421, the Town of Scarborough Authorization of Outdoor Services Ordinance, amending the applicable time period for May 31, 2024 through October 31, 2024. *[Planning Director]*

*Planning Director*

*Ought to Pass*

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Sponsor

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Recommendation

*04/03/2024 – Vote: 7 Yeas*

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First Reading/Vote

*04/17/2024*

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Public Hearing

*04/17/2024 – Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: April 17, 2024

**ACTION ITEM: Ordinance No. 24-034.**

**SUBJECT:**

**7:00 p.m. Public hearing** and second reading on the proposed amended Chapter 421, the Town of Scarborough Authorization of Outdoor Services Ordinance, amending the applicable time period for May 31, 2024 through October 31, 2024.

**PURPOSE:**

To implement an ordinance to allow businesses who wish to expand their current services to include outdoor services for the spring/summer season beginning May 31, 2024 through October 31, 2024.

**BACKGROUND:**

In May 2020, the Town enacted an Emergency Ordinance to permit outdoor services during the COVID pandemic. The Emergency Ordinance was extended two additional times on October 7, 2020, and April 7, 2021, with a final expiration of May 31, 2022.

During this time, several establishments took advantage of the allowance and were encouraged to amend their existing site plans through the site plan process if they wished to continue.

However, many did not go through the site plan process and have continued to request tent permits for outdoor services during the summer months. The site plan process can be time consuming and costly. Staff has proposed this seasonal ordinance to be renewed on an annual basis to allow for outdoor services.

In 2023, Town Council approved the Temporary Outdoor Services ordinance to be effective from July 21, 2023 through October 31, 2023.

Staff recommends authorizing this Temporary Outdoor Services ordinance for 2024 with dates beginning May 31, 2024 through October 31, 2024.

**FISCAL IMPACT:** Permit fees of \$50 each

**STATUS / PROCESS TO DATE:**

- Town Council First Reading: April 3, 2024
- Town Council Public Hearing & second reading: April 17, 2024

**PROPOSED ACTION:**

Recommend move approval of the second reading on Order No. 24-034.

**ATTACHMENTS:**

- 2024 Temporary Outdoor Services Ordinance



BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, approves Chapter 421, the Temporary Authorization of Outdoor Services Ordinance of the Town of Scarborough, Maine, as follows:

## **Chapter 421 – Town of Scarborough**

### **Temporary Seasonal Authorization of Outdoor Services Ordinance**

**Section 1. Purpose:** To implement this ordinance to allow businesses who wish to expand their current services to include outdoor services for the summer season beginning May 31, 2024 through October 31, 2024.

**Section 2. Provisions:** Notwithstanding any Town ordinance provisions to the contrary, the outdoor activity, display, sale of merchandise, and sale, service and consumption of food or drinks, including alcoholic beverages for restaurant and retail sales and services (together referred to as “outdoor services”) in certain temporary outdoor areas on private property is permitted subject to the following:

- 1) All properly licensed and/or permitted businesses at the time of enactment of this ordinance in the Town of Scarborough wishing to create or expand existing outdoor services shall first apply to the Town of Scarborough’s Planning Department and receive correspondence of approval from the Town;
- 2) In addition to the creation or expansion of outdoor services areas, temporary awnings, tents or other temporary structures may be permitted to protect the outdoor service areas from the elements;
- 3) All applications for outdoor services shall be submitted by entities properly licensed and/or permitted by the appropriate state and local agencies to perform the sales and services;

Approval for outdoor services under this temporary ordinance shall be granted through the Planning Department in coordination with the Administrative Review Team described below. To receive approval for outdoor services businesses must demonstrate how they shall:

- 1) Refrain from creating or increasing noise, such as playing or allowing amplified music, in violation of Chapter 616, the Good Neighbor Ordinance.
- 2) Not encroach on public right-of-ways.
- 3) Not interfere with handicap parking spaces.
- 4) Maintain adequate parking for patrons (the expansion or creation of outdoor services associated with approved uses may not exceed the approved capacity of the business unless additional parking is available.
- 5) Maintain safe pedestrian and vehicular access.
- 6) Maintain all access required under the Americans with Disabilities Act.
- 7) Not impede fire and emergency access nor not block fire lanes.
- 8) Provide physical barriers between the outdoor services areas and the parking field.
- 9) Demonstrate that any temporary structure complies with the rules and policies of the Town.

10) Outdoor service areas can only be used between the hours of 9am and 9pm Sunday to Thursday and 9am to 10pm Friday and Saturday.

11) Shall be in compliance with the provisions of the Maine Alcoholic Beverages and Lottery Operations - Division of Liquor Licensing and Enforcement and other federal, state and local laws or regulations. Additionally, any business legally serving alcoholic beverages in the outdoor services area shall clearly delineate, by use of physical markers and barricade, areas where alcoholic beverages are to be served and consumed, and such consumption shall not take place outside of the marked areas. Signage reading, "No Alcohol Beyond This Point" shall be posted at all exit points and as necessary.

12) Each business seeking approval for outdoor services under this Ordinance shall apply to the Planning Department.

13) All applications shall be approved or denied by an Administrative Review Team consisting of the Town Planner, or their designee, the Zoning Administrator, or their designee, the Police Chief, or their designee, and the Fire Chief, or their designee. Approvals require unanimous decision of the administrative review team. Appeals of any denials may be made in accordance with the provisions of Chapter 405, section V.B.1.

The application shall include the following:

- 1) A narrative and plan describing the nature of the use, including responses or illustrations demonstrating how the proposal meets the requirements stated above.
- 2) A plan, survey, or aerial of the lot on which the proposed outdoor services will be located with clearly marked limits and capacity of the proposed outdoor services area.
- 3) Details of the proposed barriers used to delineate the outdoor service area.
- 4) Details of any temporary awning, tents or other temporary structures proposed (depending on size and materials additional permits may be required).
- 5) If parking capacity is to be met utilizing off-site parking spaces the application shall include the proposed location, capacity and rights of use of such off-site parking spaces.
- 6) Any additional materials as deemed necessary by the Administrative Review Team to ensure compliance with the standards.

If after the establishment of the outdoor services area the Administrative Review Team determines that the activity is proposing unforeseen hazards and concerns for public health, welfare, and safety the Town may suspend or revoke any permits under this order. Suspended or revoked activities may resubmit an application following the procedures above for review and reconsideration.

Approved outdoor service areas are valid and allowed until the expiration of this Ordinance or any extensions, modifications or replacements thereto, unless revoked by the Town.

**Section 3. Sunset Clause.** This ordinance shall expire on the 31st day of October, 2024.

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

**Order No. 24-036.** Move approval adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough. [*Sustainability Coordinator*]

*Sustainability Coordinator*

*Ought to Pass*

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Sponsor

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Recommendation

*04/03/2024 – Vote: 5 Yeas and 2 Nays (Chairman McGee and Councilor Hamill)*

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First Reading/Vote

*04/17/2024*

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Public Hearing

*05/01/2024—Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: April 17, 2024

**ACTION ITEM: Order No. 24-036.**

**SUBJECT:**

**7:00 p.m. Public hearing** to adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough.  
*[Sustainability Coordinator]*

**PURPOSE:**

To review the proposed new Chapter 1104B Commercial Property Assessed Clean Energy Program Ordinance which is required for property owners to participate in the program.

**BACKGROUND:**

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

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

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

The Sustainability Committee and staff recommend adopting under option 2.

In option 2, Municipalities are relieved of the majority of administrative burdens while still able to stimulate the adoption of energy savings improvements for commercial properties within their communities. Under both options 1 and 2, Municipalities wishing to participate in the C-PACE Program must adopt a C-PACE Ordinance as required by the Maine C-PACE Act. The Trust has developed a model C-PACE Ordinance.

A municipality that wishes to exercise option 2 must also enter into a C-PACE Municipality Participation Agreement with the Trust that establishes the Trust as the Municipality’s C-PACE Program Administrator for certain designated functions.

- 1. Project Initiation:** The municipality must execute a C-PACE Assessment Agreement, along with the Property Owner and its Capital Provider, for each C-PACE project within their municipality. The C-PACE Assessment Agreement authorizes the creation of a C-

PACE Lien on the Property receiving the Energy Savings Improvements. The process of completing this program responsibility is as follows:

- During the development of a C-PACE Project, the Capital Provider and Property Owner will sign the C-PACE Assessment Agreement.
- The Municipality will then sign the C-PACE Assessment Agreement, approved as to form and substance by the Municipality.
- All parties must sign the C-PACE Assessment Agreement prior to the submission of a C-PACE project application to Efficiency Maine, though the effectiveness of the Agreement is conditioned on final project approval by Efficiency Maine and closing of the C-PACE loan.
- Once a project approval is provided by Efficiency Maine and the C-PACE financing transactions closes, a notice of the C-PACE Agreement will be filed in the registry of deeds, which filing will create a lien on the Property implementing the Energy Savings Improvements until the amounts due under the C-PACE Financing are paid in full. The form C-PACE Assessment Agreement places the obligation for recording the Notice of C-PACE Agreement on the Capital Provider.

**Annual C-PACE Assessments and Collections:** The municipality will not need to finance or fund any C-PACE projects and will incur no liability for payment of the loan. The C-PACE Assessment Agreement details the responsibilities of the Municipality and Capital Provider with regard to billing and collection of the C-PACE assessments, but in summary:

The Capital Provider will provide the Municipality with a “Payment Due Notice” specifying the amount due from the Property Owner in repayment of the C-PACE loan for the subject year. The Municipality will assess the Property in the amount specified in the Payment Due Notice and designate the Capital Provider as agent for the billing of the C-PACE assessment amount and the collection of payments from the Property Owner.

The C-PACE assessment payments are to be applied by the Capital Provider to the C-PACE loan balance. The Capital Provider will provide periodic reports to the Municipality on the status of the C-PACE payments from each Property Owner and will provide notice to the Municipality of any delinquency or default of a C-PACE assessment payment.

The Capital Provider shall provide notice to the Municipality and the Property Owner when the C-PACE Financing amount has been paid in full and shall cooperate with the Municipality and the Property Owner in the preparation and recording of a release and discharge of the C-PACE Lien on the subject Property when the C-PACE Financing has been satisfied. {P2178537.1}

**Default and Foreclosure:** See Attachment *Municipality Participation Guide*

## **SUSTAINABILITY COMMITTEE REVIEW**

The Sustainability Committee received an overview presentation from James Neal from Efficiency Maine at their meeting on September 27, 2023. At the meeting the Sustainability Committee requested the item move to Ordinance Committee for consideration.

**ORDINANCE COMMITTEE REVIEW**

Mr. Neal provide a brief overview of the program at the [Ordinance Committee Meeting on October 12, 2023 \(youtube.com\)](#). No action was taken at that time. At the request of the Sustainability Committee, the Ordinance Committee reviewed the proposal again on March 13, 2024, and recommended the draft ordinance be presented to Town Council.

More information is available at the following:

[Commercial Property Assessed Clean Energy \(C-PACE\) - Efficiency Maine](#)

**FISCAL IMPACT:**

No direct fiscal impact to the Town.

**STATUS / PROCESS TO DATE:**

- Sustainability Committee: September 27, 2023
- Ordinance Committee: October 12, 2023
- Ordinance Committee: March 20, 2024
- Town Council First Reading: April 3, 2024
- Town Council Public Hearing: April 17, 2024

**PROPOSED ACTION:**

Move approval adopt new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace) and authorize the Town Manager to enter into a Participation Agreement with Efficiency Maine on behalf of the Town of Scarborough.  
*[Sustainability Manager]*

**ATTACHMENTS:**

- Proposed Chapter 1104B Commercial Property Assessed Clean Energy Program Ordinance
- Municipality Participation Agreement
- Municipality Assessment Agreement
- Municipality Participation Guide

**CHAPTER 1104-B**  
**TOWN OF SCARBOROUGH**  
**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**  
**(C-PACE) ORDINANCE**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following recommendation of the new Chapter 1104B – the Town of Scarborough Commercial Property Assessed Clean Energy Program (C-Pace), be and hereby, be adopted, as follows:

**1. Purpose and authority**

- A. Purpose. By and through this Ordinance, the Town of Scarborough Maine, 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 Town. The Town declares its purpose and the provisions of this Ordinance to be in conformity with federal and state laws.
- B. Enabling legislation. The 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 Town of Scarborough’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:

**Town.** The Town of Scarborough.

**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 Town.

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

**Commercial PACE District.** The area within which the Town establishes a Commercial PACE Program hereunder, which is all that area within the 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 Town that:

- A. Does not have a residential mortgage;
- B. Is not owned by a residential customer or small commercial customer as defined in 35-A M.R.S. §3016(1)(C) and (D), respectively;
- C. Consists of 5 or more rental units if the property is a commercial building designed for residential use;
- D. Is not owned by a federal, state or municipal government or public school; and
- E. Is located in a municipality that participates in a Commercial PACE Program.

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

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

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



#### **4. Program established; Amendments.**

- A. Establishment. The Town hereby establishes a Commercial PACE Program allowing owners of Qualifying Property located in the 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 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 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 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 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 Town shall be responsible for administration of loans made from those funding sources. The 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 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 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 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 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 Town or its designated agent, the Trust, or a 3rd-party administrator contracted by the Trust, consistent with applicable laws. The 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 Town along with other municipal tax payments, such payments received from property owners shall first be applied to Town taxes, assessments, and charges. The Town shall have no ownership of the Commercial PACE assessments collected except for any administrative costs provided under the Commercial PACE Program. The 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 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 Town collects Commercial PACE Assessments on behalf of the Town, the Trust or agent shall periodically report to the Town on the status of the Commercial PACE Assessments in the Town and shall notify the Town of any delinquent Commercial PACE Assessments. Upon receiving notification from the Trust or agent of a delinquent Commercial PACE Assessment, the 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 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 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 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 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 Town, then a Commercial PACE lienholder shall accept an assignment of the Commercial PACE Lien, as provided in the written agreement between Town and the Capital Provider. The assignee shall have and possess all the same powers and rights at law as the 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 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 Town**

- (1) Notwithstanding any other provision of law to the contrary, Town officers and 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 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 Town's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Town shall take necessary steps to conform this Ordinance and its Commercial PACE Program to those standards, rules or model documents.

## C-PACE MUNICIPALITY PARTICIPATION AGREEMENT

This C-PACE Municipality Assessment Agreement (“Agreement”), dated as of {**INSERT DATE**} is entered into by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine with offices located at 168 Capitol Street, Suite 1, Augusta, ME 04330 (the “**Trust**”) and Town of Scarborough, a municipal corporation existing under the laws of the State of Maine, with offices located at 259 US Route One Scarborough, Maine 04070 (the “**Municipality**”).

WHEREAS, Title 35-A M.R.S. §§10201 et seq., enacted by PL 2021, c.142, “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs” (the “**C-PACE Act**”), authorizes the Trust and municipalities adopting a Commercial PACE Ordinance (as defined in the C-PACE Act) to establish commercial PACE programs under which commercial property owners may finance Energy Savings Improvements on Qualifying Property (each as defined in the C-PACE Act and the C-PACE Program Regulations (the “**Regulations**”)) by utilizing a municipal assessment and collection mechanism to provide security for repayment of the financing pursuant to the terms of the C-PACE Act (a “**C-PACE Program**”).

WHEREAS, the Trust has developed a C-PACE Program and the Municipality has adopted a Commercial PACE Ordinance for the purpose of establishing and participating in a C-PACE Program.

WHEREAS, pursuant to the C-PACE Act, the Municipality wishes to enter into a contract with the Trust to administer certain aspects of the C-PACE Program with respect to Property Owners holding Qualified Property within the Municipality.

WHEREAS, the Trust is willing to provide certain C-PACE Program administration services for the Municipality under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust and Municipality agree as follows:

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms under the C-PACE Act, the Regulations, and the C-PACE Program Guidelines (the “**Guidelines**”).

1. The Trust will provide general marketing services for the C-PACE Program and provide model C-PACE Ordinances, C-PACE Agreements, and forms, documents, and educational materials for use by the Municipality and Property Owners holding Qualifying Property in the Municipality. The Trust will provide general program support for Property Owners holding Qualifying Property in the Municipality who make an application for participation in the C-PACE Program.
2. The Trust agrees to serve as Program Administrator with respect to C-PACE Program applications submitted by Property Owners holding Qualified Property in the Municipality, administering those aspects of the C-PACE Program specified herein.
3. The Trust will review applications of Capital Providers wishing to participate in the C-PACE Program in accordance with the Guidelines and approve such applications that demonstrate the capacity to meet the requirements of the Regulations). The Trust will maintain a list of approved Registered Capital Providers available to Property Owners holding Qualifying Property in the Municipality.
4. The Trust will review applications to the C-PACE Program by or on behalf of Program applicants and shall determine whether the application satisfies the requirements for a Qualifying Property and Qualifying Project under the Regulations and Guidelines. If the Trust determines that the C-PACE

Program application meets the standards and requirements set forth in the Regulations and Guidelines, the Trust will issue a Notice of Approval to the Property Owner and the Capital Provider providing the C-PACE financing.

5. For those Property Owners with a Qualifying Property in the Municipality for which a Notice of Approval is issued, the Municipality shall be required to execute a C-PACE Assessment Agreement with the Property Owner and Capital Provider pursuant to which the Municipality will agree to assess the subject Qualifying Property to facilitate repayment of the C-PACE Loan to the Capital Provider. The Municipality shall undertake such actions as required under the C-PACE Assessment Agreement and C-PACE Act as necessary to establish the C-PACE Lien and facilitate repayment of the C-PACE Loan to the Capital Provider through the assessment process.

6. The Municipality agrees to comply with the terms of the C-PACE Act and the Municipality's Commercial PACE Ordinance, including, without limitation, procedures on collection and foreclosure of C-PACE Assessments where the Property Owner also is delinquent in any tax debt due to the Municipality, and the assignment of the C-PACE Lien to the Capital Provider for collection and foreclosure where the C-PACE Assessment is delinquent but the Property Owner is current on municipal taxes. In accordance with the C-PACE Act, the Municipality agrees to release the C-PACE Lien upon full payment of the C-PACE Loan.

7. The Municipality shall provide written notice to the Trust if any property within the Municipality subject to a C-PACE Lien is delinquent in payment of the C-PACE Assessment and is subject to foreclosure on a lien for any tax debt due to the Municipality or if the Municipality makes an assignment of the C-PACE Lien to the Capital Provider.

8. Notwithstanding any provision of law to the contrary, staff or trustees of the Trust, municipal officers and municipal 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 C-PACE Program established under the C-PACE Act, including, without limitation, claims for or related to uncollected C-PACE Assessments.

9. Pursuant to the C-PACE Act, other than the fulfillment of its obligations specified in a C-PACE Assessment Agreement, neither the Trust nor a Municipality has any liability to a Property Owner for or related to Energy Savings Improvements financed under a C-PACE Program.

10. The services to be provided by the Trust are limited to the services specified herein. The Trust assumes no responsibility, and undertakes no liability, for the filing or recording of any required documents or instruments, the perfection of any C-PACE Liens, the terms, performance, or enforcement of any C-PACE Loan, the collection of any C-PACE Assessments, any C-PACE Loan servicing or recordkeeping, the collection of delinquent accounts, or any other matters between the Property Owner, the Capital Provider, and the Municipality.

11. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

12. The term of this Agreement shall commence on the date first written above and shall continue until all C-PACE Loans issued in connection with C-PACE Program applications administered by the Trust under this Agreement have been paid in full or deemed no longer outstanding. The Municipality may discontinue participation in the C-PACE Program under this Agreement at any time on sixty (60) days' written notice to the Trust, provided that the obligations of the Municipality under this Agreement shall continue to apply to C-PACE Loans, C-PACE Liens, and C-PACE Assessments in place prior to the termination date.

IN WITNESS WHEREOF, the Municipality and the Trust have each caused this Agreement to be executed and delivered as of the date first written above.

Town of Scarborough

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By:

Its:

EFFICIENCY MAINE TRUST

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Michael D. Stoddard

Executive Director

## C-PACE ASSESSMENT AGREEMENT

**THIS C-PACE ASSESSMENT AGREEMENT** (the “**Agreement**”) is made as of {INSERT DATE}, between {INSERT NAME}, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ {IF FOREIGN ENTITY ADD: and authorized to do business in the State of Maine}, whose address is {INSERT ADDRESS} [IF INDIVIDUAL(S), MODIFY ACCORDINGLY] [NOTE: ALL OWNERS OF THE QUALIFYING PROPERTY MUST BE PARTY AND SIGN] ([collectively,] the “**Property Owner**”), {CAPITAL PROVIDER NAME AND ADDRESS} (together with its assigns, nominees and/or designees, the “**Capital Provider**”) and the {CITY/TOWN OF} {INSERT NAME OF PARTICIPATING MUNICIPALITY} (the “**Municipality**”), a municipal corporation existing under the laws of the State of Maine. Each of Property Owner, Capital Provider and the Municipality is referred to herein as a “**Party**” and, collectively, as the “**Parties**.”

### RECITALS

- A. Title 35-A M.R.S. §§10201 *et seq.* established “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs” (the “**C-PACE Act**”) and authorized Efficiency Maine Trust (the “Trust”) and municipalities adopting a Commercial PACE Ordinance (as defined in the C-PACE Act) to establish commercial PACE programs under which commercial property owners may finance Energy Savings Improvements on Qualifying Property (each as defined in the C-PACE Act and the Trust’s administrative rules) by utilizing a municipal assessment and collection mechanism to provide security for repayment of the financing pursuant to the terms of the C-PACE Act. (a “**C-PACE Program**”).
- B. The Trust has developed a C-PACE Program and the Municipality has adopted a Commercial PACE Ordinance for the purpose of establishing and participating in a C-PACE Program.
- C. Property Owner has applied for participation in the C-PACE Program with respect to that certain property located within the Municipality as more fully described on Exhibit A to this Agreement (the “**Property**”) and to obtain C-PACE financing from the Capital Provider for the acquisition and installation of Energy Savings Improvements at the Property (the “**Project**”) in an amount up to that detailed on Exhibit A hereof (as the same may be amended in writing by the Parties), which financing will be secured by a C-PACE assessment lien (the “**C-PACE Lien**” or “**Assessment Lien**”) against the Property pursuant to the terms of the C-PACE Act.
- D. Prior to closing on the C-PACE Financing (as defined below), the Trust, or its designated agent, will review the Property Owner’s C-PACE Program application and will make a determination that the proposed Project will, if installed and operated as represented, satisfy the requirements and standards as set forth in the C-PACE Program Guidelines and applicable administrative rules of the Trust, with final approval of the Project by the Trust being a condition precedent to closing of the C-PACE Financing transaction by the Parties.
- E. The Capital Provider has determined that the Property Owner and the proposed Project satisfy the minimum underwriting requirements of the C-PACE Act and applicable administrative rules of the Trust and has agreed to provide a loan under the C-PACE Program for the Energy Savings Improvements to be installed at the Property (the “**C-PACE Financing**”).



F. The Municipality has determined that the Property Owner's proposed Project is in conformity with its C-PACE Ordinance and has agreed to impose the C-PACE Assessment to facilitate payment of the Property Owner's C-PACE Financing obligation to the Capital Provider.

G. The Property Owner, being all of the owners of the qualifying Property, wishes to enter this Agreement and affirm the imposition of the C-PACE Assessment and grant of the C-PACE Assessment Lien to secure the C-PACE Financing.

H. The Parties wish to confirm the process for assessment, payment, and collection of the C-PACE Financing amounts.

**NOW, THEREFORE**, in consideration of the foregoing and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## **ARTICLE I - AUTHORIZATION OF C-PACE ASSESSMENT AND LIEN**

**Section 1.01. C-PACE Financing of Energy Savings Improvements.** The Capital Provider has determined that the Property Owner and proposed Project satisfy the minimum underwriting requirements of the C-PACE Program and has agreed to provide the C-PACE Financing to the Property Owner to finance the acquisition, construction and installation of the Energy Savings Improvements, and the Property Owner hereby agrees to use the proceeds of such C-PACE Financing solely to acquire, construct, and install the Energy Savings Improvements (and to pay the allowable fees and costs required to be paid in connection therewith, including audits, energy savings improvement development, and application fees) and to cause the C-PACE Financing to be repaid on the terms set forth in the C-PACE Financing documents and this Agreement.

**Section 1.02. Terms of Financing.** The C-PACE Financing amount, interest rate, repayment schedule, maturity and other material terms of the C-PACE Financing are set forth in Exhibit A hereto. If the C-PACE Financing amount, interest rate, repayment schedule, maturity or other material terms of the C-PACE Financing are modified or amended by the Parties between the date of execution of this Agreement and the date of closing of the C-PACE Financing transaction, the Parties shall, as a condition of closing, execute and deliver an Amended and Restated Exhibit A in the form attached as Exhibit A-1 hereto, which Amended and Restated Exhibit A shall be incorporated herein and made part hereof.

**Section 1.03. Security/Collateral for the C-PACE Financing; C-PACE Lien.** To secure repayment of the C-PACE Financing, the Property Owner hereby agrees to the imposition of a C-PACE Assessment on the Property in the amount of the C-PACE Financing and hereby grants a C-PACE Lien on the Property for the benefit of and enforceable by the Municipality and Capital Provider, and its successors and assigns, pursuant to the C-PACE Act. The Parties hereby agree to cause a notice of this Agreement in the form attached hereto as Exhibit B to be recorded in the appropriate Registry of Deeds thereby perfecting the C-PACE Lien to evidence and secure the C-PACE Financing (the "**Notice of C-PACE Agreement**"). The Notice of C-PACE Agreement must be accompanied by an executed Mortgage Lender Consent, as may be required from each financial institution holding a lien, mortgage, or other collateral encumbrance on the Property, showing voluntary consent to the enrollment of the Property in the C-PACE Program, acknowledging the priority status of the C-PACE Lien, and acknowledging the foreclosure process for C-PACE liens under the C-PACE Act. The Property Owner acknowledges and agrees to the imposition of the C-PACE Assessment and C-PACE Lien on the Property as a priority lien running with the title to the Property (junior only to real property taxes and liens of municipal sewer, sanitary, and water districts) to secure the C-PACE Financing, enforceable against the Property as provided in the C-PACE Act until the amounts due under the C-PACE Financing documents are paid in full.

**Section 1.04. Recording of Notice of C-PACE Agreement; Project Completion.** The recording of a Notice of C-PACE Agreement creates a C-PACE Lien subject to the C-PACE Assessment and such notice may only be recorded upon closing of the C-PACE Financing transaction between Property Owner and Capital Provider. The Parties agree to execute the Notice of C-PACE Agreement in connection with closing of the C-PACE Financing transaction and the Capital Provider shall be responsible to record the Notice of C-PACE Agreement and Mortgage Lender Consent in the appropriate Registry of Deeds and to provide copies of the executed Notice of C-PACE Agreement and Mortgage Lender Consent to the Trust with 10 days after closing. The Property Owner shall be required to keep the Capital Provider apprised of Project status and completion. After the Completion Date, as set forth below, the Capital Provider, with cooperation and assistance from the Property Owner as necessary, shall prepare and submit to the Municipality and the Trust a statement certifying that the Project is complete (a “**Completion Certificate**”). The Project shall be deemed completed on the date (such date, the “**Completion Date**”) that: (i) the construction/installation of the Project is completed, (ii) the Energy Savings Improvements have been put into service, (iii) all approvals and reports required to be submitted to the Trust pursuant to the C-PACE Act, the C-PACE Program Guidelines, and administrative rules of the Trust have been submitted, and (iv) all other requirements of the C-PACE Financing documents have been met.

## **ARTICLE II - C-PACE FINANCING AND ASSESSMENT PAYMENTS**

**Section 2.01. C-PACE Financing Payments.** The following governs the manner and timing of C-PACE Assessment payments:

(a) *Manner of Payments.* Property Owner shall make payments of principal and interest due under the C-PACE Financing documents by way of C-PACE Assessments to be placed against the Property each year during the term of the C-PACE Financing documents. The C-PACE Assessments (and any interest, fees, penalties, and attorney's fees incurred in its collection) will be collected in the manner set forth in this Agreement.

(b) *Capital Provider Notice.* Capital Provider shall provide the Municipality and Property Owner with written notice on or before July 1 each year specifying the total C-PACE Financing amount (principal and interest) due from the Property Owner and to be assessed against the Property for the subject tax year (the “**Payment Due Notice**”).

(c) *Municipal Assessment.* The Municipality shall make a C-PACE Assessment or Assessments against the Property in the total amount of the Payment Due Notice each year for the subject tax year. Pursuant to the C-PACE Act, the C-PACE Assessment constitutes a lien on the Property until it is paid in full. The Municipality agrees to make C-PACE Assessments against the Property for repayment of C-PACE Financing amounts to the Capital Provider and shall maintain a record of such assessments and take such other action as necessary for the establishment of liens against the Property as contemplated in the C-PACE Act.

(d) *Designation of Capital Provider as Agent to Issue C-PACE Assessment Billing and Receive C-PACE Assessment Payments.* After receipt of the Payment Due Notice from the Capital Provider, the Municipality's Assessor shall commit the C-PACE Assessment amount to the Capital Provider for billing and collection. The Municipality designates Capital Provider as its agent to issue C-PACE Assessment billing to the Property Owner in the assessed amounts due for the subject period and to receive direct payment of the C-PACE Assessment amounts, which payments shall be applied by Capital Provider to the Property Owner's repayment obligation under the C-PACE Financing documents. C-PACE Assessment billing by the Capital Provider hereunder as the

Municipality's agent shall have the same effect as if the C-PACE Assessment billing were issued by the Municipality to the Property Owner directly.

(e) *Reporting.* Capital Provider shall periodically report to the Municipality on the status of the C-PACE Assessment payments and shall notify the Municipality and the Trust promptly of any delinquent C-PACE Assessment payments.

(f) *Remittance of C-PACE Payments by Municipality to Capital Provider.* It is the intent of the Parties that the C-PACE Assessment amounts shall be paid directly by Property Owner to Capital Provider. In accordance with the C-PACE Act, the Capital Provider has a contractual right to receive C-PACE Assessment payments. If the Municipality receives C-PACE Assessment payments from the Property Owner, the Municipality shall remit such payments to the Capital Provider, which payments shall be applied by Capital Provider to the Property Owner's repayment obligation under the C-PACE Financing documents. The Municipality shall remit all C-PACE Assessment payments it receives to Capital Provider within 30 days after receipt of such payments. In no event shall the Municipality be responsible to remit or pay over to Capital Provider any amount in excess of the Assessment payments actually received by the Municipality from the Property Owner. The Municipality has no independent obligation to repay the C-PACE Financing amounts on behalf of the Property Owner. For the avoidance of doubt, pursuant to the C-PACE Act, notwithstanding any provision of law to the contrary, municipal officers and Municipal officials, including, without limitation, tax assessors, tax collectors, and treasurers, and staff or trustees of the Trust, are not personally liable to any other person for claims, of whatever kind or nature, under or related to a C-PACE program established under the C-PACE Act, including, without limitation, claims for or related to uncollected C-PACE Assessments.

(g) *Continuing Payment Obligation; No Prepayment.* The Property Owner acknowledges and agrees that (i) the C-PACE Assessment Lien against the Property shall run with the title to the Property and automatically bind all successor owners of the Property until paid in full, and (ii) the C-PACE Financing may not be prepaid in whole or in part except as set forth in the C-PACE Financing documents.

(h) *Notice of Satisfaction; Release of Lien.* The Capital Provider shall provide notice to the Municipality and the Property Owner when the C-PACE Financing amount has been paid in full and shall cooperate with the Municipality and the Property Owner in the preparation and recording of a release and discharge of the C-PACE Lien on the subject Property when the C-PACE Financing has been satisfied.

### **ARTICLE III - PROPERTY OWNER'S REPRESENTATIONS AND WARRANTIES**

The Property Owner represents and warrants as follows, which representations and warranties shall be true and correct as of the date hereof and at all times thereafter until the C-PACE Financing is paid in full, each of which shall be true and binding on any future Property Owner.

**Section 3.01. Organization and Authority.** The Property Owner is duly organized, validly existing and in good standing in the state of its organization and with authority to do business under the laws of the State of Maine. The Property Owner has all necessary power and authority to own the Property and to conduct its business and enter into the transactions contemplated hereby. The Property Owner has the right to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement and all other documents executed in connection therewith have been duly authorized, executed and delivered and constitute valid and binding obligations of the Property Owner, each enforceable in accordance with its respective terms.

**Section 3.02. Title.** The Property Owner has good and insurable title to the Property subject only to the permitted encumbrances approved by Capital Provider. The Property Owner shall cause any current mortgagee, as of the execution date of this Agreement, holding a mortgage lien against the Property as of such date, to consent to and subordinate the lien of such mortgage filed against the Property to the Assessment Lien by Mortgage Lender Consent which shall be recorded prior to recordation of notice of this Agreement. The Property Owner, through the Capital Provider, shall ensure that all financial institutions and lenders holding a lien, mortgage, or other collateral encumbrance on the Property receive notice and provide consent as required by the C-PACE Act.

**Section 3.03. No Overdue Taxes or Payments.** The Property is (i) current on real estate taxes, personal property taxes and municipal sewer, sanitary, and water district charges; (ii) has no outstanding and unsatisfied tax or municipal sewer, sanitary, or water district liens; (iii) is not subject to a mortgage or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured; and (iv) there are no overdue payments on mortgages secured by the Property.

**Section 3.04. No Misrepresentation or Material Nondisclosure.** The Property Owner has not made and will not make to the Municipality, the Capital Provider, or the Trust, in this Agreement or otherwise, any untrue statement of a material fact, nor has it omitted and nor will it omit to state a material fact necessary to make any statement made not misleading.

**Section 3.05. Commercial Purpose.** The Property Owner will use the proceeds of the C-PACE Financing Advance only for the purposes specified in the Recitals to this Agreement in accordance with the C-PACE Act. The primary purpose of the C-PACE Financing is for a commercial and business purpose, and the proceeds of the C-PACE Financing will not be used primarily for personal, family, or household purposes.

## **ARTICLE IV - DEFAULT AND FORECLOSURE**

**Section 4.01. Delinquency, Collection and Foreclosure.** If a C-PACE Assessment is delinquent or in default, collection and foreclosure shall proceed as set forth in Section 10205(5) of the C-PACE Act and the statutes referenced therein. The C-PACE Assessment Lien shall take precedence over all other liens or encumbrances as permitted by the C-PACE Act.

(a) The C-PACE Assessment levied pursuant to the C-PACE Act, and payment thereof (together with the interest, fees and any penalties thereon) shall constitute a C-PACE Assessment Lien against the Property until paid in full. Delinquencies shall be subject to the procedures outlined in Section 10205(5) of the C-PACE Act and the statutes referenced therein.

(b) If a C-PACE Assessment is delinquent or in default and the Property Owner is delinquent in any tax debt due to the Municipality, collection shall be instituted by the Municipality and may occur only by the recording of liens and by foreclosure under Title 36, M.R.S. sections 942 and 943. Liens must be recorded and released in the same manner as liens for real property taxes. If the Municipality acquires the Property through tax lien foreclosure or otherwise pursuant to 36 M.R.S. §§942 and 943, then the Municipality shall cause to be paid to the Capital Provider all delinquent amounts payable under the C-PACE Financing at the time of foreclosure (whether from the proceeds of sale or other amounts collected by the Municipality after satisfaction of delinquent taxes) but only to the extent that the Municipality has received such amounts through the foreclosure process and there are funds remaining after satisfaction of delinquent taxes, interest, fees and costs owed to the Municipality, and any unpaid C-PACE Financing installments shall continue as against the Property as an enforceable Assessment Lien with full rights of collection as set forth in the C-PACE Act. For the avoidance of doubt, it is agreed and understood by the Parties that in no event

shall the Municipality be obligated to make C-PACE Assessment payments during any period in which it is deemed the owner of the Property acquired through the statutory tax lien foreclosure process. It is agreed and understood that unpaid future C-PACE Assessment payments shall be the obligation of the person or entity that subsequently acquires title to the Property subject to the C-PACE Lien.

(c) If only a C-PACE Assessment is delinquent but the Property Owner is current on payment of all municipal taxes due to the Municipality, then the Municipality shall, and does hereby in such event, assign the C-PACE Assessment Lien to the Capital Provider, and the Capital Provider shall, and does hereby in such event, accept an assignment of the C-PACE Assessment Lien from the Municipality. If only a C-PACE Assessment is delinquent but the Property Owner is current on payment of all municipal taxes due to the Municipality, the Capital Provider then shall have and possess all the same powers and rights at law as the Municipality and its tax collector with regards to the priority of the C-PACE lien, the accrual of interest and fees, and the costs of collection. The Capital Provider shall have the same rights to enforce the C-PACE lien as any private party or lender holding a lien on real property and shall have all such other rights as set forth in the C-PACE Act, including the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of a C-PACE Lien. The Capital Provider, as assignee of the lien, shall recover costs and reasonable attorney's fees incurred as a result of any foreclosure action or other legal proceeding brought pursuant to this subsection, which may be collected by the Capital Provider at any time after it has made demand for payment.

## ARTICLE V – MISCELLANEOUS

**Section 5.01. Effectiveness of this Agreement.** It is agreed and understood by the Parties that, without regard to the date of execution of this Agreement by any Party hereto, the effectiveness of this Agreement is expressly conditioned on the issuance by the Trust of a Notice of Approval for the Property Owner's C-PACE Program application for the subject Property and the closing of the C-PACE Financing transaction. Pursuant to Section 1.02 of this Agreement, the Parties agree that if the C-PACE Financing amount, interest rate, repayment schedule, maturity or other material terms of the C-PACE Financing are modified or amended by the Parties between the date of execution of this Agreement and the date of closing of the C-PACE Financing transaction, the Parties shall, as a condition of closing, execute and deliver an Amended and Restated Exhibit A in the form attached as Exhibit A-1 hereto, and Capital Provider shall provide the Trust with a final, fully-executed copy of this Agreement, with any amendments thereto, within 10 days after closing of the C-PACE Financing transaction.

**Section 5.02 No Waiver.** No waiver of any default or breach by the Property Owner hereunder shall be implied from any failure by any other Party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**Section 5.03. Successors and Assigns.** This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the Municipality and the Trust, their successors and permitted assigns, and no other person or persons shall have any right of action hereunder.

**Section 5.04. Notices.** Any notice and other communications hereunder shall be in writing and shall be delivered in person or mailed by reputable overnight courier or by registered or certified mail, return receipt requested, postage prepaid, to the other Parties, at the address set forth at the caption of this Agreement. The addresses of any Party may be changed by notice to the other Party given in the same manner as provided above.

**Section 5.05. Amendments.** No amendment, modification, termination, or waiver of any provisions of this Agreement shall be effective unless in writing and signed by all of the Parties.

**Section 5.06. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. It is the intent of the parties hereto that the transactions contemplated herein shall comply with and achieve the intent of the C-PACE Act. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify this Agreement to give effect to the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 5.07. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

**Section 5.08. No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Municipality or the Trust and their officials, employees, trustees, or agents, or any other person acting on behalf of the Municipality or the Trust and, in particular, governmental immunity afforded or available pursuant to Maine common law, the Maine Tort Claims Act, and the Constitutions of the State of Maine and United States.

**Section 5.09. Third-Party Beneficiary.** The Parties acknowledge that the Trust will rely on the terms of this Agreement and the representations and undertakings of the Parties contained herein and on the Property Owners' and Capital Provider's C-PACE Program application submittals. The Trust is deemed a third-party beneficiary of those provisions in this Agreement that grant or allow the Trust to exercise rights, receive documents and information in connection with the administration of the C-PACE Program, and are otherwise intended for the benefit of the Trust and its agents.

**IN WITNESS WHEREOF,** the Property Owner, the Municipality, and the Capital Provider have executed this Agreement as of the date first written above by and through their duly authorized representatives.

[MUNICIPALITY]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

{CAPITAL PROVIDER}

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

NOTE: ALL OWNERS OF THE QUALIFYING

PROPERTY MUST AGREE AND EXECUTE; SEE  
35-A MRS 10202(2)]  
{ INSERT NAME OF PROPERTY OWNER(S) }

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## Exhibit A

Property Owner: \_\_\_\_\_

Property Location:

Street Address: \_\_\_\_\_

Municipality: \_\_\_\_\_

Tax Map and Lot No.: \_\_\_\_\_

Registry of Deeds Book and Page: \_\_\_\_\_

Capital Provider: \_\_\_\_\_

Capital Provider Address and Contact Information: \_\_\_\_\_

\_\_\_\_\_

C-PACE Financing Amount: \_\_\_\_\_

Term of C-PACE Loan: \_\_\_\_\_

Interest Rate: \_\_\_\_\_

Payment Schedule

\_\_\_\_\_



**Exhibit A-1**  
**Amended and Restated**

(If Necessary: To be executed and delivered prior to closing if the C-PACE Financing amount, interest rate, repayment schedule, maturity or other material terms of the C-PACE Financing are modified or amended by the Parties between the date of execution of the C-PACE Assessment Agreement and the date of closing of the C-PACE Financing transaction)

Exhibit A to the C-PACE Assessment Agreement between the Parties identified below for the subject Property is hereby amended and restated as follows:

Property Owner: \_\_\_\_\_

Property Location:

Street Address: \_\_\_\_\_

Municipality: \_\_\_\_\_

Tax Map and Lot No.: \_\_\_\_\_

Registry of Deeds Book and Page: \_\_\_\_\_

Capital Provider: \_\_\_\_\_

Capital Provider Address and Contact Information: \_\_\_\_\_  
\_\_\_\_\_

C-PACE Financing Amount: \_\_\_\_\_

Term of C-PACE Loan: \_\_\_\_\_

Interest Rate: \_\_\_\_\_

Payment Schedule

\_\_\_\_\_

Capital Provider certifies that with this amendment, the C-PACE Assessment Agreement and C-PACE Financing continue to comply with the minimum underwriting requirements of the C-PACE Act as of the date of closing.

When completed and executed by the Parties, this Amended and Restated Exhibit A shall be deemed incorporated in and made part of the C-PACE Assessment Agreement executed by the Parties for the subject Property.

Date: \_\_\_\_\_

[C-PACE CAPITAL PROVIDER/LENDER]:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[PROPERTY OWNER]:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

[PROPERTY OWNER]:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

[MUNICIPALITY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit B

### NOTICE OF C-PACE ASSESSMENT AGREEMENT

Notice is hereby given that the parties identified below have entered into a C-PACE Assessment Agreement (“Agreement”) relative to the Property identified below pursuant to the terms of Title 35-A M.R.S. §§10201 *et seq.*, “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs” (the “C-PACE Act”) and that an assessment is made against the Property in the amount of the C-PACE Financing. The amounts financed under the Agreement are secured by a C-PACE assessment on the Property and, pursuant to 35-A M.R.S. §10205(2), the filing of this Notice creates a C-PACE lien against the Property subject to the C-PACE assessment until the amounts due under the Agreement are paid in full. Pursuant to 35-A M.R.S. §10205(2), notice is hereby given of the following:

DATE OF C-PACE AGREEMENT:

\_\_\_\_\_

C-PACE FINANCING AMOUNT:

\_\_\_\_\_

\_\_\_\_\_

PROPERTY OWNER(S):

(Names and Addresses)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PROPERTY SUBJECT TO

C-PACE ASSESSMENT:

A certain property located in the City/Town of \_\_\_\_\_, County of \_\_\_\_\_, and State of Maine with a street address of:

\_\_\_\_\_

Tax Map: \_\_\_\_\_, Lot No. \_\_\_\_\_

Registry of Deeds Book and Page: \_\_\_\_\_

(As more particularly described in **Exhibit A** hereto).

DURATION OF C-PACE AGREEMENT:

\_\_\_\_\_

MUNICIPALITY:

\_\_\_\_\_

C-PACE LENDER FILING NOTICE:

(Name and Address)

\_\_\_\_\_

\_\_\_\_\_

VERIFICATION OF MORTGAGE

LENDER CONSENT:

Verification is hereby made that any financial institution(s) holding a lien, mortgage, or security interest in or other collateral encumbrance on the property subject to the C-PACE assessment has provided consent to the Property Owner(s) and Municipality pursuant to 35-A M.R.S. §10205(4) that the borrower(s) may participate and enroll the subject property in the C-PACE Program. A copy of such consent(s) is/are attached as **Exhibit B** hereto.

Executed as a sealed instrument as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

[C-PACE CAPITAL PROVIDER/LENDER]:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_, SS

\_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said

\_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney-at-Law

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[PROPERTY OWNER]:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_, SS \_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney-at-Law

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[PROPERTY OWNER]:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_, SS \_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney-at-Law

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[MUNICIPALITY]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_, SS \_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_, in his/her capacity as  
\_\_\_\_\_ of \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her  
free act and deed in his/her said capacity and the free act and deed of said  
\_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney-at-Law  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A to NOTICE OF C-PACE AGREEMENT**

(Description of Premises)

**EXHIBIT B to NOTICE OF C-PACE AGREEMENT**

(Copy of Executed Mortgage Lender Consent)





# Efficiency Maine C-PACE Program Municipality Participation Guide

## C-PACE Program Benefits

### Why a Municipality Should Consider Participating

- Commercial PACE (C-PACE) means commercial property assessed clean energy. C-PACE is an economic development tool for municipalities. Energy-efficient buildings create a more competitive environment for retaining and attracting new businesses by lowering energy costs. Energy upgrades also create jobs and reduce greenhouse gases and other pollutants.
- *Many owners lack capital to implement energy improvements.* C-PACE provides up to 100% up-front, long-term financing to commercial property owners for Energy Savings Improvements. The costs of energy audits, construction, commissioning and post-construction performance measurement and verification (M&V) can be wrapped into C-PACE financing.
- C-PACE stimulates the implementation of energy savings improvements with 100% private market capital and requires no investment from the Municipality.
- *Owners often want to sell the building before an energy upgrade loan is repaid.* The C-PACE assessment obligation is attached to the property and can transfer to the new owner. Payments do not accelerate in case of sale or default.
- The C-PACE program requires that the estimated cost savings from Energy Savings Improvements equal or exceed the up-front investment and financing costs, leading the expected cash flow to be positive over the useful life of the improvements.
- As a property tax assessment, where permissible under lease agreements, C-PACE payments – together with the energy cost savings associated with the improvements – may be passed along to tenants.
- C-PACE has created a secured, clean energy financing product for Capital Providers. The security comes from the C-PACE Lien on a property. The lien, like property tax assessments, sits in a senior position to other encumbrances on the property, including mortgage debt and liens (other than Municipal Liens). The security provided by the tax assessment results in several compelling features, including longer-term financing and transferability of the repayment obligations to subsequent owners of the property.
- C-PACE financing strengthens the business case for investment in longer payback and deeper building retrofits beyond what may be possible with traditional financing.

## Municipality Participation

### Municipality Options for Participation

Maine Municipalities have two options for participation in the C-PACE Program.

A Municipality can:

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

In option 1, Municipalities would have more control over the program design within their municipality, but they would be subject to significantly greater administrative burden, including developing and implementing their own program guidelines, recruiting and registering Capital Providers, accepting project applications and reviewing and approving projects for adherence to the rules and regulations. Municipality-based programs are typically less successful in large part to the unwillingness of Capital Providers to participate in smaller market size C-PACE programs.

In option 2, Municipalities are relieved of the majority of administrative burdens while still able to stimulate the adoption of energy savings improvements for commercial properties within their communities.

Under both options 1 and 2, Municipalities wishing to participate in the C-PACE Program must adopt a C-PACE Ordinance as required by the Maine C-PACE Act. The Trust has developed a model C-PACE Ordinance. A municipality that wishes to exercise option 2 must also enter into a C-PACE Municipality Participation Agreement with the Trust that establishes the Trust as the Municipality's C-PACE Program Administrator for certain designated functions. A Maine municipality that adopts a C-PACE Ordinance not materially different from the Trust's model C-PACE Ordinance and executes a C-PACE Municipality Participation Agreement with the Trust is a "Participating Municipality." A commercial property must be located in a Participating Municipality in order to be eligible for C-PACE financing through the Efficiency Maine C-PACE Program.

Municipalities interested in becoming a Participating Municipality under the Efficiency Maine Trust C-PACE program should closely review the following documents from the **C-PACE Program Guidelines** (available at [Efficiencymaine.com/C-PACE](http://Efficiencymaine.com/C-PACE)):

- **Appendix B: Model C-PACE Ordinance**
- **Appendix C: C-PACE Municipality Participation Agreement**
- **Appendix D: C-PACE Assessment Agreement**

## Participating Municipality Responsibilities

### Responsibilities of the Municipality within the Efficiency Maine Trust C-PACE Program

*The responsibilities below represent option 2 above. Option 1 would contain significantly greater municipality responsibilities. The below identified responsibilities have been simplified for understanding and further detail can be found in the aforementioned documents.*

1. **Project Agreements:** The municipality must execute a C-PACE Assessment Agreement, along with the Property Owner and its Capital Provider, for each C-PACE project within their municipality. The C-PACE Assessment Agreement authorizes the creation of a C-PACE Lien on the Property receiving the Energy Savings Improvements. The process of completing this program responsibility is as follows:
  - During the development of a C-PACE Project, the Capital Provider and Property Owner will sign the C-PACE Assessment Agreement.
  - The Municipality will then sign the C-PACE Assessment Agreement, approved as to form and substance by the Municipality.
  - All parties must sign the C-PACE Assessment Agreement prior to the submission of a C-PACE project application to Efficiency Maine, though the effectiveness of the Agreement is conditioned on final project approval by Efficiency Maine and closing of the C-PACE loan.
  - Once a project approval is provided by Efficiency Maine and the C-PACE financing transactions closes, a notice of the C-PACE Agreement will be filed in the registry of deeds, which filing will create a lien on the Property implementing the Energy Savings Improvements until the amounts due under the C-PACE Financing are paid in full. The form C-PACE Assessment Agreement places the obligation for recording the Notice of C-PACE Agreement on the Capital Provider.
2. **Annual C-PACE Assessments and Collections:** The municipality will not need to finance or fund any C-PACE projects and will incur no liability for payment of the loan. The C-PACE Assessment Agreement details the responsibilities of the Municipality and Capital Provider with regard to billing and collection of the C-PACE assessments, but in summary: The Capital Provider will provide the Municipality with a "Payment Due Notice" specifying the amount due from the Property Owner in repayment of the C-PACE loan for the subject year. The Municipality will assess the Property in the amount specified in the Payment Due Notice and designate the Capital Provider as agent for the billing of the C-PACE assessment amount and the collection of payments from the Property Owner. The C-PACE assessment payments are to be applied by the Capital Provider to the C-PACE loan balance. The Capital Provider will provide periodic reports to the Municipality on the status of the C-PACE payments from each Property Owner and will provide notice to the Municipality of any delinquency or default of a C-PACE assessment payment.

The Capital Provider shall provide notice to the Municipality and the Property Owner when the C-PACE Financing amount has been paid in full and shall cooperate with the Municipality and the Property Owner in the preparation and recording of a release and discharge of the C-PACE Lien on the subject Property when the C-PACE Financing has been satisfied.

3. **Default and Foreclosure:** The process for collection of delinquent C-PACE assessments is governed by the Maine C-PACE Act. If a C-PACE Assessment is delinquent or in default, collection and foreclosure shall proceed as follows:
- If both the C-PACE Assessment is delinquent or in default **AND** the borrower or property owner is delinquent in any tax debt due to the Municipality, the process is as follows:
    1. Collection may occur only by the recording of liens and by foreclosure under 36 M.R.S. §§ 942 and 943. The Municipality would institute the foreclosure process for both the delinquent tax and C-PACE assessments, and liens must be recorded and released in the same manner as liens for real property taxes.
    2. If the Municipality acquires the Property through tax lien foreclosure, then the Municipality shall cause to be paid to the Capital Provider all delinquent amounts payable under the C-PACE Financing at the time of foreclosure. *(This is true only to the extent that the Municipality has received such amounts through the foreclosure process and there are funds remaining after satisfaction of delinquent taxes, interest, fees, and costs owed to the Municipality.)*
    3. The portion of the C-PACE assessment that has not yet become due at the time foreclosure is not eliminated by foreclosure and remains as a lien against the Property with full rights of collection as set forth in the C-PACE Act.
    4. The form C-PACE Assessment Agreement provides that in no event shall the Municipality be obligated to make C-PACE Assessment payments during any period in which it is deemed the owner of the Property acquired through the statutory tax lien foreclosure process.
    5. Unpaid future C-PACE Assessment payments shall be the obligation of the person or entity that subsequently acquires title to the Property subject to the C-PACE Lien.
  - If **only** the C-PACE Assessment is delinquent, but the borrower or property owner is current on payment of all municipal taxes due to the Municipality, the process is as follows:
    1. The Capital Provider will take an assignment of the C-PACE Lien, as provided in the C-PACE Assessment Agreement.
    2. Per the C-PACE Act, the Capital Provider then shall have and possess all the same powers and rights at law as the Municipality and its tax collector with regards to the priority of the C-PACE lien, the accrual of interest and fees, and the costs of collection.
    3. The Capital Provider shall have the same rights to enforce the C-PACE lien as any private party or lender holding a lien on real property and shall have all such other rights as set forth in the C-PACE Act, including the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of a C-PACE Lien.

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

**Proclamation 24-001.** Move approval on the request from the Scarborough Land Trust to proclaim Saturday, May 4<sup>th</sup> as Scarborough Land Trust Day. [*Scarborough Land Trust*]

*Scarborough Land Trust*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

N/A

\_\_\_\_\_  
First Reading/Vote

N/A

\_\_\_\_\_  
Public Hearing

04/17/2024—Vote:

\_\_\_\_\_  
Second Reading/Final Approval/Vote



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## Proclamation 24-001

### *Proclaiming Saturday, May 4<sup>th</sup> as Scarborough Land Trust Day*

**BE IT RESOLVED**, by the Council of the Town of Scarborough, Maine in Town Council assembled that,

**WHEREAS**, the Scarborough Land Trust was founded as the Owascoag Land Conservation Trust in 1977 by eight local residents and has served the town for 46 years; and,

**WHEREAS**, the Scarborough Land Trust has permanently protected over 1,600 acres of natural resources, farmland, scenic vistas, and areas of historical significance throughout Scarborough; and,

**WHEREAS**, the Scarborough Land Trust works with willing landowners and community partners to conserve land, provide public access, conserve wildlife habitat, and protect farmland for the benefit of the community; and,

**WHEREAS**, the dedicated volunteers of the Scarborough Land Trust build and maintain trails, monitor lands, manage forests and wildlife habitat, and ensure these lands thrive today, and for future generations; and,

**WHEREAS**, the Scarborough Land Trust conducts environmental education programs and other field experiences to connect more people to Scarborough's beautiful and diverse landscapes; and,

**WHEREAS**, Open lands provide places to recreate, nurture physical and mental health, increase our community's quality of life, and foster an appreciation for the natural world.

**NOW, THEREFORE, BE IT RESOLVED**, that the Scarborough Town Council, does hereby proclaim Saturday, May 4, 2024 as:

### *Scarborough Land Trust Day*

throughout Town of Scarborough Maine, and we urge all citizens to participate in their annual clean-up day.

Signed and dated this 17<sup>th</sup> day of April, 2024, on behalf of the Town Council and the Town Manager of Scarborough, Maine.

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Signed by:                      April V. Sither  
    Council Vice Chair

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Signed by:                      Thomas J. Hall  
    Town Manager

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

**Resolution 24-003.** Move approval on the request to recognize George Horrigan for his winning essay. *[Town Manager]*

*Town Manager*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

N/A

\_\_\_\_\_  
First Reading/Vote

N/A

\_\_\_\_\_  
Public Hearing

04/17/2024—Vote:

\_\_\_\_\_  
Second Reading/Final Approval/Vote

**RESOLUTION 24-003**

**RECOGNIZING GEORGE HARRIGAN FOR HIS MAINE MUNICIPAL  
ASSOCIATION WINNING ESSAY**

**BE IT RESOLVED** by the Council of the Town of Scarborough, Maine, in Town Council assembled that,

**WHEREAS**, the Maine Municipal Association holds an annual 7<sup>th</sup> Grade Essay Contest, the theme this year being “If I Led My Community”; and,

**WHEREAS**, this contest is held throughout the State of Maine for all 7<sup>th</sup> Graders; and,

**WHEREAS**, George Harrigan of the Scarborough Middle School did submit his essay to make his community a better place by addressing invasive species, the Green Crab; and,

**WHEREAS**, George was one of the top three winning authors of this year’s contest.

**NOW, THEREFORE, BE IT RESOLVED**, by the Scarborough Town Council, in Town Council assembled, that he is hereby recognized for the great honor they have brought to the Town of Scarborough. The Scarborough Town Council is proud of his effort and hard work.

Signed and sealed this the 17th day of April, 2024, on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine.

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Signed by: April V. Sither  
Council Vice Chair

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Attested by: Kristen M. Barth  
Deputy Town Clerk



George Horrigan  
Mrs. Bracy  
Scarborough Middle School

If I led my community, in order to make it a better place, the issue I would address about Scarborough is the invasive species, the Green Crab. This issue is serious for me as I live in Scarborough, home to the largest saltwater marsh in the state. The marsh is a big part of my life; I swim, boat, and fish in it. My family keeps a Boston Whaler in a marina where the Libby River combines with the marsh. Since I spend so much time around the marsh, I want it to be well taken care of so it will be around for the next generations to enjoy. If we don't act, the invasive Green Crabs will take over, eating native species and destroying parts of the habitat.

Scarborough is very keen on conserving the marsh from people, but we also need to protect it from within. Green Crabs eat native crabs, fish, and clams. I can help, and so can everyone else. We can spread the word, making signs telling people of the damage and destruction taking place in our marsh. Once people know about Green Crabs, we can all work together to get rid of them. The invasive species is especially an issue for fishermen and clammers, when the crabs eat the things being fished, there are less to be caught and sold. According to the *Portland Press Herald*, fishermen are already working on exterminating the crabs, as reported in 2017, "About 20 fishermen participated in the June 28 conservation project along the banks of the Jones Creek and Nonesuch River, hoping to kill as many invasive green crabs as possible before the crustaceans prey upon the clams - and the fishermen's livelihood."([pressherald.com](http://pressherald.com)) The article shows how big of an issue this is for fishermen; if they cannot catch enough fish, they won't make enough money.

You can help in this way, too. Although it is illegal to sell Green Crabs without a license, you are completely allowed to kill one. That is exactly what we should do; if you see one of these crabs at the beach, you should kill it, knowing you are helping the environment. They don't belong here, and are causing unbelievable amounts of destruction.

If taking matters into my own hands doesn't work, I have another solution. I can work with town officials to get more traps and fences put up, protecting our marshes in a stronger way. The fences will block the Green Crabs from access to baby clams, the traps will get rid of the crabs in efficient ways. Adding traps and fences will reduce the amount of damage done by Green Crabs.

If I led my community, I would work to make it a better place by focusing on the issue of Green Crabs in the Scarborough Marsh. I want to help this problem because I am worried for our marsh, and I want it to last. Not only for me, but for the future of our community.

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

**Order No. 24-037.** Move approval of the second reading to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town’s interest. *[Parks and Conservation Land Board]*

*Parks and Conservation Land Board*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

*04/03/2024 – Vote: 7 Yeas*

\_\_\_\_\_  
First Reading/Vote

*N/A*

\_\_\_\_\_  
Public Hearing

*04/17/2024—Vote:*

\_\_\_\_\_  
Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: April 17, 2024

### **ACTION ITEM: Order No. 24-037.**

#### **SUBJECT:**

Second reading to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest. *[Parks and Conservation Land Board]*

#### **PURPOSE:**

To assist in the preservation of land for open space within the Town of Scarborough for public benefit.

#### **BACKGROUND:**

The Scarborough Land Trust is a non-profit community-based organization and conserve land where natural resources, scenic vistas and historical significance offer unique value to the community.

In November of 2019, the voters approved an additional \$2.5 million for land conservation and historic preservation. The Parks and Conservation Land Board was created to evaluate properties for conservation and recommend to the Town Council on the use of land bond monies for the purpose of acquisition and stewardship of conserved land.

An application for the subject property was reviewed by the Parks and Conservation Land Board, who have provided a positive recommendation for purchase. A grant application to the North American Wetlands Conservation Act (NAWCA) for \$350,000 in funding has been submitted with expected grant award in June 2024 and release of funds by April 2025. The Parties wish to finalize the sale in June 2024, so the request is to use Land Bonds to accomplish the purchase with the clear understanding and expectations that any grant funds received will reimburse the Land Bond account.

#### **FISCAL IMPACT:**

\$2,500,000 Voter Approved Land Bond (TC Order #19-060)  
 (\$ 396,099) Alger Hall Building (649 US Rt 1) TC Order #21-052  
 (\$ 200,000) Libby Property (196 Gorham Rd) TC Order #21-088  
 (\$ 140,000) 91 Burnham Road TC Order #22-113  
 (\$ 260,000) 80 Beech Ridge Road TC Order #23-053  
 (\$ 130,000) Gorham Road [located at the end of Finch Way] TC Order #23-083  
 (\$ 210,000) 50 Hanson Road (R001/Lot 007), TC Order #23-132  
**\$1,163,901 Unspent Land Bond Funds**  
 (\$210,000) 380 Payne Road, approved per TC Order #22-066 – did not close

#### **STATUS / PROCESS TO DATE:**

- Letter of Recommendation from the Parks & Conservation Land Board: March 26, 2024

- First Reading before the Town Council: April 3, 2024
- Second Reading before the Town Council: April 17, 2024

**PROPOSED ACTION:**

Move approval of the second reading to approve the expenditure, in an amount not to exceed, \$350,000 from the Land Acquisition Reserve Fund for the purpose of purchasing a portion of property located at 162 Spurwink Road, identified by the Scarborough Tax Assessors Map R098/Lot 18, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest. *[Parks and Conservation Land Board]*

**ATTACHMENTS:**

- Letter of Recommendation from the Parks and Conservation Land Board.
- Application Packet from the Scarborough Land Trust.

# PARKS AND CONSERVATION LAND BOARD

Town of Scarborough, Maine

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March 26, 2024

Nick McGee, Town Council Chair  
Honorable Town Councilors and Town Manager  
Town of Scarborough, Maine

Dear Chairman McGee and Friends,

## Board Members

Suzanne Foley-Ferguson  
Rachel Hendrickson  
Richard Murphy  
Noah Perlut  
Jessica Sargent  
Douglas Williams

Staff Liaison  
Todd Souza

Council Liaison  
Karin Shupe

The Parks and Conservation Land Board met on March 21, 2024, and voted to recommend that the Town Council authorize \$350,000 be spent from already approved Land Bonds to assist the Scarborough Land Trust (SLT) in purchasing 22.8 acres located at 162 Spurwink Road (Expanding Pleasant Hill Preserve).

This property will connect to and expand the existing 161-acre Pleasant Hill Preserve and connect +/-300 contiguous acres of Rachel Carson National Wildlife Refuge (Appendix IV - Map). In all, the 22.8 additional acres will connect to about 500 acres of contiguous conserved lands. Large land blocks support the Town's goals of increasing access to land for recreation in the form of trails and connections, as well as protecting habitats for the greatest number of species.

In addition to connectivity, the property itself provides important wildlife habitat. As SLT described in the application (Appendix II - Application), it is located within four Federal priority areas and three Atlantic Coast Joint Venture bird conservation Focus Areas. It is also located within a Maine Department of Inland Fisheries and Wildlife (MDIFW) Focus Area of statewide ecological significance. It contains 9 acres within a MDIFW identified "state listed animal habitat" for endangered, threatened, and species of concern, and their habitat buffers. Nature's Network, a 13 state collaborative effort to identify and conserve connecting intact ecosystems that support imperiled species, has identified approximately 7 acres as Core Habitat.

SLT will create recreational opportunities for hiking, skiing, snowshoeing, wildlife observation, and hunting.

The PCLB reviewed the property in one meeting. The property evaluation score as compared to similarly sized parcels is below:

00 Gorham Road	11.5 acres	236 points
50 Hanson Road	18 acres	252 points
<b>162 Spurwink Road</b>	<b>22.8 acres</b>	<b>397.2 points</b>
Libby I/Nonesuch	16.57 acres	543 points

The total project cost is \$549,147, so the Town's contribution to the project will be 64 percent of the project (Appendix III - Budget) with one very valuable caveat, there is the potential for reimbursement to the Town of up to the full amount. The SLT applied for a \$350,000 North American Wetlands Conservation Act (NAWCA) grant in December 2023. As detailed in the SLT cover letter (Appendix I - Letter) the expected award date is July 2024 and funds are anticipated to be released April of 2025. If SLT is awarded funding from the NAWCA grant, SLT would repay the Land Bond fund up to \$350,000, depending on the amount and costs awarded by the grant. If SLT is not awarded the grant, no repayment would occur. The landowners are also graciously providing a \$120,000 donation in the form of a bargain sale. A community effort led by SLT will fundraise the remaining portion of the project.

This project is superb for all of the aforementioned reasons, and the photos attached provide a glimpse of what will be protected (Appendix V - Photos).

The Board recommends the purchase and that the development rights on the property be extinguished legally by attaching conditions to the contribution and/or placing a conservation easement on the property. These details are typically negotiated between town and land trust staff and other contributing organizations, and should be included in the Council's direction to the manager.

If you have any questions regarding this property, a representative will be available at your meeting. Scarborough continues to be a leader in conservation, and I am proud to help in that regard. I hope you will be as well.

Sincerely,

Jessica Sargent  
Chair, Scarborough Parks and Conservation Land Board

Attachments:

Appendix I - Letter

Appendix II - Application to the PCLB

Appendix III - Project Budget

Appendix IV – Map of Parcel and Protected Adjacent Land

Appendix V - Photos



March 12, 2024

Jessica Sargeant  
Chair  
Parks and Conservation Land Board  
Town of Scarborough  
Scarborough, ME 04074

Dear Jessica,

The Scarborough Land Trust (SLT) is applying for Land Bond funding for the purchase of a portion of 162 Spurwink Rd -Lot R098-018 owned by Jim and Louise Falt. SLT has executed a purchase and sale agreement for a purchase price of \$350,000 and are looking to close by end of June 2024. SLT is requesting Land Bond funding of \$350,000.

SLT is also applying to the North American Wetlands Conservation Act (NAWCA) grant for \$350,000 in funding to purchase the same property. The NAWCA grant does allow reimbursement for certain project costs as well. The NAWCA grant application was submitted in December 2023 with an expected award date of July 2024. Funds are anticipated to be released by April of 2025. The grant request is part of a larger grant application submitted in coordination with the Maine Coast Heritage Trust and other land trusts from around the state of Maine.

SLT is requesting Land Bond funding to purchase the property by end of June 2024. If SLT is awarded funding from the NAWCA grant, then SLT would repay the Land Bond fund up to \$350,000 (depending upon the amount and costs awarded by the NAWCA grant). If SLT is not awarded the grant, then no repayment would occur. We consider this a win-win for the residents of Scarborough, as it secures the property for conservation while providing the opportunity to use Federal funding and preserve Town funding for other conservation projects.

Thank you for your time and consideration in reviewing our application. Please feel free to reach out with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "SKUNKLER", is placed below the word "Sincerely,".

Scott Kunkler  
Conservation Director

Town of Scarborough, Maine

## LAND ACQUISITION APPLICATION FORM

Property Name: Expanding Pleasant Hill Preserve Date: 3-10-24

Applicant Name: Scarborough Land Trust

**GENERAL INFORMATION:**

Property Address: 162 Spurwink Rd

Scarborough, Maine 04074

Mailing Address: PO Box 1237

Scarborough, ME 04074

Contact Person: Scott Kunkler

Phone # 207-289-1199 e-mail: skunkler@scarboroughlandtrust.org

Landowner(s) -please list full name of all owners (and lien holders, if any)

Jim and Louise Falt

Deed type: Warranty Deed Book / page# 4677 / 106

Current Assessed Value \$423,400

Recent appraised value (if available) \$470,000 for back 25 acres

Existing boundary survey? ☒ Y / ☐ N (circle) Will be updated to split the property.

Potential boundary disputes? Y / ☒ N (circle) (if yes, attach explanation)

Any hazardous waste on the property? Y / ☒ N An environmental assessment will be completed.

**LAND DESCRIPTION:** Tax Map # R098 Lot # 018 Zoning District RF and RP

Total Acres: 39.5 Proposed purchase acres: 25 Proposed easement acres           

Are there any buildings on the property? (Please circle) yes / ☒ no

If yes, are they a part of the proposed purchase? Y / N



**BRIEF PROJECT DESCRIPTION:**

(Please provide information regarding the suitability for public acquisition, special features, and proximity to existing public lands; include the value to the people of Scarborough and any current or potential uses)

SLT will purchase ~25 acres of forested land split from a ~40-acre parcel. The property includes 6 acres of NWI forested (PFO) and shrub (PSS) wetlands, and 19 acres of mature forested uplands of towering mature pine, spruce, maple, and oak trees. The wetlands form part of a larger 53-acre wetland complex that forms the headwaters of the Spurwink River, which flows into the Spurwink Marsh, a saltwater marsh. The property connects to 300 contiguous acres of Rachel Carson NWR. It also connects to SLT's 161-acre Pleasant Hill Preserve (PHP) and will expand PHP to 186 acres. In all the property will connect to about 500 acres of contiguous conserved lands. It is located within 4 Federal priority areas and 3 Atlantic Coast Joint Venture bird conservation focus areas. It is also located within a Maine Department of Inland Fisheries and Wildlife (MDIFW) Focus Area of statewide ecological significance. It contains 9 acres within a MDIFW identified "state listed animal habitat" for "endangered, threatened, and special concerns species occurrences and habitat buffers." Nature's Network identifies approximately 7 acres as Core Habitat for Imperiled Species (areas likely to support high levels of imperiled terrestrial and aquatic species, including 600 Species of Greatest Conservation Need).

SLT will create recreational opportunities for hiking, skiing, snowshoeing, wildlife observation, and hunting. SLT will also provide educational programs for people of all ages that bring awareness of the property's connections to the Spurwink Marsh, teach the values of forests and wetlands, as well as understand the property's role in mitigating the impacts of climate change in a meaningful local setting.

Do you (the presenter) believe that there will be a willing seller(s) of this site?  
Please explain: We have an executed P and S Agreement with the seller.

Please attach the following:

- Site Location Map (map provided)
- Assessors Map (with abutting properties)
- Photo(s) (no more than 1 page please)

Directions to the property from Town Hall:

\_ North on US Route 1 to right on Black Point Rd to left on Spurwink Rd. Property on left.

LEAVE THIS BOX BLANK UNTIL FURTHER NOTICE

**Important Note:** The Town Council of the Town of Scarborough requires that all owners of land being proposed for town purchase are willing sellers and have full knowledge that their property is being presented to them for consideration. When and if the Parks and Conservation Land Board recommend a purchase, the owners of the property will be asked to sign below to indicate their willingness to sell. *A signed letter stating the above is also acceptable.*

\_\_\_\_\_  
Owner #1

\_\_\_\_\_  
date

\_\_\_\_\_  
Owner #2

\_\_\_\_\_  
date

**Site Description** (To be filled out by Applicant or Representative)

Directions: Please check all that apply to the parcel that is proposed for purchase. If unsure, leave blank.

- ☒ Rare, or endangered species
- ☐ Freshwater rivers, streams, vernal pools
- ☐ Ocean, tidal or estuary
- ☐ Working Farm or Forest
- ☒ Saltmarsh / other wetlands
  
- ☐ Creates link between public or protected parcels or trails
- ☐ Provides buffer for river, streams or brooks
  
- ☐ Public access to beaches, marshes, waterways, or other natural areas
- ☒ Public access to trails or other public lands
  
- ☐ Existing active recreation (ball fields, motorized vehicles, etc.)
- ☐ Potential active recreation
- ☐ Existing passive recreation (birding, hiking, horseback riding, skiing, etc.)
- ☒ Potential passive recreation
  
- ☐ Scenic views
- ☐ Historical significance (cemetery, monument, archeological site)
  
- Possibilities for
- ☒ Purchase
- ☐ Easement
- ☐ Donation

*Note: This is a quick summary of the Detailed Assessment Form that the committee will be using to evaluate your parcel. The detailed form is available upon request and is based on a point system. The full evaluation has subjective components, as well.*

**V** Site Visit Scheduled: (to be filled out by committee) \_\_\_\_\_

## Expanding Pleasant Hill Preserve

162 Spurwink Rd

Scarborough Land Trust

<i>Expense</i>	<i>Estimate</i>	<i>Actual</i>
Appraised value of property		\$470,000
Appraisal	\$5,800	\$1,200
Environmental Review	\$2,200	
Survey	\$5,000	
Legal Fees	\$5,000	
Closing costs including title policy	\$2,500	
Long-term Stewardship		\$34,500
Land Protection Staff Costs	\$12,480	
Overhead and Administration	\$10,467	
<b>Total</b>		<b>\$549,147</b>

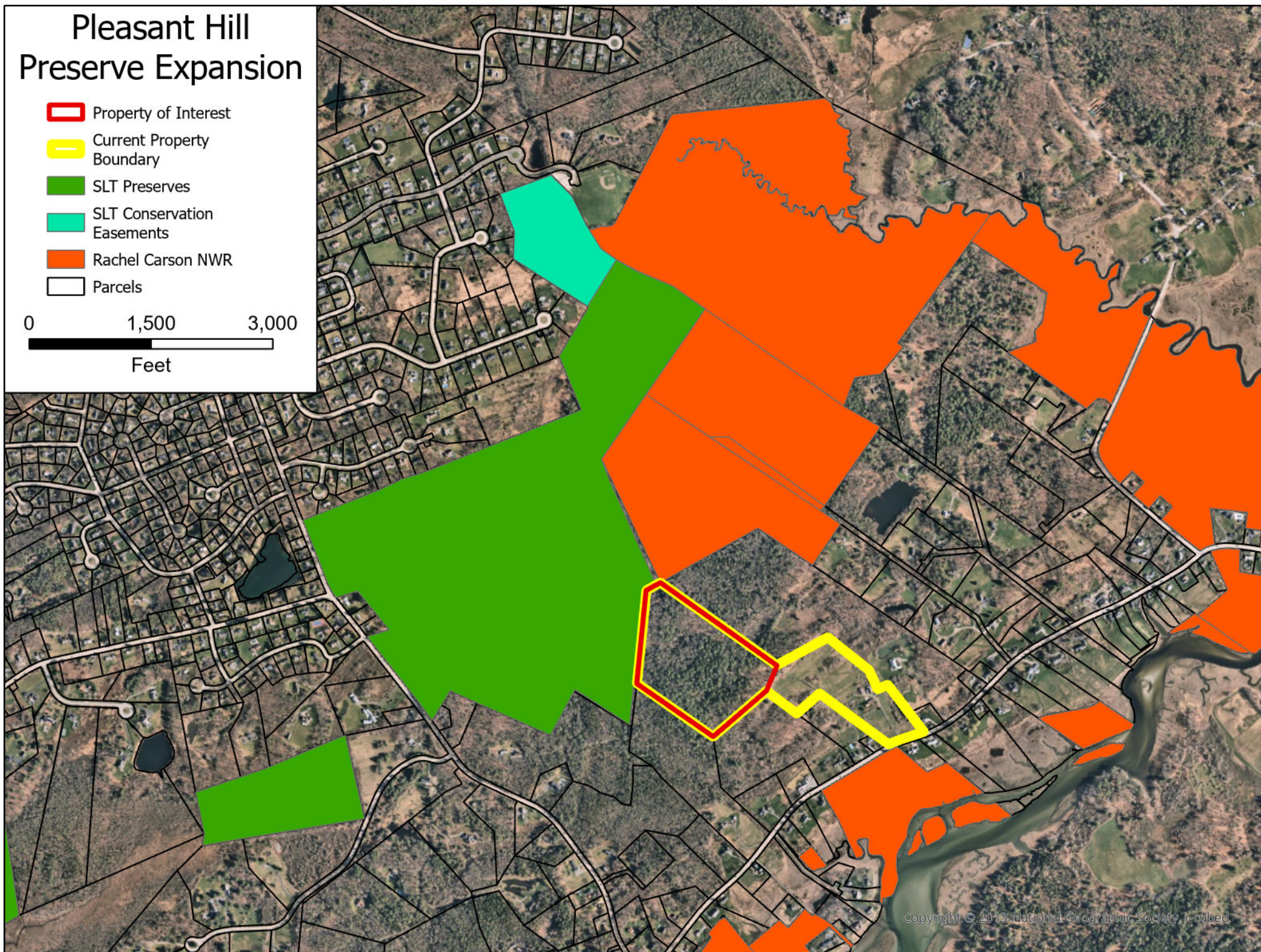
<i>Income</i>	<i>Landowner donation</i>	<i>SLT Fundraising</i>	<i>Town of Scarborough Land Bond</i>	<i>Total</i>
Purchase price of property	\$0	\$0	\$350,000	\$350,000
Bargain Sale	\$120,000	\$0	\$0	\$120,000
Appraisal	\$0	\$7,000	\$0	\$7,000
Environmental Review	\$0	\$2,200	\$0	\$2,200
Survey	\$0	\$5,000	\$0	\$5,000
Legal Fees	\$0	\$5,000	\$0	\$5,000
Closing costs including title policy	\$0	\$2,500	\$0	\$2,500
Long-term Stewardship	\$0	\$34,500	\$0	\$34,500
Land Protection Staff Costs	\$0	\$12,480	\$0	\$12,480
Overhead and Administration	\$0	\$10,467	\$0	\$10,467
	\$120,000	\$79,147	\$350,000	\$549,147



# Pleasant Hill Preserve Expansion

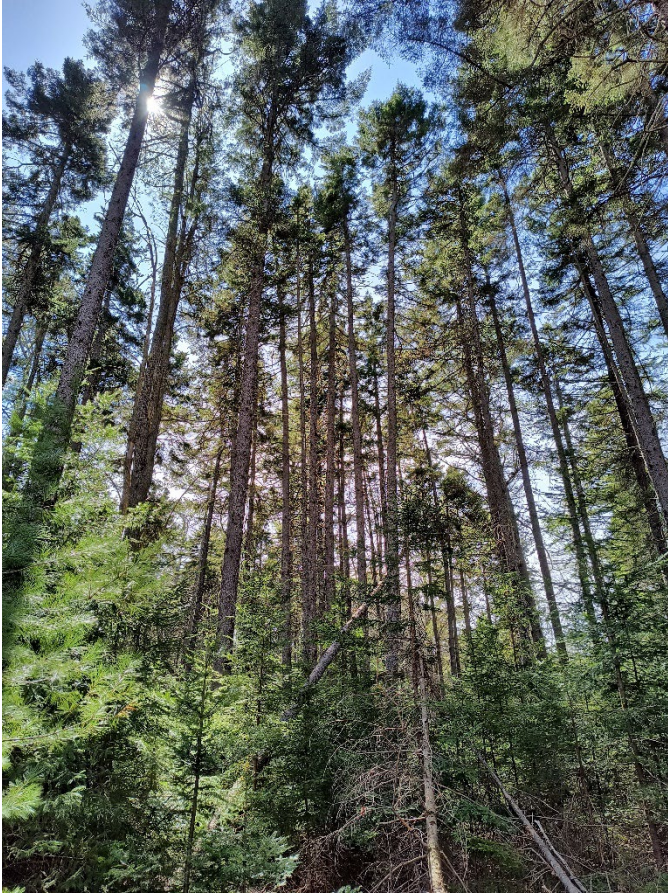
-  Property of Interest
-  Current Property Boundary
-  SLT Preserves
-  SLT Conservation Easements
-  Rachel Carson NWR
-  Parcels

0 1,500 3,000  
Feet





## Expanding Pleasant Hill Preserve







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

**Order No. 24-040.** Move approval of the first reading on the proposed changes to Chapter 1018 – the Town of Scarborough Marijuana Establishment Licensing Ordinance and schedule a public hearing and second reading for Wednesday, May 1, 2024. *[Assistant Town Manager]*

*Assistant Town Manager*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

*04/17/2024 – Vote:*

\_\_\_\_\_  
First Reading/Vote

*05/01/2024*

\_\_\_\_\_  
Public Hearing

*05/01/2024*

\_\_\_\_\_  
Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: April 17, 2024

<b>ACTION ITEM: Order No. 24-040.</b>
<b>SUBJECT:</b> <b>Order No. 24-040.</b> First reading and schedule a public hearing and second reading on the proposed changes to Chapter 1018 – the Town of Scarborough Marijuana Establishment Licensing Ordinance. <i>[Assistant Town Manager]</i>
<b>PURPOSE:</b> Revise Section 11: Odor Observation and Enforcement. The revised language is modeled after language within the good neighbor ordinance, expands the enforcement authority to the police department, and includes provisions that refer licenses back to the Town Council following five (5) verified odor reports within the 12 month licensing period.
<b>BACKGROUND:</b> Despite Cannabis Licensing changes adopted in August, 2023 the Town continues to receive reports of Odor from residential abutters to cannabis cultivation establishments. The enforcement language adopted in August, 2023 contained a very specific report threshold prior to the reports being verified by a Town official. These changes are made in an effort to dispatch Town officials (either Police or Code Enforcement) upon receipt of a singular complaint.
<b>FISCAL IMPACT:</b> N/A
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Discussion and consideration at Ordinance Committee in March and April.</li><li>• April 10: Ordinance Committee recommended to move proposed amendments to Chapter 1081: Cannabis Establishments Ordinance forward to Town Council</li></ul>
<b>PROPOSED ACTION:</b> Move approval of the first reading on the proposed changes to Chapter 1018 – the Town of Scarborough Marijuana Establishment Licensing Ordinance and schedule a public hearing and second reading for Wednesday, May 1, 2024. <i>[Assistant Town Manager]</i>
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Chapter 1018: Cannabis Licensing Ordinance</li></ul>



**Chapter 1018**  
**Town of Scarborough**  
**Cannabis Establishments Licensing Ordinance**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 1018 - the Town of Scarborough Cannabis Establishments Licensing Ordinance, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

**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~~ 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~~ 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~~ school within one thousand (1000) feet of the subject property. ~~For the~~ 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~~ 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~~ 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 floor rooms
    - 5. other areas with high odor potential

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

- b. Replace activated Carbon Media or other filters used to mitigate odor in accordance with the manufacturer's specifications but not less than an annual basis. Carbon Media includes but is not limited to carbon filters, carbon canister filters and pre-filters.
- c. All odor mitigation equipment used by an applicant or License holder shall always be in operation unless (1) the interruption is caused by a power outage or power failure; (2) the interruption is caused by routine maintenance, as recommended by the manufacturer, or emergency maintenance, to the odor mitigation equipment; or (3) the Town, in writing, permits otherwise. In the event there is a power outage or power failure, the License shall do whatever is reasonably necessary (e.g., informing Central Maine Power of any power disruption) to ensure power is restored to its facility as soon as reasonably practicable. For any disruption due to maintenance, the License holder shall ensure the odor mitigation equipment is returned to service or replaced as soon as reasonably practicable.
- d. No exterior venting of cannabis odor unless the applicant or License holder: (1) notifies the Town; (2) provides evidence of the cannabis odor being properly treated before exhausted outside; and (3) Town approves of the exterior venting of the cannabis odor. The Town shall not deny an applicant or License holder from venting odor outside unless either fails to provide sufficient evidence that the odor will be properly treated before its exhausted outside, or the License holder has been fined more than once by the Town for an odor violation.
- e. No window air conditioning units or window fans are permitted.
- f. All windows must always remain closed.
- g. Maintenance Records for all odor mitigation equipment shall be maintained for a period of two (2) years from the date of maintenance. Maintenance Records means

records of purchases of replacement carbon filters or other odor mitigation equipment, performed maintenance tracking, documentation and notification of malfunctions or power outages, scheduled and performed training sessions, and monitoring of administrative controls. All Maintenance Records shall be made available for review, upon request from the Town.

- h. Submit an Odor Mitigation Plan at the initial application stage of seeking a License. A License holder shall not be required to re-submit an Odor Mitigation Plan upon renewing the License unless there have been changes to the facility floor plan or system design as described in the existing Odor Mitigation Plan. The Odor Mitigation Plan must, at a minimum, 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, due to a multi-tenant situation or other ~~thereasons~~, 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 owner of the place~~ licensed premises where the violation occurred, and shall be posted in a conspicuous location at that premises, -in which event the specified time period for abating or appealing the violation shall commence at the date of the day following the mailing of such notice.

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After the fifth (5<sup>th</sup>) violation within the license period, 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~~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.