

**MINUTES**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 1, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Item 1. Call to Order.** Chairman McGee called the regular meeting of the Scarborough Town Council to order at 7:00 p.m.

**Item 2. Pledge of Allegiance.**

**Item 3. Roll Call.** Roll was called by Kristen Barth, Deputy Town Clerk. Thomas Hall, Town Manager and Liam Gallagher, Assistant Town Manager, were also present. Those Councilors present:

|                                  |                                |
|----------------------------------|--------------------------------|
| Vice Chair April V. Sither       | Councilor Jean-Marie Caterina  |
| Councilor Donald W. Cushing, Jr. | Councilor Donald R. Hamill     |
| Councilor Karin B. Shupe—ABSENT  | Councilor Jonathan E. Anderson |
| Chairman Nicholas S. McGee       |                                |

**Item 4. General Public Comments.** Chairman McGee provided an overview of the rules for public comment. The following public comments were made:

- Sue Hamill of Bay Street spoke in regards to the budget and fund balance. She would also like to see additional questions on the ballot to determine their view on the budget.
- Denise Hamilton of Two Rod Road in regards to the light industrial zone in the Two Rod Road/Holmes Road area.
- Alyson Bristol of Bay View Ave spoke in regards to the budget and the Senior Tax Program.
- Jim Pritchard of Maple Ave spoke in regards to traffic calming and a recommendation of a left-hand turn lane on Gorham Road to Maple Ave.
- Richard Hayes of Martin Ave spoke in regards to Town Council goal for a reduction to 3.2M and budget.
- Stanis Moody-Roberts of County Road spoke in regards to the Gorham Connector.
- Robert Baizley of Pin Oak Drive spoke in regards to the Cannabis Ordinance and disability accommodations for those who need more time for public comment.
- David Saari of Orchard Street spoke in regards to trees and other plants smell throughout the Town. He also spoke in regards to the traffic on Orchard Street.

**Item 5. Minutes: April 17, 2024 - Town Council Meeting.** Motion by Councilor Caterina, seconded by Councilor Sither on, to move approval of the April 17, 2024, Town Council meeting with a correction of the vote on 24-040.

Vote: 5 Yeas. Motion Passes. (Chairman McGee abstained due to being absent for the April 17, 2024 meeting)

**Item 6. Adjustment to the Agenda.** None at this time.

**Item 7. Items to be signed: a. Treasurer's Warrants.** Treasurer's Warrants were signed prior to the meeting.

**Item 8. Town Manager Report.** Thomas Hall, Town Manager, gave the following updates and answered questions from the Council:

- **FY25 Budget Review—directive to reduce net budget by \$2.2M**
  - Finance Committee Department Sessions—April 11 and 12
  - Finance Committee Review Sessions—April 18 and 24
  - Public Hearing—May 1
  - Adoption—May 15
- **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 completed
    - Black Point Road—met with DEP and PNIA
      - Maine Geological Survey consultation
      - Summer 2024 Traffic Plan
      - “Municipal Exemption”
      - Engineering Design
- **Ice Storm/Snow Storm Damage**
  - Tree Damage Town wide
  - Town to remove debris within Town right-of-way—on going effort
    - Contracted with Bartlett Tree next week
- **Eastern Trail—Close The Gap**
  - Agreement with CSX on Aerial Easement and Construction Agreement
- **Gorham Connector**
  - Scarborough to host public meeting
  - HOLD June 27, 2024—Wentworth Cafeteria
- **Award of \$1.4M NOAA Coastal Zone Management Grant**
  - Announcement Ceremony—April 22 (Earth Day)
  - Field Exercise and Roundtable at Town Hall
- **FEMA Disaster Recovery Center—PSB Classroom**
  - Selected dates: 04/18, 04/30, 05/02 and 05/09—afternoons
  - “Town Hall” meeting—04/18 at 6:00p.m.
  - Supplement to Wells and Harpswell—open to the public
- **Erosion at Pillsbury Shores (Pine Point)**
  - Met with residents on April 23, 2024
  - Conservation Easement limiting factor
- **Passing of Josh Roy—former Public Works/current SSD employee**
- **Ad-Hoc Community Center Committee**
  - Open house last week
  - Committee work completed in June 2024
  - Town Council Workshop in July—report/presentation
- **Business Community Engagement—5/23 at Landry French Office at 7:45**
  - Landscape Standards—Order No. 24-041
  - Impact Fees—Order No. 24-042
- **Land Bond Survey—Parks and Conservation Land Board**
  - Trust for Public Land technical assistance
  - Guidance for potential Land Bond Questions to voters
- **Revaluation Notices**
  - Mailed to every taxpayer

- To be received by the end of May—before School Budget Validation Vote
- Communications Committee to provide input

**Order No. 24-033, 7:00 p.m. Public hearing on the proposed FY2025 Municipal/School Budget.** *[Town Manager/Superintendent of Schools]* Thomas Hall, Town Manager provided a brief overview of this order. Chairman McGee opened the public hearing and the following public comments were made:

- Jim Pritchard of Maple Ave spoke in regards to the fund balance being a last resort but wanted to know if TIFs, wages, etc. will be used. Also, how this will play out in the years to come.
- Alyson Bristol of Bay View Ave spoke in regards 30% of the Scarborough’s population being 65 years or older and the impacts the revaluation will have.

As there were no additional comments for or against this order, Chairman McGee closed the hearing at 7:52p.m.

**Order No. 24-035, 7:00 p.m. Public hearing and second reading on the proposed repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024, as amended.** *[Planning Director]* Autumn Speer, Planning Director gave a brief overview of this order. Chairman McGee opened the public hearing and the following public comments were made:

- Peter Slovinsky of Iron Clad Road and who is a current member of the Conservation Commission spoke in support of this order and a required three feet base flood elevation.

As there were no additional comments for or against this order, Chairman McGee closed the hearing at 7:57p.m.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the second reading on the proposed repeal and replacement of Chapter 405A Floodplain Management Ordinance as required to maintain standing in the National Flood Insurance Program (NFIP) and to recognize the areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Cumberland County, Maine” dated June 20, 2024, with accompanying “Flood Insurance Rate Map” dated June 20, 2024.

Motion by Councilor Anderson, seconded by Councilor Sither, to move approval of the amend the main motion to require two feet above the base flood elevation, as follows:

## **ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

### **A. All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

2. use construction materials that are resistant to flood damage;
  3. use construction methods and practices that will minimize flood damage; and,
  4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.
- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Utilities** - New construction or substantial improvement of any structure (including manufactured homes) located within:
1. Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least ~~one foot~~two feet above the base flood elevation.
  2. Zone VE shall meet the requirements of Article VI.R.2.
- G. **Physical Changes to the Natural Landscape** - Certain development projects, including but not limited to, retaining walls, sea walls, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.
1. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
    - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
    - b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
  2. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.
  3. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.
- H. **Residential** - New construction or substantial improvement of any residential structure located within:



1. Zone AE shall have the lowest floor (including basement) elevated to at least ~~one~~ two feet ~~foot~~ above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated:
  - a. to at least two feet ~~one foot~~ above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
  - b. in the absence of all data described in Article VI.H.2.a., to at least two feet above the highest adjacent grade to the structure.
3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**I. Non-Residential** - New construction or substantial improvement of any non-residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least two feet ~~one foot~~ above the base flood elevation, or together with attendant utility and sanitary facilities shall:
  - a. be floodproofed to at least two feet ~~one foot~~ above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K., and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated:
  - a. to at least two feet ~~one foot~~ above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
  - b. in the absence of all data described in Article VI.I.2.a., to at least two feet above the highest adjacent grade to the structure; or,
  - c. together with attendant utility and sanitary facilities, be floodproofed to two feet ~~one foot~~ above the elevation established in Article VI.I.2.a. or b. and meet the floodproofing standards of Article VI.I.1.a., b., and c.
3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**J. Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zone AE shall:
  - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet ~~one foot~~ above the base flood elevation;
  - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
  - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

- (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
  - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
  - (3) All components of the anchoring system described in Article VI.J.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.
2. Zone A shall:
  - a. be elevated on a permanent foundation, as described in Article VI.J.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet ~~one foot~~ above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D.; or,
  - b. in the absence of all data described in Article VI.J.2.a., to at least two feet above the highest adjacent grade to the structure; and,
  - c. meet the anchoring requirements of VI.J.1.c.
5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

Vote on Amendment: 4 Yeas and 2 Nays (Chairman McGee and Councilor Hamill). Motion Passes.

Main Motion as Amended:

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 405A Town of Scarborough Floodplain Management Ordinance is hereby repealed and is replaced it with a new Floodplain Management Ordinance as recommended by the Planning Director.

**CHAPTER 405A  
TOWN OF SCARBOROUGH  
FLOODPLAIN MANAGEMENT ORDINANCE  
Enacted on March 7, 2007  
Amended October 17, 2007**

**ARTICLE I - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Scarborough, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Scarborough, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Scarborough, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Scarborough has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Scarborough having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Scarborough, Maine.

The areas of special flood hazard, Zones A, A1-30, AO, and V1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Scarborough, Maine, Cumberland County," dated December 19, 1984 with accompanying "Flood Insurance Rate Map" dated April 2, 1992, which are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits, which may be required pursuant to the codes and ordinances of the Town of Scarborough, Maine.

## **ARTICLE III - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;  
[Items H-K.3. apply only to new construction and substantial improvements.]
- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
  1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones A1-30, AO, and V1-30, from data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I; or,
    - b. in Zone A:

- (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and IX.D.;
  - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
  - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  3. lowest floor, including basement; and whether or not such structures contain a basement; and,
  4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
  - J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
  - K. The following certifications as required in Article VI by a registered professional engineer or architect:
    1. a Floodproofing Certificate (FEMA Form 81-65, 02/06, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI; (amended 10/17/2007)
    2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zones V1-30, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
    3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
    4. a certified statement that bridges will meet the standards of Article VI.M.;
    5. a certified statement that containment walls will meet the standards of Article VI.N.;
  - L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
  - M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application. (amended 10/17/2007)

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

## **ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  - 1. the base flood and floodway data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I.;
  - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
  - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
  - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, H, or P. Following review

of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. All Development - All development shall:
1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  2. use construction materials that are resistant to flood damage;
  3. use construction methods and practices that will minimize flood damage; and,
  4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- C. Sanitary Sewage Systems - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
- D. On Site Waste Disposal Systems - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

- E. Watercourse Carrying Capacity - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. Residential - New construction or substantial improvement of any residential structure located within:
  - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
  - 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  - 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
    - a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified.
  - 4. Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
  - 5. Zones V1-30 shall meet the requirements of Article VI.P.
- G. Non Residential - New construction or substantial improvement of any non-residential structure located within:
  - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  - 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  - 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
    - a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified; or,
    - c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Article VI.G.1.
  - 4. Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or

- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
  - 5. Zones V1-30 shall meet the requirements of Article VI.P.
- H. Manufactured Homes - New or substantially improved manufactured homes located within:
  - 1. Zones A1-30 shall:
    - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation;
    - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
    - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
      - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
      - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
      - (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.
  - 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  - 3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:
    - a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified; and,
    - c. meet the anchoring requirements of Article VI.H.1.c.
  - 4. Zone A shall:
    - a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
    - b. meet the anchoring requirements of Article VI.H.1.c.
  - 5. Zones V1-30 shall meet the requirements of Article VI.P.
- I. Recreational Vehicles - Recreational Vehicles located within:
  - 1. Zones A1-30 shall either:
    - a. be on the site for fewer than 180 consecutive days,
    - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,



- c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.
- 2. Zones V1-30 shall meet the requirements of either Article VI.I.1.a. or b., or Article VI.P.
- J. Accessory Structures - Accessory Structures, as defined in Article XIV, located within Zones A1-30, AO, and A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:
  - 1. be 500 square feet or less and have a value less than \$3000;
  - 2. have unfinished interiors and not be used for human habitation;
  - 3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
  - 4. be located outside the floodway;
  - 5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
  - 6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.
- K. Floodways -
  - 1. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
  - 2. In Zones A1-30 and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
    - a. will not increase the water surface elevation of the base flood more than two feet at any point within the community; and,
    - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/ January 1995, as amended).
  - 3. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A1-30, AO, and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and

is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
  2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
    - a. be engineered and certified by a registered professional engineer or architect; or,
    - b. meet or exceed the following minimum criteria:
      - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      - (2) the bottom of all openings shall be below the base flood elevation and no higher than two feet above the lowest grade; and,
      - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
  3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. Bridges - New construction or substantial improvement of any bridge in Zones A1-30, AO, A, and V1-30 shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least two feet above the base flood elevation; and
  2. a registered professional engineer shall certify that:
    - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
    - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. Containment Walls - New construction or substantial improvement of any containment wall located within:
1. Zones A1-30, A, and V1-30 shall:
    - a. have the containment wall elevated to at least two feet above the base flood elevation;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.
  2. Zone AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.

3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
  - a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b. at least three feet if no depth number is specified; and,
  - c. shall meet the requirements of Article VI.N.1.b. & c.
- O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, A, and V1-30, in and over water and seaward of the mean high tide if the following requirements are met:
  1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
  2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.
- P. Coastal Floodplains -
  1. All new construction located within Zones A1-30, A, and V1-30 shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
  2. New construction or substantial improvement of any structure located within Zones V1-30 shall:
    - a. be elevated on posts or columns such that:
      - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to two feet above the base flood elevation;
      - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
      - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
    - b. have the space below the lowest floor:
      - (1) free of obstructions; or,
      - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
      - (3) constructed with non-supporting breakaway walls, which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
    - c. require a registered professional engineer or architect to: (amended 10/17/2007)
      - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55/June, 2000); and,
      - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.

3. The use of fill for structural support in Zones V1-30 is prohibited.
4. Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
  - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
  - d. The structure shall have unfinished interiors and shall not be used for human habitation.
  - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to two feet above the base flood elevation.
  - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

## **Article VII - CONDITIONAL USE REVIEW**

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

### **A. Review Procedure for a Conditional Use Flood Hazard Development Permit.**

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.

5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

**B. Expansion of Conditional Uses**

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

## **ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure, which is constructed or substantially improved, shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
  1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
  2. for structures in Zones V1-30, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  1. review the required certificate(s) and the applicant's written notification; and,
  2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

## **ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.

- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **ARTICLE X - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Scarborough may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. other criteria of Article X and Article VI.K. are met; and,

2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
  1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  2. such construction below the base flood level increases risks to life and property; and,
  3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals
  1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
  2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
  3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
  4. The person filing the appeal shall have the burden of proof.
  5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
  6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
  7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
  - 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  - 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
  - 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  - 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
  - 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **ARTICLE XII - VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

## **ARTICLE XIV - DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

### **Accessory Structure:**

Means a small detached structure that is incidental and subordinate to the principal structure.

### **Adjacent Grade:**

Means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

### **Area of Shallow Flooding:**

Means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where



a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard:**

Means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

**Base Flood:**

Means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement:**

Means any area of the building having its floor subgrade (below ground level) on all sides.

**Breakaway Wall:**

Means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Building:**

See Structure.

**Certificate of Compliance:**

A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Code Enforcement Officer:**

A person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances. (amended 10/17/2007)

**Conditional Use:**

Means a use that because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**Development:**

Means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. (*The new wording of this definition is directly from the FEMA regulations at 44 CFR 59.1*) (amended 10/17/2007)

**Elevated Building:**

Means a non-basement building:

- a. built, in the case of a building in Zones A1-30, A, or AO, to have the top of the elevated floor, or in the case of a building in Zones V1-30 to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to two feet above the magnitude of the base flood.

In the case of Zones A1-30, A, or AO, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zones V1-30, Elevated Building also includes a building otherwise meeting the definition of elevated

building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

**Elevation Certificate:**

An official form (FEMA Form 81-31, 02/06, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

**Flood or Flooding:**

Means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study:**

Means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM):**

Means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study:**

See Flood Elevation Study.

**Floodplain or Flood-prone Area:**

Means any land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management:**

Means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations:**

Means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing:**

Means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

**Floodway:**

See Regulatory Floodway.

**Floodway Encroachment Lines:**

Mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard:**

Means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use:**

Means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure:**

Means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Locally Established Datum:**

Means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor:**

Means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

**Manufactured Home:**

Means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision:**

Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level:**

Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development:**

Means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD):**

Means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)."

**New Construction:**

Means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**100-year flood:**

See Base Flood.

**Recreational Vehicle:**

Means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Floodway:**

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than two feet, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a

distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine:**

Means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area:**

See Area of Special Flood Hazard.

**Start of Construction:**

Means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**Structure:**

Means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage:**

Means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement:**

Means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

**Variance:**

Means a grant of relief by a community from the terms of a floodplain management regulation.

**Violation:**

Means the failure of a structure or development to comply with a community's floodplain management regulations.

**ARTICLE XV - ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following new Chapter 405A Town of Scarborough Floodplain Management Ordinance does hereby repeal and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

**CHAPTER 405A**

**TOWN OF SCARBOROUGH  
FLOODPLAIN MANAGEMENT  
ORDINANCE**

**[Table of Contents will be added upon approval]**

ENACTED: May 15, 2024

EFFECTIVE: June 20, 2024

CERTIFIED BY: \_\_\_\_\_  
Signature

CERTIFIED BY: \_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**ARTICLE I - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Scarborough, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Scarborough, Maine has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the

National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Scarborough, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Scarborough has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Scarborough having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Scarborough, Maine.

The areas of special flood hazard, Zones A, AE, and VE for the Town of Scarborough, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Cumberland County, Maine" dated June 20, 2024, with accompanying "Flood Insurance Rate Map" dated June 20, 2024, as amended, are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer, except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Scarborough, Maine.

## **ARTICLE III - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address, and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing locations of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;

- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;
- [Items H-K.3. apply only to new construction and substantial improvements.]
- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones AE and VE from data contained in the "Flood Insurance Study - Cumberland County, Maine," as described in Article I; or,
    - b. in Zone A:
      - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.M. and IX.D.; or,
      - (2) in the absence of all data described in Article III.H.1.b.(1), information to demonstrate that the structure shall meet the elevation requirement in Article VI.H.2.b., Article VII.2.b., or Article VI.J.2.b.
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement;
  - 4. lowest machinery and equipment servicing the building; and,
  - 5. level, in the case of non-residential structures only, to which the structure will be floodproofed.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by:
  - 1. a Professional Land Surveyor that the grade elevations shown on the application are accurate; and,
  - 2. a Professional Land Surveyor, registered professional engineer or architect that the base flood elevation shown on the application is accurate.
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
  - 1. a Floodproofing Certificate (FEMA Form FF-206-FY-22-153, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article VI.I., and other applicable standards in Article VI;
  - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE and Coastal AE Zone, will meet the criteria of Article VI.R.; and other applicable standards in Article VI;



3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.N.2.a.;
  4. a certified statement that bridges will meet the standards of Article VI.O.;
  5. a certified statement that containment walls will meet the standards of Article VI.P.
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer, Planning Board, and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

#### **ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  1. the base flood and floodway data contained in the "Flood Insurance Study - Cumberland County, Maine," as described in Article I;
  2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.(1); Article VI.M.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
  3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b.(1), the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;

- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
  - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an “under construction” Elevation Certificate completed by a Professional Land Surveyor based on the Part I permit construction for verifying compliance with the elevation requirements of Article VI, paragraphs H., I., J., or R. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
  - 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.I.1. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
  - 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes but is not limited to: accessory structures as provided for in Article VI.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance, and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

## ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

**A. All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

**B. Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

**C. Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

**D. On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

**E. Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

**F. Utilities** - New construction or substantial improvement of any structure (including manufactured homes) located within:

3. Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least two feet above the base flood elevation.

2. Zone VE shall meet the requirements of Article VI.R.2.

**G. Physical Changes to the Natural Landscape** - Certain development projects, including but not limited to, retaining walls, sea walls, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.

4. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
  - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.

- b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
  5. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.
  6. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.
- H. **Residential** - New construction or substantial improvement of any residential structure located within:
  1. Zone AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
  4. Zone A shall have the lowest floor (including basement) elevated:
    - a. to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
    - b. in the absence of all data described in Article VI.H.2.a., to at least two feet above the highest adjacent grade to the structure.
  3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.
- I. **Non-Residential** - New construction or substantial improvement of any non-residential structure located within:
  1. Zone AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K., and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  2. Zone A shall have the lowest floor (including basement) elevated:

- a. to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
  - b. in the absence of all data described in Article VI.I.2.a., to at least two feet above the highest adjacent grade to the structure; or,
  - c. together with attendant utility and sanitary facilities, be floodproofed to two feet above the elevation established in Article VI.I.2.a. or b. and meet the floodproofing standards of Article VI.I.1.a., b., and c.
3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**J. Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zone AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation;
- b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
  - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
  - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
  - (3) All components of the anchoring system described in Article VI.J.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- d. be elevated on a permanent foundation, as described in Article VI.J.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D.; or,
- e. in the absence of all data described in Article VI.J.2.a., to at least two feet above the highest adjacent grade to the structure; and,
- f. meet the anchoring requirements of VI.J.1.c.

5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**K. Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE shall either:
  - a. be on the site for fewer than 180 consecutive days; and,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.J.1.
2. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of either Article VI.K.1.a. and b., or Article VI.R.

**L. Accessory Structures** - New construction or substantial improvement of Accessory Structures, as defined in Article XIV, shall be exempt from the elevation criteria required in Article VI.H. & I. above, if all other requirements of Article VI and all the following requirements are met.

1. Accessory Structures located in Zone A and AE shall:
  - a. meet the requirements of Article VI.A.1. through 4., as applicable;
  - b. be limited in size to a one-story two car garage;
  - c. have unfinished interiors and not be used for human habitation;
  - d. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and, when possible, outside the Special Flood Hazard Area;
  - e. be located outside the floodway;
  - f. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure;
  - g. have hydraulic openings, as specified in Article VI.N.2., in at least two different walls of the accessory structure; and
  - h. be located outside the Coastal AE Zone.
2. Accessory Structures in Zone VE and Coastal A Zones shall meet the requirements of Article VI.R.

**M. Floodways** -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. In Zones A and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.M.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
    - a. will not increase the water surface elevation of the base flood more than two feet at any point within the community; and,
    - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
  3. In Zones A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- N. **Hydraulic Openings/Flood Vents** - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs H., I., or J. and is elevated on posts, columns, piers, piles, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
1. Enclosed areas are not "basements" as defined in Article XIV;
  2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
    - a. be engineered and certified by a registered professional engineer or architect; or,
    - b. meet or exceed the following minimum criteria:
      - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      - (2) the bottom of all openings shall be below the base flood elevation and no higher than two feet above the lowest grade; and,
      - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
  3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- O. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AE, and VE shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least two feet above the base flood elevation; and,

2. a registered professional engineer shall certify that:
  - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.M.; and,
  - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

**P. Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A, AE, and VE shall:
  - a. have the containment wall elevated to at least two feet above the base flood elevation;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

**Q. Wharves, Piers, and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in and over water and seaward of the mean high tide if the following requirements are met:

1. in Zones A and AE, wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; or,
2. in Zone VE, wharves, piers, and docks shall have a registered professional engineer develop or review the structural design, specifications, and plans for the construction.

**R. Coastal Floodplains** -

1. New construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.R.7.
2. New construction or substantial improvement of any structure located within Zone VE or Coastal AE Zone shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least two feet above the base flood elevation. Systems, fixtures, equipment, and components shall not be mounted on or penetrate through walls intended to break away under flood loads.
3. New construction or substantial improvement of any structure located within Zone VE and Coastal AE Zones (as defined) shall:
  - a. be elevated on posts or columns such that:



- (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least two feet above the base flood elevation;
  - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
  - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
- b. have the space below the lowest floor:
  - (1) free of obstructions; or,
  - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
  - (3) constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
- c. require a registered professional engineer or architect to:
  - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
  - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.R.3.
4. The use of fill for structural support in Zone VE and Coastal AE Zones is prohibited.
5. Human alteration of sand dunes within Zone VE and Coastal AE Zones is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
6. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
7. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.I. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.M., and VI.N. are met:
  - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

- c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
- d. The structure shall have unfinished interiors and shall not be used for human habitation.
- e. Any mechanical, utility equipment, and fuel storage tanks must be anchored and either elevated or floodproofed to at least two feet above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and, when possible, outside the Special Flood Hazard Area.

## **ARTICLE VII - CONDITIONAL USE REVIEW**

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

### **A. Review Procedure for a Conditional Use Flood Hazard Development Permit**

- 1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied may serve as the permit application for the Conditional Use Permit.
- 2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
- 3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
- 4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
- 5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

### **B. Expansion of Conditional Uses**

- 1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

## **ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
  - 1. an Elevation Certificate completed by a Professional Land Surveyor for compliance with Article VI, paragraphs H., I., J., or R.; and,
  - 2. for structures in Zone VE and Coastal AE Zone (as defined), certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.R.3.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  - 1. review the required certificate(s) and the applicant's written notification; and,
  - 2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

#### **ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

#### **ARTICLE X - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Scarborough may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal, or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. the criteria of Article X.A. through C. and Article VI.M. are met; and,
  - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
  - 1. the development meets the criteria of Article X.A. through C.; and,
  - 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Variances may be issued for new construction and substantial improvement of Agricultural Structures being used for the conduct of agricultural uses provided that:
  - 1. the development meets the criteria of Article X.A. through C.; and,
  - 2. the development meets the criteria of Article VI.M. and Article VI.N.

G. Any applicant who meets the criteria of Article X.A. through C. and Article X.D., E., or F. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; and,
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks, and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

H. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the documents constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer, upon identifying a violation, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of:

1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **ARTICLE XII - VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

## **ARTICLE XIV – DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Accessory Structure** - a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.

**Adjacent Grade** - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Agricultural Structure** - structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

**Area of Special Flood Hazard** - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

**Base Flood** - a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - any area of a building that includes a floor that is subgrade (below ground level) on all sides.

**Breakaway Wall** - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Building** - see **Structure**.

**Certificate of Compliance** - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Coastal AE Zone** - The portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

**Coastal High Hazard Area** - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM).

**Code Enforcement Officer** - a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

**Conditional Use** - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**Containment Wall** - a wall surrounding all sides of an above ground tank to contain any spills or leaks.

**Development** - any manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

**Elevated Building** - a non-basement building that is:

- a. built, in the case of a building in Zones A or AE, so that the top of the elevated floor, or in the case of a building in Zone VE or Coastal AE Zone, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, posts, or piers; and,
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to two feet above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.N. In the case of Zone VE and Coastal AE Zone, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.R.3.b.(3).

**Elevation Certificate** - an official form (FEMA Form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

**Existing Manufactured Home Park or Subdivision** - a manufactured home park or subdivision that was recorded in the deed registry prior to the adoption date of the community's first floodplain management regulations.

**Flood or Flooding -**

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. The overflow of inland or tidal waters.
  - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study** - an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Floodprone Area** - any land area susceptible to being inundated by water from any source (see **Flood or Flooding**).

**Floodplain Management** - the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** - the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.



**Functionally Dependent Use** - a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or,
  2. Directly by the Secretary of the Interior in states without approved programs.

**Limit of Moderate Wave Action (LiMWA)** - The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

**Locally Established Datum** - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.N. of this Ordinance.

**Manufactured Home** - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - for the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development** - all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes but is not limited to: accessory structures as provided for in Article VI.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD)** - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and has been called "1929 Mean Sea Level" (MSL).

**New Construction** - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD)** - the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon the vertical data used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound and subsidence, and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and,
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Floodway** -

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, and,
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine** - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

**Start of Construction** - the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**Structure** - for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

**Variance** - a grant of relief by a community from the terms of a floodplain management regulation.

**Violation** - the failure of a structure or development to comply with a community's floodplain management regulations.

## **ARTICLE XV - ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

## **ARTICLE XVI - DISCLAIMER OF LIABILITY**

The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.

Vote: 6 Yeas. Motion Passes.

**Order No. 24-040, 7:00 p.m. Public hearing and second reading on the proposed changes to Chapter 1018 – the Town of Scarborough Cannabis Establishment Licensing Ordinance.**  
[Assistant Town Manager] Liam Gallagher, Assistant Town Manager gave a brief overview of this order. Chairman McGee opened the public hearing and the following public comments were made:

- David Saari of Orchard Street spoke in regards to his medical history which causes a need of cannabis and the consequences odor ordinances can have. He provided the Council with a copy of his resume.
- Anthony Romano of Portland and a cultivator at Coastal Maine Cannabis spoke in regards to cannabis bias.
- Mike Shannon of Shannon's Best Buds on Snow Canning Road spoke in support of a Council Workshop and thanked the Councilors who visited Snow Canning last week.
- Chris McNeil of Coastal Remedies on Commercial Road spoke in regards to the cannabis bias, how the moratorium is impacting his business, and wanting to educate the public more.
- Alyson Bristol of Bay View Ave spoke in regards to the history of odor issues of Scarborough, the ordinance being clear, and in support of law enforcement assisting with odor complaints.
- Jill Cohen of Cohen Law who represents a lot of the local cannabis business spoke in regards to the passing of LD40. Additionally, she is in support of this ordinance but has four areas of concerns which are stated in her email.
- Derek Shirley of Peoples Not Parties spoke in regards to the life cycle of a cannabis plant and outdated Cannabis laws.
- Brandon Baizley of Pin Oak Drive spoke in regards to needing cannabis for his medical needs. Scarborough turning their back on cannabis
- Robert Baizley of Pin Oak Drive spoke in regards to cannabis odor being an act of God. He personally does not like the odor but knows there are individuals in need cannabis. Additionally, he spoke in regards to other smells and LD40.
- Peter Langwith a cultivator of Snow Canning Road thanked the Council for visiting their location last week and is in favor of simplifying the ordinance without blanket punishments.
- Steve Pachuta a cultivator of Snow Canning Road provided some ideas of how to assist with odor concerns.

Public comments submitted via email:

*"RE: Public Comment on Order No.: 24-040  
Proposed Changes to Chapter 1018 – Scarborough Cannabis Licensing Establishment Ordinance.*

*To the Scarborough Town Council:*

*Please accept this letter as the memorialization of my public comment this evening. I am legal counsel to numerous Scarborough Cannabis Establishment licensees, including Coastal Maine Cannabis LLC, and its owners, located at 10 Snow Canning Road, as well as licensees on Commercial Road and Washington Ave. My primary function with my clients is licensing and*

compliance, so any ordinance change involving setting compliance standards is of particular interest to me.

*I have been representing cannabis clients in Scarborough since 2017 and have closely followed the evolution of Scarborough's Cannabis Licensing Establishment Ordinance, and more specifically, the provisions regarding odor mitigation. I am here tonight to express my support for the proposed changes to Chapter 1018 which will hopefully serve to clarify and streamline enforcement of Scarborough's odor mitigation performance standards.*

*However, I have four remaining areas of concern regarding the proposed ordinance language:*

*1. Section 11, Para. C: "Violations of this ordinance shall be prosecuted in the same manner as other civil violations;*

*I respectfully suggest that it would be appropriate to include a citation to Section IV Administration of Chapter 405, Scarborough's Zoning Ordinance. This is the section of your Zoning Ordinance that sets forth the procedures related to prosecuting zoning ordinance violations.*

*2. Section 11, Para. C: "...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..."*

*This provision indicates that a written notice of violation MAY be issued. There is no provision or process for what would occur if a written Notice of Violation is not issued. Closing the loop on this provision is necessary to ensure that licensees are on notice of what is expected of them and when they can be assured that a complaint has been resolved.*

*3. Section 11, Para. C: "After the fifth (5th) violation within the license period..."*

*How does the Council propose to address a situation where multiple complaints are submitted on the same day, or even within the same time period on a given day, or over the course of subsequent days within the same week? It is undisputed that odor is generated in a cultivation facility during harvests. Therefore, it would not be unreasonable to expect that if there is an odor mitigation issue at a facility, the town may receive numerous complaints during a short period of time. I would respectfully suggest that the Council amend the proposed ordinance language to include a provision whereby all complaints within a twenty-one (21) day period, if verified, will count as one complaint. The concern is that the town could receive five (5) complaints in a matter of minutes and then the licensee will be subject to having their license back in front of the Council for a possible revocation.*

*4. Section 11, Para. C: "If, due to a multi-tenant situation or other reasons, 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 to the owner of the licensed premises where the violation occurred..."*

*The issue of how to determine the source(s) of the odor in a multi-licensee facility is perhaps the most challenging remaining hurdle in enforcement of the ordinance. I know from concerns raised in prior Council meetings and Ordinance Committee meetings that both Councilors and industry representatives have expressed concern as to how to manage enforcement for a multi-licensee facility. I respectfully suggest that it is improper to shift the burden of enforcement from Scarborough Code Officers and Law Enforcement*

*Officers to the Landlords. The investigation and verification of odor complaints should be an actual investigation where the source(s) of odor are verified. If the source cannot be verified, then the complaint is not verified, and the prosecution of the matter should be closed with no Notice of Violation issued. Perhaps the reason a source cannot be tracked is because the complaint is baseless.*

*Again, I am generally in support of the proposed ordinance language. Issues #1 and #2 above are drafting issues that, if addressed, will clarify the ordinance language. Issues #3 and #4 are more significant issues for discussion, and hopefully amended language, in furtherance of an enforceable ordinance that will be fair to the licensees and responsive to the abutters.*

*I appreciate your thoughtful consideration of the feedback provided.*

*Sincerely,*

*Jill G. Cohen, Esq.”*

As there were no additional comments for or against this order, Chairman McGee closed the hearing at 8:45p.m.

Motion by Councilor Caterina, seconded by Councilor Sither to move approval of the second reading on the proposed changes to Chapter 1018 – the Town of Scarborough Cannabis Establishment Licensing Ordinance.

Motion by Chairman McGee, seconded by Councilor Sither to table the second reading on the proposed changes to Chapter 1018 – the Town of Scarborough Cannabis Establishment Licensing Ordinance until June 5, 2024 Town Council Meeting with a May 15, 2024 Workshop.

Vote: 6 Yeas. Motion Passes.

Chairman McGee called a recess at 8:47pm and resumed the meeting at 8:56pm.

**Proclamation 24-002. Act on the request to proclaim the month of May 2024 as Building Safety Month.** [Zoning Administrator] Brian Longstaff, Zoning Administrator gave an overview of this order. There were no public comments for or against this order.

## **Proclamation 24-002**

### ***Proclaiming May 2024 as Building Safety Month***

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

**WHEREAS**, the Town of Scarborough is committed to recognizing that our growth and strength depends on the safety and essential role our homes, buildings and infrastructure play, both in everyday life and when disasters strike, and;

**WHEREAS**, the Town of Scarborough is confident in the resilience of these buildings that make up our community is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers, plumbers and others in the construction industry—who work year-round to ensure the safe construction of buildings, and;

**WHEREAS**, these guardians are dedicated members of the International Code Council, a nonprofit that brings together local, state, territorial, tribal and federal officials who are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work and play, and;

**WHEREAS**, these modern building codes include safeguards to protect the public from hazards such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquakes, and;

**WHEREAS**, Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities’ largely unknown protectors of public safety—our local code officials—who assure us of safe, sustainable and affordable buildings that are essential to our prosperity, and;

**WHEREAS**, “Mission Possible,” the theme for Building Safety Month 2024, encourages us all to raise awareness about building safety on a personal, local and global scale, and;

**WHEREAS**, each year, in observance of Building Safety Month, people all over the world are asked to consider the commitment to improve building safety, resilience and economic investment at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments, fire prevention bureaus and federal agencies in protecting lives and property.

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

### ***Building Safety Month***

throughout Town of Scarborough Maine, and we urge all citizens to join us as we participate in Building Safety Month activities.

Signed and dated this 1<sup>st</sup> day of May, 2024, on behalf of the Town Council and the Town Manager of Scarborough, Maine.

Signed by:  
Hall

Nicholas S. McGee  
Council Chair

Signed by:

Thomas J.

Town Manager

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval on the request to proclaim the month of May 2024, as Building Safety Month.

Vote: 6 Yeas. Motion Passes

**Proclamation 24-003. Act on the request to proclaim May 5-11, 2024 as Municipal Clerk’s Week. [Town Clerk]** There were no public comments for or against this order.

**Proclamation 24-003**

***55<sup>th</sup> Annual Professional Municipal Clerk's Week***

***May 5-11, 2024***

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

**WHEREAS**, The Office of the Professional Municipal Clerk, a time honored and vital part of local government exists throughout the world, and;

**WHEREAS**, The Office of the Professional Municipal Clerk is the oldest among public servants, and;

**WHEREAS**, The Office of the Professional Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels, and;

**WHEREAS**, Professional Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all.

**WHEREAS**, The Professional Municipal Clerk serves as the information center on functions of local government and community.

**WHEREAS**, Professional Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Professional Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, provincial, county and international professional organizations.

**WHEREAS**, it is most appropriate that we recognize the accomplishments of the Office of the Professional Municipal Clerk.

**NOW, THEREFORE, BE IT RESOLVED**, that the Scarborough Town Council, does hereby proclaim May 5 through 11, 2024 as:

***Professional Municipal Clerk's Week***

throughout Town of Scarborough Maine, and further extend appreciation to our Professional Municipal Clerk's, Yolande [Tody] Justice, Kristen Barth, Katie Duross and to all Professional Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

Signed and dated this 1<sup>st</sup> day of May, 2024, on behalf of the Town Council and the Town Manager of Scarborough, Maine.

Signed by:  
J. Hall

Nicholas S. McGee

Signed by:

Thomas

Council Chair

Town

Manager

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval on the request to proclaim May 5-11, 2024 as Municipal Clerk's Week.



Vote: 6 Yeas. Motion Passes

**OLD BUSINESS:**

**Order No. 24-036. Second reading 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]* Jami Fitch, Sustainability Coordinator gave a brief overview of this order. There were no public comments for or against this order.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval 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, as follows:

**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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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), MODIFIY 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**.”

### RECI TALS

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) \_\_\_\_\_  
\_\_\_\_\_

PROPSER SUBJECT TO  
C-PACE ASSESSMENT: A certain property located in the City/Town of \_\_\_\_\_,  
County of \_\_\_\_\_, and State of Maine  
with a address of:

\_\_\_\_\_

|           |     |             |     |
|-----------|-----|-------------|-----|
| No. _____ | Tax | Map: _____, | Lot |
|-----------|-----|-------------|-----|

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

DURATION OF C-PACE AGREEMENT: \_\_\_\_\_

MUNICIPALITY: \_\_\_\_\_

C-PACE LENDER FILING NOTICE:  
(Name and Address) \_\_\_\_\_  
\_\_\_\_\_

VERIFICATION OF MORTGAGE  
LENDER CONSENT:

Verification 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 salad 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 acknowledge the foregoing instrument to be his/her free act and deed  
in his/her capacity and the free act and deed of said \_\_\_\_\_.

Before me,

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

WITNESS: [PROPERTY OWNER]

\_\_\_\_\_

\_\_\_\_\_ by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

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

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

Before me,

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

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

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

Witness

[MUNICIPALITY]

\_\_\_\_\_

\_\_\_\_\_ by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

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

Then personally appeared the above-named \_\_\_\_\_, in his/her capacity as  
\_\_\_\_\_ of \_\_\_\_\_ and acknowledge the foregoing instrument to be his/her free act and deed  
in his/her 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 A to NOTICE OF C-PACE AGREEMENT**

**(Copy of Executed Mortgage Lender Consent)**

Roll Call Vote:

Councilor April V. Sither - Yea

Councilor Jean-Marie Caterina - Yea

Councilor Donald W. Cushing -Yea

Councilor Donald R. Hamill - Nay

Councilor Karin B. Shupe - Yea

Councilor Jonathan E. Anderson - Yea

Chairman Nicholas S. McGee - Nay

Motion Passes.

**Order No. 24-033. First reading and schedule a public hearing on the proposed FY2025 Municipal/School Budget.** [Town Manager] Thomas J. Hall, Town Manager, gave a brief overview on this Order and responded to questions from the Town Council.

Motion by Councilor Anderson, seconded by Councilor Shupe, to move approval of the first on the proposed FY2025 Municipal/School Budget reading and schedule a public hearing for Wednesday, May 1, 2024, as follows:

**Budget Order for Fiscal Year 2025**

Be it ordered that the Scarborough Town Council approves the first reading on the FY2025 Budget and **schedules the public hearing for Wednesday, May 1, 2024**, the line item appropriations and expenditures for all offices, agencies and departments of the Town as follows:

| <b>SUMMARY MUNICIPAL OPERATING BUDGET 2024</b> |           |
|--|-----------|
| TOTAL EXECUTIVE                                | 4,627,451 |
| TOTAL HUMAN RESOURCE/GENERAL ASSISTANCE        | 729,839   |
| TOTAL FINANCE ALL DIVISIONS                    | 1,485,382 |
| TOTAL MUNICIPAL INFORMATION SYSTEMS            | 2,393,829 |
| TOTAL PLANNING DEPARTMENT ALL DIVISIONS        | 1,015,913 |
| TOTAL COMMUNITY SERVICES ALL DIVISIONS         | 3,894,514 |
| TOTAL LIBRARY NET – TOWN APPROPRIATION         | 1,340,938 |
| TOTAL SEDCO                                    | 316,078   |
| TOTAL FIRE ALL DIVISIONS                       | 7,611,022 |
| TOTAL POLICE ALL DIVISIONS                     | 8,488,242 |
| TOTAL PUBLIC WORKS ALL DIVISIONS               | 8,623,246 |
| TOTAL ENGINEERING & TECHNICAL SERVICES         | 656,237   |
| TOTAL DEBT (Town Only)                         | 5,058,942 |

Be it further ordered that the Scarborough Town Council hereby appropriates the sum of **\$400,000** for Resident Senior Property Tax Relief as authorized under – Chapter 313 – Property Tax Assistance Ordinance; and,

Be it further ordered that the Scarborough Town Council hereby appropriates, for school purposes, the Education Operating Budget (including school debt), the sum of **\$66,562,878** and the Town of Scarborough raises as the local share for the Education Operating Budget, the sum of **\$56,792,182** and,

Be it further ordered that the Scarborough Town Council hereby appropriates, for school purposes, the Education Adult Education and Food Services, the sum of **\$2,618,550** and the Town of Scarborough raises as the local share for the Education Adult Education and Food Services Budgets, the sum of **\$73,789** and,

Be it further ordered, that the Town Council hereby authorizes the Chairperson of the Town Council to sign the Municipal Expenditure Warrant approving all expenditures paid at the regular meetings of the Town Council and;

Be it further ordered that the Town of Scarborough hereby appropriates the Town's due portion of the County Tax, in the amount of **\$3,342,311** for the period July 1, 2024, through June 30, 2025; and a six-month County Assessment transition of **\$287,875** covering year 2 of 5; and,

Be it further ordered that the Scarborough Town Council hereby approves adding **\$18,346,291** to the Capital Budget and appropriates for Capital purposes, the sum of **\$681,000** for school capital programs and **\$691,000** for town capital; for a total Capital Appropriation of **\$1,372,000** be funded from property taxes.

Be it further ordered that the Town Council hereby authorizes the following utilization of funds from dedicated accounts:

Restricted Fund Balance:

**\$1,535,000** from Restricted for Education to reduce the local share of the Education and Adult Ed Operating Budgets

**\$1,207,225** from Downtown TIF Account to support Public Safety Building Debt Service

**\$316,078** from Downtown TIF Account to support SEDCO operating costs

**\$355,610** from Downtown TIF Account to support personnel costs

**\$212,000** from Downtown TIF Account to support operating expenses

**\$4,000,000** from Grants for repair of Black Point Road

Committed Fund Balance:

**\$1,200,000** from Rescue Equipment Reserve to reduce the tax rate

**\$443,890** from School Development Impact Fee Account to pay Debt Service for eligible Capital

Improvements

**\$1,000,000** from Payne Road District 3 account for Mussey Road Intersection Improvements

**\$1,005,000** from Downtown TIF Account to pay for eligible Capital Improvements

**\$154,000** from the Recreation Fee Account for Hurd Park & Ferry Beach Capital Improvements

Be it further ordered, that the Town Council hereby authorizes the use of **\$985,000** from Unassigned Fund Balance; and,

Be it further ordered that the Total Gross Budget appropriation of **\$144,274,537**, this total less estimated revenues and other credits of **\$56,861,896** result in a Net appropriation of **\$87,412,641**, which shall be raised from taxation. The Scarborough Town Council further fixes **Tuesday, October 15, 2024**, and **Monday, March 17, 2025**, as the dates upon each of which one-half of such tax is due and payable, and pursuant to 36 M.R.S.A. Section 505.4 with interest to accrue upon taxes due and unpaid after each such date at the rate of **8.50%** per annum.

Be it further ordered that the Scarborough Town Council hereby appropriates an estimated **\$500,000** for overlay, which may be adjusted and shall be finally determined by the Town

Assessor pursuant to Title 36 MRSA Section 710 within State restrictions; and (such estimated amount is incorporated within the Total Gross Budget as identified within this order); and,

Be it further ordered that the Scarborough Town Council hereby appropriates an estimated **\$4,350,000** for Tax Increment Financing Revenues to be deposited into Tax Increment Financing Development Program Funds, an estimated **\$1,715,000** of which is authorized to be paid pursuant to applicable credit enhancement agreements, both of which amounts may be adjusted and shall be finally determined by Town staff based on actual assessed values and applicable Tax Increment Financing Districts, Development Programs and credit enhancement agreements approved by the Town Council and State Department of Economic and Community Development (such estimated amounts are incorporated within the Total Gross Budget as identified within this order).

Be it further ordered, that in accordance with 36 M.R.S.A. Section 506, the Tax Collector/Treasurer is authorized to accept prepayment of taxes not yet committed or prior to any due date and pay no interest thereon. In accordance with 36 M.R.S.A. Section 506-A, a taxpayer who pays an amount in excess of that finally assessed shall be repaid the amount of overpayment plus interest from the date of overpayment at the annual rate of **4.50%**.

Be it further ordered, that the Town Council hereby authorizes the Finance Director and/or Treasurer to withhold monies payable to the Town of Scarborough to cover taxes due pursuant to M.R.S.A. Title 36, Section 905 and to invest funds in accordance with M.R.S.A. Title 30-A, Section 5706; authorizes the Tax Collector to sign on behalf of the Town, the necessary deeds and liens and tax settlements; in accordance with 36 M.R.S.A. Section 906, the Tax Collector and Treasurer are authorized to apply any tax payment received as payment for any property tax against outstanding or delinquent taxes due on that property in chronological order beginning with the oldest unpaid tax bill and processed in the order of liens and fees, interest and then to principal and, after the date of perfection of the tax, the Tax Collector is authorized to discharge any obligation to collect unpaid property taxes in the amount of **\$5.00** or less and remove same from the municipal books, pursuant to 36 M.R.S.A. Section 970-A.

Be it further ordered, that if the 2025 Municipal Budget exceeds the Property Tax Levy Limit for fiscal 2025, pursuant to Title 30-A, Section 5721-A of the Maine Revised Statutes, as amended, it is the intent of the Town Council to increase the commitment to greater than the Property Tax Levy Limit.

Vote: 4 Yeas and 2 Nays (Chairman McGee and Hamill). Motion Passes.

### **NEW BUSINESS:**

**Order No. 24-041. First reading and refer to the Planning Board, the proposed amendments to Chapter 405B Site Plan Review, IV Performance and Design Standards, D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts. [Planning Director] Autumn Speer, Planning Director gave a brief overview of this order and provided a presentation. There were no public comments for or against this order.**

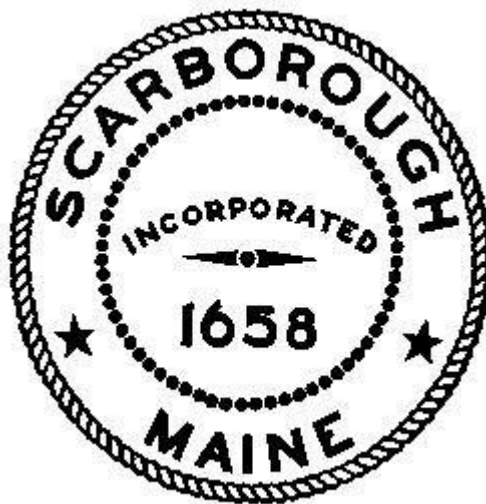
Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the first reading and refer to the Planning Board, the proposed amendments to Chapter 405B Site Plan Review, IV Performance and Design Standards, D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts and to schedule the Town Council public hearing upon receipt of the Planning Board's review, as follows:

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 405B Town of Scarborough Site Plan Review Ordinance is amended as recommended by the Planning Director.

# **CHAPTER 405B**

## **SITE PLAN REVIEW ORDINANCE**

### **TOWN OF SCARBOROUGH**



*Revised as of August 17,  
2005*  
**Amended November 7, 2007 - Amended January 6,  
2010**



**Amended May 5, 2010 - Amended March 19,  
2014**  
**Amended March 18, 2015 - Amended November 1,  
2017**  
**Amended June 5, 2019 - Amended April 21,  
2021**  
**Amended January 4, 2023 – Amended July 19,  
2023**  
**Amended October 18, 2023 Amended June xxx, 2024**

**TABLE OF  
CONTENTS**

|  |               |
|--|---------------|
| I. Purpose .....   | 1             |
| II. Applicability.....   | 1             |
| A. Activities Requiring Site Plan Review [amended 04/21/2021] .....                | 1             |
| B. Activities Exempt from Site Plan Review [amended 05/05/2010; 01/04/2023] .....  | 2             |
| III. Application & Review Procedures [amended 04/21/2021; 07/19/2023] .....        | 2             |
| A. Major Development Review [amended 04/21/2021] .....                             | 2             |
| 1. Sketch Plan Review .....  | 2             |
| 2. Site Plan Application Procedures & Action [amended 06/05/19] .....              | 3             |
| 3. Submission Requirements.....  | 5             |
| B. Minor Development Review [amended 04/21/2021] .....                             | 7             |
| IV. Performance & Design Standards [amended 04/21/2021; 07/19/2023] .....          | 8             |
| A. Site Utilization & Layout.....  | 8             |
| B. Site Access [amended 04/21/2021] .....  | 9             |
| C. Internal Vehicular Circulation [amended 04/21/2021] .....                       | 11            |
| D. Parking Areas [amended 04/21/2021].....   | 12            |
| E. Pedestrian Ways, Space & Alternative Transportation .....                       | 15            |
| [amended 11/07/2007; 04/21/2021].....  | 15            |
| <del>F. Landscaping, Buffering &amp; Greenspace [amended 04/21/2021] .....</del>   | <del>17</del> |
| F. Landscape and Screening Standards [amended 04/21/2021; amended xx/xx/2024]..... | 19            |
| G. Stormwater Management [amended 04/21/2021] .....                                | 40            |
| H. Outdoor Lighting Standards [amended 04/21/2021; 10/18/2023] .....               | 41            |
| I. Architecture & Signage .....  | 46            |
| J. Public & Private Utilities [amended 04/21/2021] .....                           | 46            |
| <del>K. Outdoor Storage .....</del>  | <del>47</del> |
| K. Design Standards for Commercial Districts [amended 04/21/2021] .....            | 47            |
| L. L. Preservation of Historic and Archeological Resources .....                   | 47            |
| M. Municipal Capacity and State Agency Review .....                                | 47            |
| V. Site Conditions & Environmental Considerations.....                             | 48            |
| A. Conservation, Erosion, & Sediment Control [amended 04/21/2021] .....            | 48            |
| B. Site Conditions .....   | 49            |
| VI. Fees .....   | 50            |
| A. Application Fee .....   | 50            |
| B. Development Review and Construction Inspection Fee .....                        | 50            |
| VII. Enforcement, Occupancy and Performance Guaranty .....                         | 50            |
| A. Occupancy Permit and Performance Guaranty .....                                 | 51            |

|  |    |
|--|----|
| VIII. Severability and Conflicts ..... | 52 |
| A. Severability .....                  | 52 |
| B. Conflict.....                       | 52 |
| IX. Meanings of Words.....             | 52 |
| Appendix—Plant Materials List .....    | 53 |

## CHAPTER 405B TOWN OF SCARBOROUGH SITE PLAN REVIEW

### **I. Purpose**

The Town of Scarborough finds that uses and structures for which site plan submissions are required are potentially significant additions to the community’s built and natural environment as well as to the residential, commercial or industrial neighborhood in which they are proposed. The purpose of site plan review is to ensure that the design, layout and construction of these additions to the community constitute suitable development and will not result in a detriment to the neighborhood, community or environment. The standards and requirements of this ordinance are intended to assure that adequate provisions are made for: traffic safety, access and circulation; emergency access and response; stormwater management; protection of natural features and the environment; water supply and sewage disposal; and minimizing impacts to abutting properties or uses.

### **II. Applicability**

#### **A. Activities Requiring Site Plan Review [amended 04/21/2021]**

Site Plan approval is required before any building or structure is erected or externally enlarged and before any parking, loading, or vehicular or pedestrian use is established, enlarged or changed, with the exception of the activities found below in Section II(B). Activities subject to site plan review shall be divided into two classes: Major Development Review and Minor Development Review.

1. Major Development Review. Planning Board approval is required for any activity described above, except for any activity that may be eligible for Minor Development Review outlined below, or as exempt as provided in Section II.B.
2. Minor Development Review. Town Planner approval is required for any permitted uses in the Industrial District, the Light Industrial District, and those uses in the Crossroads Planned Development District which are permitted only within the “inclusionary area” as outlined in Section XX.C.I.B.iv of the Scarborough Zoning Ordinance.

Notwithstanding the above, the following activities in the Industrial District, the Light Industrial District, and those uses in the Crossroads Planned Development District which are permitted only within the “inclusionary area” as outlined in Section XX.C.I.B.iv require Major Development Review from the Planning Board:

- a. Activities with one-acre or more of disturbance;

- b. Activities that are forecasted to generate more than 35 trip ends during any peak hour; and
- c. Activities that require amendments to state or federal permits.

The Town Planner (or designee) may refer approval of a permitted use defined as requiring minor development review to the Planning Board for Major Development Review when the nature of the application warrants a public hearing or poses the potential for significant impacts on municipal facilities or natural resources, as determined by the Town Planner (or designee). Additionally, an applicant may request that a project be reviewed by the Planning Board through Major Development Review instead of Minor Development Review for any reason.

**B. Activities Exempt from Site Plan Review [amended 05/05/2010; 01/04/2023]**

The following activities shall not require site plan approval; however, such activities may require building permits, plumbing permits or other local or State approvals:

1. The construction of, or addition to, single and two-family dwellings and their accessory buildings, structures and areas for parking and vehicular or pedestrian use. More than one single family or two-family dwellings developed on a single lot under unified ownership, as defined in Section II(d)(9) of the Zoning Ordinance, are not exempt from Site Plan Review.
2. Alterations to a building which in total do not increase the floor area of the building by more than 100 square feet.
3. Municipal buildings or uses, but shall be reviewed by the Planning Board for an advisory opinion to the Town Council or the applicable Town Department.
4. Buildings, structures and areas of impervious surface, the principal use of which is the conduct of accessory agriculture, commercial agriculture, or commercial animal husbandry, as are defined in Section VI. Definitions of the Town of Scarborough Zoning Ordinance.
5. Farm stands with no more than 400 square feet of retail sales area.
6. Temporary use of accessory storage containers.
7. Timber harvesting.

**III. Application & Review Procedures [amended 04/21/2021; 07/19/2023]**

The following procedures and application requirements shall govern development proposals for major and minor development review.

**A. Major Development Review [amended 4/21/2021]**

**1. Sketch Plan Review**

Prior to submitting a formal site plan review application, the applicant may submit a sketch plan for review by the Planning Board. The sketch plan shall be conceptual and

sketch plan review shall be considered an informal, informational review and discussion. The purpose of the sketch plan review process is to enable the applicant to present a concept plan for a development to the Planning Board in order for the Board to understand the type and scale of the proposed development as well as the associated on and off-site issues. Further, this process is intended to provide the applicant with preliminary feedback from the Board in order to identify any issues or revisions that should be addressed in the site plan review application.

The following information should be submitted or presented for discussion during sketch plan review:

- a. The proposed site, including its boundaries, size, location, and landscape.
- b. The environmental characteristics or constraints of the site, such as waterbodies, wetlands, floodways, steep slopes, etc.
- c. The proposed use and scale of development, including a conceptual site plan, landscape plan, and building elevations.
- d. Total disturbed area.
- e. An overview of any traffic issues or implications.
- f. An overview of the local regulations and State permits that may apply to the proposed project and any requested waivers of such regulations.

The sketch plan review shall be conceptual and informational, and there shall be no formal action by the Planning Board. Further, the submittal and review of a sketch plan shall not be considered the creation of a pending proceeding under 1 M.R.S.A. § 302. Following sketch plan review, an applicant must submit a formal site plan review application in order to seek site plan approval.

## **2. Site Plan Application Procedures & Action [amended 06/05/19]**

- a. An application for site plan review shall be submitted to the Planning Department with the requisite fees and submission requirements, as outlined in Section VI.A of this ordinance. Upon receipt of any application that meets the submission requirements the Town Planner shall schedule the site plan for review on the next available Planning Board meeting agenda. An initial determination as to the completeness of the application shall be made by the Town Planner and Town Engineer, subject to final determination by the Planning Board. The Planning Board reserves the right to request additional plans or information, as stated in Section III(3)(i), depending on the nature of the proposal and its anticipated impacts. The Planning Board may also engage the services of one or more professional consultants to review the materials submitted by the applicant, the cost of which shall be paid by the applicant as provided in Section VI(B) of this ordinance.
- b. When an application for site plan review is determined to be complete, the Planning Department 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 development is located of the date, time, and place of the meeting at which the application will be considered. Notification shall be sent at least ten (10) days prior to the first meeting at which the complete application is to be reviewed. Failure of any property owner to receive the notification shall not

necessitate another hearing or invalidate any action of the Board. For purposes of this section, the owners of the abutting properties shall be considered to be the parties listed by the tax assessor for the Town of Scarborough. The Planning Board shall provide an opportunity for public comment prior to taking action on any site plan application.

- c. No application for site plan review shall be considered complete nor acted upon by the Planning Board until all special exceptions or variances which may be required for a development have been approved. The Planning Board may conduct its shoreland zoning or subdivision review concurrently with a project's site plan review.
- d. The Planning Board may make a decision at the initial Planning Board meeting at which a site plan is heard or may request additional meetings to receive revised plans or additional information pertaining to the proposal, and then issue a decision. The Planning Board may deny the application, approve the site plan as submitted, or approve the site plan with such conditions as the Board finds necessary to ensure compliance with the standards of this ordinance and other applicable ordinances of the Town of Scarborough.
- e. If a site plan application is denied, a substantially similar application shall not be brought before the Planning Board within one (1) year from the date of the denial of the original application. This limitation may be waived if the majority of the Board finds that substantial new evidence exists or an error or mistake of law or misinformation concerning the original application is identified.
- f. Any appeal of a Planning Board decision on an application for site plan review shall be taken directly to Cumberland County Superior Court. Decisions of the Planning Board are not appealable to the Scarborough Board of Appeals.
- g. Upon written request, the Town Planner may approve transfer of Site Plan approval granted to the project owner to an alternative developer or property owner, or the Planner may refer any request for transfer to the Planning Board for decision. A transfer shall be approved only if the new developer or owner has the financial and technical capacity to comply with the requirements of the site plan approval.
- h. Final approval shall expire one (1) year from the date of such approval unless the applicant has started substantial construction. The Town Planner may extend final approval for one (1) additional year for good cause, provided a written request for extension is submitted before the expiration of the approval. At her/his option, the Town Planner may refer any request for extension to the Planning Board for decision. [amended 11/01/17]
- i. The property shown on the approved site plan may be developed and used only as shown on the plan. All elements and features of the plan and all representations made by the applicant which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended site plan is approved by the Planning Board. Minor deviations that do not alter the essential nature of the approval or affect approval criteria may be approved by the Town Planner (or designee) and with endorsement of the Planning Board Chair.

- j. The text of paragraph (i), above, shall be included as a note on the approved site plan.

- k. A request to amend an approved site plan shall be processed in the same manner as an application for site plan review, except that the Town Planner may grant preliminary waivers of submission requirements, subject to review of such waivers by the Planning Board when the Board takes up the request for amendment.

### **3. Submission Requirements**

The applicant shall submit to the Planning Board the following plans and information in a form required by the Planning Department:

- a. A boundary survey prepared by a professional land surveyor licensed by the State of Maine indicating the boundary lines, dimensions, encumbrances, water bodies, water features, zoning designation(s) and topography of the site. This boundary survey shall be prepared at a scale no greater than one (1) inch = forty (40) feet. Plans showing engineering details submitted as part of the site plan application may be prepared by either a professional land surveyor or by a professional engineer.
- b. A site plan(s), at a scale no greater than one (1) inch = forty (40) feet, showing all existing and proposed buildings, contour elevations, structures, parking spaces and layout, driveways, driveway openings, service areas, proposed outside display or vending areas, proposed grades and drainage facilities, proposed water and sewage facilities or connections, landscaping plan including proposed trees and planting areas, proposed locations of fences, walls, signs and advertising features, proposed walkways and pedestrian amenities, total disturbed areas, and a lighting plan. The site plan shall also include a locus map showing the relationship of the project to the surrounding area at a scale no greater than one inch equals 2,000 feet. The site plan shall also show all contiguous land owned by the applicant or the owner of the land proposed for development.
- c. Building plans showing the floor plans, an outside access plan, and all elevations. The elevations shall indicate the proposed material and color of all of the proposed principal buildings and structures. The Planning Board may also require elevations of the accessory buildings and structures depending on their size and location.
- d. Stormwater management systems, details and calculations in compliance with Section IV.G of this Ordinance.
- e. An erosion and sedimentation control plan and narrative in accordance to Chapter 420 - Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
- f. A written statement prepared by a Maine Licensed Professional Engineer that describes the potential traffic flow patterns into and upon the site for both vehicles and pedestrians, the expected peak hour trip generation associated with the proposal, and the measured sight distance of each proposed driveway access. A traffic impact study shall be submitted for any project forecasted to generate 35 or more trip ends during any peak hour or if a project is forecasted to cause an existing access with less than 35 peak hour trip ends to exceed this threshold. The Planning Board or Town staff may also require a traffic study if specific safety or capacity issues have been identified for the general vicinity of the development. The scope of the study shall be determined based on discussions with the Town's Traffic Engineer and be completed by a Registered Professional Engineer with significant experience in

traffic engineering. The study should be appropriate for the level of impact. At a minimum the study shall contain the following information: collision history at the intersection of the proposed street/driveway, capacity evaluation at the proposed driveway, sight distance analysis, Road Impact Fee calculations and the need for improvements such as turning lanes, signalization, etc. In compiling a traffic study, trip generation shall be based upon the most recent edition of the ITE's "Trip Generation" Manual and shall include an evaluation of each peak hour condition.

- g. Any proposed off-site improvements to roads, sidewalks, natural areas or other infrastructure as may be necessary to accommodate the proposed development.
- h. A lighting plan in compliance with Section IV(H) of this ordinance.
- i. Reports from the Police Chief, Fire Chief, and to the extent applicable, from the Water District and Sanitary District, containing their requirements or recommendations.
- j. Such other information or plans as may be necessary to enable the Town Planner, Town Engineer, Code Enforcement Officer, and Planning Board to determine that the proposed structure and use of the land will conform to the provisions of this ordinance, the Scarborough Zoning Ordinance and, where applicable, the Scarborough Shoreland Zoning Ordinance and all other applicable Town Ordinances.
- k. A list of any requested waivers of required submissions and waivers from the standards of this ordinance.
- l. A description of method to be used to permanently delineate wetlands and wetland buffers to prevent encroachment. [08/17/2005]
- m. The location and description of all historic and archeological resources on the parcel as identified by the Maine State Historic Preservation Office, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance together with a narrative describing how these resources can be preserved and incorporated into the development plan. If an identified resource will be removed, altered, or not included as part of the development plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the development plan. [03/19/2014][Amended 03/18/2015]

The Planning Board may waive any of the above submission requirements if the Board finds that the required information is not necessary due to special circumstances of a particular site plan, or the nature or scale of the proposed development. Requirements set forth in Chapter 419

Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency and are not waivable.

## **B. Minor Development Review [amended 04/21/2021]**



1. An application for site plan review shall be submitted to the Planning Department with the requisite fees and submission requirements, as outlined in Section VI.A of this Ordinance. The Town Planner (or designee) reserves the right to request additional plans or information, as stated in Section III.A(3)(i), depending on the nature of the proposal and its anticipated impacts. The Town Planner (or designee) may also engage the services of one or more professional consultants to review the materials submitted by the applicant, the cost of which shall be paid by the applicant as provided in Section VI.B of this ordinance.
2. After the Town Planner (or designee) determines that an application is complete, the applications are distributed to the Town Engineer, Zoning Administrator, Fire Chief (or designee), Police Chief (or designee), and the Director of Public Works (or designee) for review and comment.
3. The Planning Department shall also, 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 development is located, and must include a brief description of the proposed project, the name of the applicant, the location where the application is available for inspection, how written comments on the application may be submitted. Failure of any property owner to receive the notification shall not invalidate any action of the Town Planner. 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.
4. Within 30 days of determining the application complete, and after a ten (10) day public comment period following mailing of the notice to abutting property owners, the Town Planner (or designee) shall review all submitted comments and act on the application to either: a. send the application to Major Development Review; or b. approve, approve conditionally, or deny the application. The decision of the Town Planner (or designee) shall be provided in writing to the applicant.
5. If a site plan application is denied, a substantially similar application shall not be brought before the Town Planner (or designee) within one (1) year from the date of the denial of the original application. This limitation may be waived if the Town Planner finds that substantial new evidence exists or an error or mistake of law or misinformation concerning the original application is identified.
6. Any appeal of the Town Planner's decision on an application for Minor Development Review shall be taken directly to the Planning Board; provided the appeal is made within 30 days of the issuance of the decision. Upon such an appeal, the Planning Board shall review the application as a Major Development Review; including all procedures and submission requirements of section III.A.
7. Upon written request, the Town Planner may approve transfer of Minor Development Site Plan approval granted to the project owner to an alternative developer or property owner, or the Planner may refer any request for transfer to the Planning Board for decision. A transfer shall be approved only if the new developer or owner has the financial and technical capacity to comply with the requirements of the site plan approval.
8. Final approval shall expire one (1) year from the date of such approval unless the applicant has started substantial construction. The Town Planner may extend

final approval for one (1) additional year for good cause, provided a written request for extension is submitted before the expiration of the approval. At her/his option, the Town Planner may refer any request for extension to the Planning Board for decision.

9. The property shown on the approved site plan may be developed and used only as shown on the plan. All elements and features of the plan and all representations made by the applicant which appear in the application are conditions of approval. No change from the conditions of approval is permitted unless an amended site plan is approved by the Town Planner (or designee). Minor deviations that do not alter the essential nature of the approval or affect approval criteria may be approved by the Town Planner (or designee).
10. The text of paragraph 9, above, shall be included as a note on the approved site plan.
11. A request to amend an approved site plan shall be processed in the same manner as an application for site plan review, except that the Town Planner (or designee) may grant preliminary waivers of submission requirements.

#### **IV. Performance & Design Standards [amended 04/21/2021; 07/19/2023]**

The following minimum performance and design standards shall apply to all site plans and shall serve as the minimum requirements for approval of any application. However, where the Planning Board or Town Planner (together the “Applicable Reviewing Authority”) as applicable finds that due to the nature or special circumstances of a particular plan the requirements of certain standards are not requisite to the interest of public health, safety and general welfare, the Applicable Review Authority may waive such requirements, subject to appropriate conditions to achieve the intent of this ordinance. Requirements set forth in Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency and are not waivable.

##### **A. Site Utilization & Layout**

The primary goal of the site plan review process is to produce attractive and functional sites that compliment and conform to both the natural and built environment in which they are proposed. To this end, the built portions of a site shall be laid out in only the most environmentally suitable locations for development. Structures and impervious areas shall be designed around, and away from, resource areas such as wetlands, steep slopes, water bodies and other unique natural features. Once the build-able portion of a site is identified, the principal building(s) is the most critical amenity to orient and position, as it is the focal point of the site in regards to use, visitation, and aesthetics. The principal building(s) shall be oriented on the site in a way that is compatible with neighboring structures and the development pattern in the vicinity. The building(s) shall also be positioned to provide an aesthetic and functional relationship with surrounding streets and sidewalks to ensure attractive and efficient vehicle and pedestrian access. Parking areas, driveways, access points and sidewalks shall be designed around, and to serve, the principal building(s)

and shall also compliment the neighboring development patterns and transportation networks as well as the Comprehensive Plan guidelines.

## **B. Site Access [amended 04/21/2021]**

Vehicle access to and from the site shall be safe and convenient, shall minimize conflict with the existing flow of traffic, and shall be from roads that have adequate capacity to accommodate the additional traffic generated by the development. Access management techniques such as limiting the number of driveways and combining driveways preserves mobility and improves safety, and shall be incorporated to the extent feasible.

As used in this Section IV(B), the term “street or driveway” includes both public and private local, collector and arterial streets, as well as entrance roads.

### **1. Entrance Location & Design**

- a. Any street or driveway access shall be separated from any other street or driveway, existing or proposed, on-site or off-site, in accordance with the following table. The Applicable Reviewing Authority may relax these standards only upon finding, based on a traffic study, that the location of the street or driveway closer than these minimums is necessary for effective utilization of the site or to enable the sharing of an access with an adjacent lot to reduce the total number of necessary curb cuts, and will not cause unreasonable congestion or unreasonable safety hazards. Driveway separation shall be measured from the edge of the proposed street/driveway entrance to the edge of the alternative entrance, excluding the radii.

The location of the site’s access shall also consider the existing location of driveways and entrances across a road or highway and shall attempt to meet the same separation standards established below. Entrances having the same centerline and situated directly across a road or highway from a proposed street or driveway shall not apply to this spacing requirement.

| <b>POSTED SPEED IN<br/>M.P.H.</b> | <b>SEPARATION IN<br/>FEET</b> |
|-----------------------------------|-------------------------------|
| 25 or less                        | 90’                           |
| 30                                | 105’                          |
| 35                                | 130’                          |
| 40                                | 175’                          |
| 45                                | 265’                          |
| 50                                | 350’                          |

55 or more

525'

- b. Any street or driveway access shall be so designed in profile and grading and so located as to provide the minimum sight distance measured in each direction as specified in the Maine Department of Transportation's "Entrance Rules - Chapter 299, Part B" (as may be amended from time to time).
- c. Driveway grades at street intersections shall not be more than five percent (5%) up or down for the first fifty (50) feet from the street, unless otherwise approved by the Applicable Reviewing Authority.
- d. Streets and driveways shall be located not less than 125 feet from the tangent point of the curb radius of any intersection. However, a greater distance or movement restrictions shall be provided if necessary based on the results of a vehicle queuing analysis at the intersection.
- e. When serving an individual site, no part of any street or driveway shall be located within a minimum of ten (10) feet of a side property line. Alternatively, when a street or driveway serves two (2) or more adjacent sites, the Applicable Reviewing Authority may allow the street or driveway to be located on or within ten (10) feet of a side property line between the sites. The sharing of street or driveway accesses between sites should be incorporated whenever feasible to limit curb cuts.
- f. Where a site has frontage on two or more streets, the Applicable Reviewing Authority will require that the access to the site be provide off the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. For developments with significant traffic volumes of 50 or more peak trips, the Applicable Reviewing Authority will consider access to more than one street, providing a traffic study clearly demonstrates a traffic safety and congestion benefit will result.
- g. There shall be no more than one full service street or driveway connection from any lot to any street, except when an additional entrance/exit must be provided to prevent traffic hazards or congestion. If two curb cuts are found to be necessary for congestion or safety reasons they shall be separated in accordance with the separation requirements in Section IV(B)(1)(a), above.
- h. Streets and driveways shall intersect the road at an angle as near to ninety (90) degrees as site conditions will permit and in no case less than seventy-five (75) degrees.
- i. Streets and driveways intersecting collector and arterial roadways shall be adequately lit.
- j. The level of service at a proposed signalized intersection shall be "D" or better. At an existing signalized intersection, the level of service shall not be reduced below "D" by the development. If an existing signalized intersection is operating below a LOS "D" pre-development, then the development shall not increase the delay at the intersection, unless this standard is waived by the Applicable Reviewing Authority. At an unsignalized intersection, if the level of service is forecasted to be less than a "D" post-development, than the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, then a level of service less than "D" may be acceptable.

#### **C. Internal Vehicular Circulation [amended 04/21/2021]**

The layout and circulation pattern within the site shall provide for the safe and convenient movement of passenger, service, and emergency vehicles through the site. The circulation layout shall also provide a safe, accessible pedestrian environment as well as encourage intra- parcel travel, minimizing curb cuts and unnecessary roadway travel in keeping with the access management goals of section B.

1. Street and driveway dimensions. The dimensions of streets and driveways shall be designed to adequately accommodate the volume and character of vehicles anticipated to visit the site on a daily basis. The required minimum and maximum dimensions for driveways are indicated below. Streets and driveways serving large volumes of daily traffic or truck traffic shall be required to establish high to maximum dimensions.

| LAND USE  | ONE-WAY<br>WIDTH<br>(FEET)     | TWO-WAY<br>WIDTH<br>(FEET)        |
|---|--------------------------------|-----------------------------------|
| Residential   | 12 to 14                       | 20 to 24                          |
| Commercial & Industrial<br>generating between 10 -<br>50 truck trips per hour | 15 to 25                       | 26 to 30                          |
| Commercial & Industrial<br>generating 50 or more<br>truck trips per hour      | Maine DOT<br>Criteria to Apply | Maine DOT<br>Criteria to<br>Apply |

2. A site development access driveway profile shall be designed to conform to the natural topographic features of the site, to the extent feasible. Driveways serving residential development shall be between 0.75% and 15% up or down. Driveways serving commercial or industrial developments shall be between 0.75% and 8% up or down.
3. The construction and materials used for a driveway, street, parking lot and drainage infrastructure shall comply with the latest standard specifications issued by The State of Maine Department of Transportation and as approved by the Applicable Reviewing Authority. Specific construction details for this infrastructure shall also be approved by the Applicable Reviewing Authority.
4. The layout and design of driveways and parking areas shall provide for safe and convenient circulation of vehicles throughout the site and shall provide the necessary curbing, directional markings, and signage to achieve this requirement. The layout, design and circulation pattern must also provide for pedestrians and cyclists as well as emergency, delivery, and service vehicles.
5. Traffic calming measures shall be included where appropriate to discourage speeding within the site and between abutting sites. Measures may include speed tables, on- street parking, raised crosswalks, vertical curbing, curvilinear road alignments, roadside plantings, neck-downs, curbed islands, signage or other traffic calming techniques.

6. Where feasible, connections between parking lots and driveways on adjacent parcels shall be provided to facilitate deliveries and minimize turning movements onto primary roads. Internal connections shall be designed to provide safe, direct access between adjacent lots in a manner that prevents their use as vehicle shortcuts. The site plan shall show stub outs, or other driveway or parking lot linkages, anticipating future vehicular connections to abutting undeveloped property.
7. Identifiable routes of access for emergency and service vehicles shall be provided to and around the buildings on the site.
8. Drive-through lanes shall minimize conflicts with pedestrian circulation routes. Motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving or other devices. The site plan shall be designed to minimize queuing in parking lots or other areas which would cause congestion or unsafe conditions.
9. Service drives shall be separated from internal walkways, parking areas, or pedestrian use areas by landscaped islands, grade changes or other devices to minimize pedestrian contact.

#### **D. Parking Areas [amended 04/21/2021]**

Parking lots shall be designed to complement adjacent buildings, the site, and the neighborhood by not being a dominant visual element. Every effort shall be made to reduce the scale of parking lots for aesthetic and stormwater reasons. Parking areas shall balance the needs of both vehicles and pedestrians. Parking lots shall be accessible and organized to serve the motorist, while being safe and pedestrian-friendly.

1. Off-street parking shall conform to Section XI., Off-Street Parking & Loading Requirements, of the Zoning Ordinance.
  - a. If an applicant can demonstrate to the Applicable Reviewing Authority that the nature or operation of the proposed use will not necessitate the minimum parking space requirements found in Section XI., the Applicable Reviewing Authority shall have the authority to approve a site plan showing fewer parking spaces than are required. This allowance may only be provided, however, if the site plan incorporates a landscaped area that is feasible and adequate to accommodate the requisite parking under Section XI., should there be a future change in the nature or operation of the use necessitating the required parking.
  - b. The Board of Appeals may also permit a reduction in the required parking spaces as per Section XI(F) of the Zoning Ordinance.
  - c. For uses that experience high turn-over traffic volumes (i.e. typical visitation is less than one-hour) the Applicable Reviewing Authority may require the dimensions of parking spaces in close proximity of the building entrance to be 10 feet wide by 20 feet long.
  - d. The Applicable Reviewing Authority may approve parking spaces for use by employees or residential parking to be 8 feet wide. All 8 foot wide parking spaces that are provided for employees and residential uses must be in physically segregated parking areas and the design of such parking areas must be shown on an approved site plan. No more than 10% of off-street parking spaces may be designed with a width of less than 9 feet.

2. There shall be adequate provisions for ingress and egress to all parking spaces. The following aisle widths shall be required to ensure adequate and safe access to parking spaces. Only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than ninety (90) degrees.

| PARKING ANGLE<br>DEGREE   | MINIMUM AISLE<br>WIDTH (FEET) |
|---------------------------|-------------------------------|
| 0° parallel parking       | 12'                           |
| 30°                       | 12'                           |
| 45°                       | 13'                           |
| 60°                       | 18'                           |
| 90° perpendicular parking | 25'                           |

3. Parking lots shall be designed as part of the overall plan for the site, and shall be coordinated with building entrances, lighting, and landscaping.
- a. Whenever feasible, the majority of parking areas shall be located at the rear or sides of the building(s) being served, except where parking would be located adjacent to a residential neighborhood or when the parking is part of a multi- building site. ~~Where such placement is not possible, the parking area shall be screened with evergreen trees, earth berms, fences, or shrubs.~~
4. There shall be adequate provisions made for handicap parking in accordance with the ADA Standards for Accessible Design and marked by the international symbol of accessibility. Handicap accessible spaces shall be designated in the closest located spaces on a site to the accessible entrances. Such spaces shall be provided in accordance with the following table and shall be designed in accordance with the ADA Design Standards.

| TOTAL SPACES | TOTAL ACCESSIBLE SPACES REQUIRED COLUMN A | SPACES WITH 60" WIDE ACCESSIBLE AISLE | VAN ACCESSIBLE SPACES WITH 96" WIDE ACCESSIBLE AISLE |
|--------------|---|---------------------------------------|--|
| 1 to 25      | 1   | 0                                     | 1  |
| 26 to 50     | 2   | 1                                     | 1  |
| 51 to 75     | 3   | 2                                     | 1  |
| 76 to 100    | 4   | 3                                     | 1  |
| 101 to 150   | 5   | 4                                     | 1  |
| 151 to 200   | 6   | 5                                     | 1  |

|               |                                  |                 |                 |
|---------------|----------------------------------|-----------------|-----------------|
| 201 to 300    | 7                                | 6               | 1               |
| 301 to 400    | 8                                | 7               | 1               |
| 401 to 500    | 9                                | 7               | 2               |
| 501 to 1000   | 2% of total parking provided     | 7/8 of column A | 1/8 of column A |
| 1001 and over | 20 plus 1 for each 100 over 1000 | 7/8 of column A | 1/8 of column A |

*This table is in accordance with the ADA Design Guide, U.S. Department of Justice, Civil Rights Division, Disability Rights Section*

5. ~~Parking areas shall be landscaped and screened in accordance with the following standards:~~
  - a. ~~Paved surfaces of parking areas shall be separated from buildings by a minimum of five (5) feet of landscaping and a five (5) foot walkway. Beyond the 5 foot minimum, the width of the landscaping shall be proportional to the height of the building.~~
  - b. ~~The scale and impervious area of parking lots with more than 15 spaces shall be broken up with trees, landscaped islands, grade changes, low walls, or other features.~~
  - c. ~~At a minimum, between 10% and 15% of the parking lot shall be landscaped. The higher percentage (15%) shall be used for larger parking lots consisting of 40 or more spaces. The lower percentage of 10% shall be used for smaller parking lots containing fewer than 40 parking spaces. Planting islands shall be a minimum of 9 feet in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions. Existing natural groupings or clusters of trees shall also be preserved.~~
  - d. ~~Where front parking is permitted between the building and the road it shall be screened by trees, berms, fencing, shrubs, low walls, perennial masses, or a combination of these elements. The height of the screening shall be approximately 3 feet to minimize the view of the parking lot and vehicles, while providing a clear view of the building and signage.~~
5. Parking areas with a single point of access are strongly discouraged. Dead-end parking lots shall not contain more than ten (10) spaces. Where dead-end lots must be used, adequate space shall be provided to safely turn a vehicle around to avoid backing out.
6. Directional signage and markers shall be utilized in diagonal parking lot arrangements.
7. ~~Provisions shall be made for snow storage in the design of all parking areas. The areas shall be shown on the site plan to avoid conflicts with landscaping, visibility, drainage, or icing during the winter season.~~

#### **E. Pedestrian Ways, Space & Alternative Transportation**

**[amended 11/07/2007; 04/21/2021]**



Developments shall provide attractive, safe, and functional walkways within the site and for connection of the site to the Town's sidewalk system when a public sidewalk exists or is planned in the vicinity of the site. Walkways shall be designed to direct pedestrians to the main entrances of the buildings from the public right-of-ways, abutting properties and businesses, and the parking areas on the site. Entrances to buildings shall also be designed to provide some outdoor space for pedestrian use, such as seating, dining, or lawn area.

1. Continuous internal walkways shall be provided from any existing or planned public sidewalk in the street(s) adjacent to the site to the principal customer entrances on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as transit stops, street crossings, and building entrances.
2. If a sidewalk does not exist in the street(s) adjacent to the site but the Town has identified the construction of a sidewalk for this portion of the street(s) in the Town Wide Transportation Study (March 2005) the applicant shall be responsible for the construction of a sidewalk along the full width of the frontage or in a location otherwise determined by the Applicable Reviewing Authority. The applicant shall not be responsible for the construction of a sidewalk in a location for which the Town Council has already adopted and funded a Sidewalk Capital Improvement Plan.
3. If a sidewalk is required to be constructed, the sidewalk shall be located within the right-of-way of the public street unless the width of the right-of-way will not allow for this. In this case, the sidewalk shall be located on the parcel in the area immediately adjacent to the street right-of-way unless the topography or natural characteristics of the site or existing development make this impractical. When determining the location and alignment of new sidewalks, existing street trees shall be avoided and preserved to the extent possible. ~~to further the goals of "subsection F Landscaping, Buffering and Greenspace" of this Ordinance.~~
4. If the sidewalk will be located outside of the street right-of-way, the applicant shall convey an easement to the Town for the sidewalk area.
5. When a sidewalk is constructed wholly within the street right-of-way it must conform to the design and construction requirements set forth in the Town's Street Acceptance Ordinance (Chapter 701) for the class of street. When a sidewalk is constructed wholly or partly outside of the street right-of-way the location and design of the sidewalk must be approved by the Applicable Reviewing Authority as part of the site plan approval.
6. Internal walkways shall be a minimum of 4 feet in width for ADA compliance and shall be raised and separated from vehicular traffic by 6 inch curbing except at crosswalks and access areas.
7. Within larger parking lots where the main building entrance will be 50+ feet from at least half of the parking spaces, a network of walkways shall be provided. These walkways shall be separated from parking bays and travel aisles by raised curbing or landscape buffering and shall be aligned with the main entry or a focal point on the building for way finding. The width of these internal parking lot walkways shall be five feet or more to enable the use of shopping carts or heavy pedestrian traffic.
8. Walkways shall be located where motorists can anticipate pedestrians. Likewise, walkways shall be designed to give pedestrians a view of oncoming vehicles and shall avoid bisecting drive-through lanes, access and service drives, and other high-traffic routes.

9. Internal crosswalks shall be provided and marked by a change in pavement texture, pattern, or color to maximize pedestrian safety. The materials selected shall be highly durable and low maintenance. Raised crosswalks shall be considered at key locations as a traffic calming device as well as to make crosswalks more visible.
- ~~10. Areas adjacent to walkways shall be landscaped with trees, shrubs, ground cover, benches or other materials. Walkways in parking areas shall include landscaped islands for visual relief, shade, and scale.~~
- ~~11. All walkways and sidewalks shall be designed for efficient snow removal to enable year-round use.~~
- ~~12. Major entrances to new or renovated buildings shall be complemented with outdoor seating or use areas. Canopies, recessed entrances, seating areas, decorative plantings, lawn areas and other elements may be incorporated around the building entry to serve as pedestrian space or gathering areas.~~
- ~~13. Provisions shall be made for alternative transportation if the site is located on a bus or bicycle route. Such provisions may consist of bus shelters, bicycle racks, or individual travel lanes for either mode of transportation.~~

#### **F. Landscaping, Buffering & Greenspace [amended 04/21/2021]**

~~Landscaping shall be used to complement the architecture, enhance the human scale, reinforce circulation paths, highlight entrances, provide shade, and add color and seasonal interest. Buffering shall be used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Greenspace shall be designated to preserve the natural features or resources of a site, to provide areas for active or passive recreation, or for visual and aesthetic benefits.~~

- ~~1. Native species shall be used to the greatest extent possible in all landscaping designs. If site improvements will create ten (10) or more new parking spaces or create 2,000 sq. ft. or more of new building footprint, a landscape plan shall be prepared by a landscape architect registered in Maine.~~
- ~~2. The applicant shall use plant material and species that require a low degree of maintenance and that are hearty and resistant to insect infestation, drought, disease, road salt, and auto emissions, and are tolerant of local winter conditions.~~
- ~~3. Wherever practical, existing specimen trees, tree clusters or other significant vegetation shall be preserved. The landscape plan shall illustrate which vegetation will be preserved and what protection measures will be implemented. Further, transplanting and reusing on-site trees and other vegetation is strongly encouraged.~~
- ~~4. A varying, but simple, collection of plant materials and species is encouraged to create a distinctive, yet low maintenance environment. A list of suggested plantings in Scarborough is included in an appendix to this ordinance. Plant materials shall meet the following minimum sizes, unless alternative sizes are required given a particular site or location:~~

| VEGETATION      | MINIMUM SIZE |
|-----------------|--------------|
| Canopy Trees    | 2 ½" caliper |
| Flowering Trees | 2" caliper   |

|                    |                     |
|--------------------|---------------------|
| Evergreen Trees    | 5 to 7' in height   |
| Deciduous Shrubs   | 24" in height       |
| Evergreen Shrubs   | 18" height / spread |
| Perennials         | 2-year clumps       |
| Ornamental Grasses | 2-year clumps       |
| Ground Covers      | 3" pots             |

- ~~5. Landscaping is necessary in parking lots to enhance their appearance, lessen the scale of paved areas, define edges, and provide shade and cover. The following standards shall apply within parking areas:~~
  - ~~a. At a minimum, between 10% and 15% of the parking lot shall be landscaped. The higher percentage (15%) shall be used for larger parking lots consisting of 40 or more spaces. The lower percentage of 10% shall be used for smaller parking lots containing fewer than 40 parking spaces. Planting islands shall be a minimum of 9 feet in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions and snow storage.~~
  - ~~b. Trees in parking lots shall be planted in informal groups, straight rows, or concentrated in certain areas. Trees shall be planted at least five feet from the end of parking lot islands for both motorist visibility and tree health.~~
  - ~~c. Plantings, trees, and other landscape elements shall separate parking lots from neighboring streets to minimize views of vehicles and paved areas, while still enabling views of the building.~~
  - ~~d. Trees and shrubs in and near parking areas shall be trimmed and maintained so that they do not block views needed for safe movement of motorists and pedestrians.~~
- ~~6. Trees and plantings shall be coordinated with the on-site architecture by complementing the building elevations without blocking storefronts, signs, or lighting.~~
- ~~7. Large spreading deciduous trees shall be planted in appropriate locations along town roads and private access drives to define the edge of the travelway, provide shade for pedestrians, clean the air, and add scale to transportation corridors and commercial developments.~~
- ~~8. Landscape plans presented to the Applicable Reviewing Authority shall anticipate a 3 to 8 year growing cycle to achieve maturity for shrubs and 15 to 20+ years for trees. The plan shall be designed and plantings selected with due consideration for maintenance requirements.~~
  - ~~a. A written maintenance plan shall be provided for the landscape elements to be installed on the site. The plan shall include initial installation, guarantee period, replacement policy, annual maintenance, and irrigation provisions. All lawns and plant materials shall be guaranteed for a period of not less than 2 years.~~
  - ~~b. The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. Vegetation to consider includes drought resistance, tolerance to auto emissions, disease resistance, and relatively light leaf litter.~~

- ~~9. Buffers shall be provided to shield structures and uses from the view of abutting properties, where the abutting properties would otherwise be adversely impacted. In particular, buffers shall be used to screen garbage collection areas, loading areas, waste storage, commercial vehicle parking and the like. Buffers may include fences, plantings, berms, and walls used to minimize any adverse impacts and nuisances on a given site or abutter.~~
- ~~10. Special landscaping and buffer requirements pertain to development along the Route One Corridor. Sites abutting Route One shall provide a green strip buffer along Route One at a depth of no less than 15 feet from the sideline of Route One. This 15 ft. may include trees, grass, plantings, berms, and mounds as well as sidewalks, fences or other landscape elements. The trees and plant materials within this buffer shall also conform to the planting schedule of the document entitled: Guiding Growth & Public Improvement on Route One, Scarborough, Maine, authored by Terrence J. Dewan & Associates, dated June 1993.~~
- ~~11. In cases where the Scarborough Zoning Ordinance requires buffers for commercial or industrial developments that abut residential zoning districts or uses, the Applicable Reviewing Authority may require evergreen or deciduous trees within these buffer areas. An evergreen buffer requires three (3) rows of staggered plantings. The rows shall be eight (8) feet apart and the evergreens planted six (6) feet on center. Deciduous buffers require trees with a minimum of 3 inch caliper and rows and spacing to be determined by the Board based on the characteristics of the site and uses.~~

## **F. Landscape and Screening Standards [amended 04/21/2021; amended xx/xx/2024]**

### **1. Purpose**

Landscaping shall be used to complement the architecture, enhance the human scale, reinforce circulation paths, highlight entrances, provide shade, and add color and seasonal interest. Greenspace shall be designated to preserve the natural features or resources of a site, to provide areas for active or passive recreation, or for visual and aesthetic benefits.

### **2. Applicability**

All landscaping approved after the date of effect of this Ordinance shall comply with these requirements. This includes, but is not limited to, new landscape, replacement planting, or any other landscaping proposed through the Site Plan or Subdivision process.

The provisions of this section shall not apply to individual single and two-family dwellings and their accessory buildings, structures and areas for parking.

Replacement planting for projects approved prior to this ordinance shall adhere to the plant species list in Section F.16. for vegetation selection.

### **3. General Standards**

Trees and plantings shall be coordinated with the on-site architecture by complementing the building elevations without blocking storefronts, signs, or lighting and reinforce wayfinding by emphasizing entrances and circulation patterns.

A varying, but simple, collection of plant materials and species is encouraged to create a distinctive, yet low maintenance environment. Plantings plans shall strike a balance between monoculture (the use of a single species) and too much variety.

Shrubs, perennials, annuals, ornamental grasses, etc. used along the roadways should be planted in masses or 'drifts' that emphasize colors and textures, rather than used as single specimens.

Native species should be selected for their benefits of conserving water, protecting soil from erosion, and creating habitat and providing food for many different animals including birds, pollinators, and small mammals. Invasive species are prohibited.

#### **4. Definitions**

**Bare-Root Plants:** Bare-root plants are grown in the field, then harvested. The soil is washed or shaken from their roots after digging. Nearly all are dormant.

**Balled-and-Burlapped Plants:** Balled-and-burlapped (or B&B) trees and shrubs are grown in nursery rows.

**Buffer:** Landscaped areas, berms, fencing, walls or other physical features that are planted or installed to physically and visually separate land uses.

**Container Grown Plants:** Container-grown refers to a plant that has been grown in a container or one that has been transplanted into a container from the field.

**Diameter at Breast Height (DBH):** DBH is the diameter of a tree measured 4.5 feet above the ground.

**Greenspace:** Greenspaces are pervious areas of grass, trees or other vegetation, for recreation or aesthetic purposes.

**Invasive Plants:** An invasive plant is defined as a plant that is not native to a particular ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health.

**Landscape Plan:** A component of a development plan which shows the quantity, species, and size of all proposed vegetation.

**Native Plants:** A native or indigenous plant species is one that occurs in a particular place without the aid of humans. They are well adapted to the climate, light, and soil conditions that characterize their ecosystem. Species native to North America are generally recognized as those occurring on the continent prior to European settlement.

**Site Furniture:** Constructed, above-ground objects, such as outdoor seating, kiosks, bus shelters, sculpture, tree grids, trash receptacles, and fountains that have the potential for enlivening and giving variety to streets, sidewalks, plazas, and other outdoor spaces used by the public.

#### **5. Minimum Landscaping Required**

A minimum percentage of the total area being developed shall be landscaped in accordance with the following percentages:

- a. Multifamily dwellings: 15%
- b. Mixed-use buildings, commercial, retail and lodging use: 15%
- c. Office and professional uses: 15%
- d. Institutional and civic uses: 15%

- e. Industrial and manufacturing uses: 10%

Tree and shrub requirements for multi-family, commercial, institutional and civic uses:

- a. For every 500 square feet of landscaping required, or portion thereof, at least one (1) large tree and two (2) shrubs are required.
- b. Two (2) small ornamental trees may be substituted for one (1) required large tree, not to exceed 50% of the required large trees.

Tree and shrub requirements for industrial and manufacturing uses:

- a. For every 1,000 square feet of landscaping required, or portion thereof, at least one (1) large tree and two (2) shrubs are required.
- b. Two (2) small ornamental trees may be substituted for one (1) required large tree, not to exceed 50% of the required large trees.

Each development shall provide at least two (2) different species. No more than 50% of all trees, per development, shall be of the same species. This standard applies only to trees being planted to meet requirements, not to existing trees.

Ground cover is required. Landscaped area that is not planted with trees and shrubs must be planted in ground cover plants, which may include grasses and lawn areas. Mulch (as a ground cover) must be confined to areas underneath plants and is not a substitute for ground cover plants.

Stormwater treatment areas including retention and detention areas shall not be counted toward the required minimum landscaped area.

## **6. Buffer Yard - Streetscape**

Planting plans shall emphasize large shade trees within or near the right-of-way in order to create a more unified streetscape. Large spreading deciduous trees shall be planted in appropriate locations along town roads and private access drives to define the edge of the travel way, provide shade for pedestrians, clean the air, and add scale to transportation corridors and commercial developments.

A vegetated buffer yard shall be established and/or maintained along the front property line of a lot where it abuts a public street as defined in the specific Zoning District for which the property is located. The minimum streetscape buffer yard shall be 10' deep for all streets not specifically designated.

Within a required buffer yard large trees shall be required at a rate of one (1) per thirty (30) feet. Trees may be planted in irregular groupings to accommodate utility conflicts and/or allow for design flexibility.

A buffer yard may be crossed by access roads or driveways and may include pedestrian and public utility facilities provided that the buffer function of the strip is maintained. Parking, internal roadways, structures, stormwater treatment areas and storage or service facilities may not be located within the buffer strip.

Trees and other landscaping planted at intersections shall preserve an adequate sight triangle as determined by the traffic engineer.

Landscape buffer strip requirements may be used to meet the overall landscape requirements established in Section F.5.

## **7. Buffer Yard – Residential Adjacency**

Buffering shall be used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Buffers shall be provided to shield structures and uses from the view of abutting properties, where the abutting properties would otherwise be adversely impacted.

A residential adjacency buffer yard is required when a side or rear yard abuts a residential district as defined in the specific Zoning District for which the property is located.

Buffer yards shall be installed by the more intense use. All required buffer yards abutting residential uses or districts shall maintain the district boundary in its natural state. Where no natural buffering can be maintained all side and rear yards abutting residential uses or districts shall be landscaped to provide a visual screen between districts.

Buffers may include fences, plantings, berms, grade changes and walls used to minimize any adverse impacts and nuisances on a given site or abutter.

Where residential adjacency buffers are required, the Planning Board may require evergreen or deciduous trees within these buffer areas as follows:

- a. Evergreen buffers require three (3) rows of staggered plantings. The rows shall be eight (8) feet apart and the evergreens planted six (6) feet on center.
- b. Deciduous buffers require trees with a minimum of 3-inch caliper and rows and spacing to be determined by the Board based on the characteristics of the site and uses.

## **8. Parking Lot Landscaping Required**

Landscaping is necessary in parking lots to enhance their appearance, lessen the scale of paved areas, define edges, and provide shade and cover.

**Parking Lot Screening.** Plantings, trees, and other landscape elements shall separate parking lots from neighboring streets to minimize views of vehicles and paved areas, while still enabling views of the building. Where parking is provided between the building and the street, it shall be screened in accordance with the following:

- a. Landscape screening shall contain a continuous screen not less than three (3) feet in height in a minimum planting bed depth of five (5) feet. The five (5) foot planting bed is in addition to the depth required for the streetscape buffer yard.

The continuous screen may be comprised of:

- a. Shrubs provided every four (4) to six (6) linear feet within the required planting strip
- b. Three (3) feet tall fence or boulders in combination with shrubs; or c.  
Combination of the above
- c. Planted screening must be capable of providing a screen of at least  
thirty-six (36) inches in height in two years.

**Parking Lot Landscaping Required.** Parking lot landscaping shall be in accordance with the following:

- a. Planting islands shall be included at a rate of one (1) island per fifteen (15) spaces.
- b. Landscape islands shall be required on both ends of all parking aisles, both single and double loaded, if such spaces are not adjacent to another landscaped area or entryway.



- c. Landscape islands shall be a minimum of 160 square feet, typically nine (9) feet wide and eighteen (18) feet deep, and shall contain at least one (1) large tree and four (4) shrubs.
- d. Parking lot entryways shall contain at least one (1) large tree and four (4) shrubs on each side.
- e. Vehicular use areas including drive aisles and/or parking space shall be screened from all abutting property by a continuous landscaped area not less than five (5) ten (10) feet deep. Stormwater treatment may be located in these areas upon approval by the Town Engineer.
- f. Trees in parking lots shall be planted in informal groups, straight rows, or concentrated in certain areas. Large trees shall be planted at least five feet from the end of parking lot islands for both motorist visibility and tree health.
- g. Areas adjacent to walkways shall be landscaped with trees, shrubs, ground cover, benches or other materials. Walkways in parking areas shall include landscaped islands for visual relief, shade, and scale.

Parking Lot Landscaping requirements may be used to meet the overall landscape requirements established in Section F.5.

## **9. Foundation Landscaping Required**

Trees and plantings shall be coordinated with the on-site architecture by complementing the building elevations without blocking storefronts, signs, or lighting and reinforce wayfinding by emphasizing entrances and circulation patterns.

Planting beds are required along exposed building edges, foundations and uninterrupted walls. Plantings shall provide either a formal pattern or a naturalistic blend of heights, colors, and textures for visual relief.

In addition, all paved surfaces, excluding those adjacent to service areas and/or the rear of buildings, of parking areas shall be separated from buildings by a minimum five (5) feet landscape strip and a five (5) foot walkway.

- a. A minimum of one (1) shrub shall be provided every four (4) to six (6) linear feet within the required planting strip. Shrubs may be clustered to avoid utility conflicts.
- b. Small ornamental trees may be provided in the planting strip and substitute for four (4) shrubs.

Plantings shall be massed to soften edges, corners, and pavement areas, and to integrate the building into the landscape.

Large rocks may be used as landscape elements sparingly and as accents in mass plantings. Where used, they shall be buried for at least one third of their depth.

Where mulch is used, it shall consist of dark, decomposed shredded bark, with pieces less than one (1) inch in any one dimension.

Foundation landscaping requirements may be used to meet the overall landscape requirements established in Section F.5.

## **10. Screening – Service and Mechanical Areas**

Refuse containers or disposal areas shall be screened from view by placement of a solid wood or vinyl fence or masonry wall as tall as the refuse containers, but no less than five (5) feet in



height. All refuse materials shall be contained within the refuse area. Refuse containers and disposal areas shall be located to the side or rear of buildings, and in no instance shall be located in the front setback of a site.

- a. Structural screens and fencing shall complement the design of the main structure by repetition of materials, detailing, scale, and color.
- b. Where chain link fencing is required for safety, it shall be painted black or a similar dark color, or coated with dark vinyl. Plastic slats in chain link fencing are not permitted.
- c. Gates shall be designed to prevent sagging.
- d. Screening may be further enhanced with evergreen trees, shrubs, and earth berms.

All mechanical equipment, transformers, propane tanks and similar shall be screened from any public right-of way or adjacent residential use or zoning districts. Fencing, landscape or a combination shall be required

Screening requirements may be used to meet the overall landscape requirements established in Section F.5.

## **11. Screening – Outdoor Storage**

Outdoor storage shall be permitted only as allowed by the Scarborough Zoning Ordinance.

The outside storage of goods, materials, merchandise, automobiles, automobile parts, containers, and the like shall be located to the side or rear of sites and screened from view, subject to the review and approval by the Planning Board. The Planning Board may require additional screening elements.

Areas for outdoor storage or containers shall be designed as an integral part of the site, landscaping, and architectural plan and shall be setback and screened from public and private ways, main entrances, public spaces, and abutting residential neighborhoods. Screening requirements may be used to meet the overall landscape requirements established in Section F.5.

## **12. Landscape Preservation and Protection**

Wherever practical, existing specimen trees, native species over 20" at DBH, tree clusters or other significant vegetation shall be preserved. Further, transplanting and reusing on-site trees and other vegetation is strongly encouraged.

When preservation is proposed, a tree inventory and survey showing the location, size, species and condition of existing protected trees on a lot, must be submitted and approved with the site plan application. The landscape plan shall illustrate which vegetation will be preserved and what protection measures will be implemented including the following minimums:

- a. Site features must be designed to minimize disturbance to protected trees.
- b. Tree wells or cut areas may be used to preserve the original grade around the tree. Raising the grade around protected tree trunks is prohibited.
- c. In the drip line of protected trees, no cut or fill may be at least four (4) inches deep unless a qualified arborist or forester evaluates and approves the disturbance.
- d. Finished grades must slope away from trunks to avoid water concentrated at tree bases.

- e. During construction, perimeter fencing must be erected around protected trees, at least six (6) feet from the trunk or one-half of the drip line, whichever is more.
- f. Storage or movement of equipment, material, debris, or fill in the tree protection zone is prohibited.
- g. Damaging attachments, wires, signs or permits cannot be fastened to protected trees.
- h. The developer is responsible for coordination with utility companies when trenching near protected trees. Trenches or footings should be at least eight (8) feet from trunk bases. Tunneling under large diameter roots may be required to prevent root damage.

Preserved landscaping may be used to meet the overall landscape requirements established in Section F.5.

### **13. Site Amenities**

Public entrances to new or renovated buildings shall be complemented with outdoor seating or use areas. Canopies, recessed entrances, seating areas, decorative plantings, lawn areas and other elements shall be incorporated around the building entry to serve as pedestrian space or gathering areas.

### **14. Alternative Transportation and Bicycle Facilities**

Provisions shall be made for alternative transportation if the site is located on a bus or bicycle route. Such provisions may consist of bus shelters, bicycle racks, or individual travel lanes for either mode of transportation.

Bicycle parking facilities are required for non-residential and multi-family uses. One (1) bicycle parking facility must be provided for every ten (10) vehicle parking spaces required. Bicycle parking design must follow standards recommended by the Association of Professional and Bicycle Professionals. The location of bicycle facilities is subject to the approval by the Planning Board during the site plan process.

### **15. Snow Storage**

Provisions shall be made for snow storage in the design of all parking areas. The areas shall be shown on the site plan to avoid conflicts with landscaping, visibility, drainage, or icing during the winter season.

Landscape materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant material shall not be used in areas where they are likely to be buried under snow.

All walkways and sidewalks shall be designed for efficient snow removal to enable year-round use.

Designated snow storage locations shall be required as follows:

- a. Located near the sides or rear of parking areas and driveways, away from primary street frontage.
- b. Located to maximize solar exposure to the greatest extent possible.
- c. Located so that snow moving equipment is not required to enter the public streets to move snow to the storage areas.

- d. Located in a manner to preserve sight lines of vehicles entering and exiting the site.
- e. Shall not block any required access, sidewalk, bicycle facility, trail or public path.
  - i. Shall not block drainage areas.
  - ii. Shall not be located in or near any stormwater treatment areas including retention and detention areas.
  - iii. May be located within parking areas, but such areas may not be counted towards required off-street parking.
  - iv. May be located within required landscaping areas, but the areas shall be planted with landscaping tolerant of snow storage.
  - v. Snow storage areas shall be located to avoid piling of snow against existing trees.

## 16. Approved Plant Species List

Plant material shall be selected with consideration to public health and safety. Plants to be avoided include those with poisonous fruits, large thorns, or shrubs that could provide hiding places along pathways or block the view of moving vehicles. The applicant shall use plant material and species that require a low degree of maintenance and that are resistant to insect infestation, drought, disease, road salt, and auto emissions, and are tolerant of local winter conditions.

All parking lot landscaping shall be appropriate for parking lot conditions. Trees that may damage automobiles (dripping sap, messy fruit, or hard seeds such as acorns) are discouraged in or around parking lots.

Invasive species shall not be used. The Do Not Sell Invasive plant list can be found here: [Maine Natural Areas Program Invasive Plant Fact Sheets](#)

The plants on the plant species list below have been derived from a number of sources to increase the use of native plants in Scarborough. This list is subject to periodic review based on factors that may change the viability or appropriateness of plantings.

All required trees shall be selected from the preferred or acceptable alternative list below, based on the size required for the landscape element. A minimum of sixty (60) percent of the total number of required trees shall be selected from the preferred species list.

When the ordinance requires a shrub, only plants classified as shrubs, perennials, ferns and grasses may be used. A minimum of forty (40) percent of the total number of shrubs shall be selected from the preferred species lists. Up to twenty-five (25%) percent of shrubs may be selected from an unlisted species subject to Site Plan approval. The [Maine Audubon Society](#) and the [University of Maine Cooperative Extension](#) provide extensive plant lists appropriate for Maine.

| LARGE DECIDUOUS TREES |                 |               |
|-----------------------|-----------------|---------------|
| Preferred Species     |                 |               |
| Scientific Name       | Common Name     | Mature Height |
| Acer x freemanii      | Armstrong Maple | 40-55'        |

|                       |                                    |         |
|-----------------------|------------------------------------|---------|
| Acer rubrum           | Red Maple                          | 50-60'  |
| Acer saccharinum      | Silver Maple                       | 60-80'  |
| Acer saccharum        | Sugar Maple                        | 60-70'  |
| Betula alleghaniensis | Yellow Birch                       | 70-85'  |
| Betula borealis       | Northern Birch                     | 30-60'  |
| Betula nigra          | River Birch                        | 40-70'  |
| Betula papyrifera     | Paper Birch                        | 60-70'  |
| Betula populifolia    | Gray Birch                         | 20-40'  |
| Carya ovata           | Shagbark Hickory                   | 70-90'  |
| Cladrastis kentukea   | Yellowwood                         | 30-50'  |
| Fagus grandifolia     | American Beech                     | 50-100' |
| Larix laricina        | Larch, Hackmatack, Tamarack        | 50-60'  |
| Nyssa sylvatica       | Tupelo Black Gum                   | 40-70'  |
| Platanus occidentalis | Sycamore American Buttonwood       | 60-80'  |
| Prunus serotina       | Black Cherry                       | 50-80'  |
| Quercus alba          | White Oak                          | 60-70'  |
| Quercus bicolor       | Swamp Oak                          | 50-60'  |
| Quercus coccinea      | Scarlet Oak                        | 30-50'  |
| Quercus macrocarpa    | Bur Oak                            | 60-100' |
| Quercus rubra         | Northern Red Oak                   | 60-80'  |
| Tilia americana       | American Basswood, American Linden | 60-80'  |
| Ulmus americana       | Princeton American Elm             | 60-70'  |

| LARGE DECIDUOUS TREES          |                        |               |
|--------------------------------|------------------------|---------------|
| Acceptable Alternative Species |                        |               |
| Scientific Name                | Common Name            | Mature Height |
| Aesculus x carnea              | Red Horse Chestnut     | 30-40'        |
| Aesculus hippocastanum         | Horse Chestnut         | 50-75'        |
| Betula jacquemonti             | Himalayan Birch        | 30-40'        |
| Catalpa speciosa               | Catalpa                | 40-60'        |
| Carpinus betulus               | European Hornbeam      | 40-60'        |
| Cercidiphyllum japonicum       | Katsura Tree           | 40-60'        |
| Fagus sylvatica                | European Beech         | 50-60'        |
| Ginkgo biloba                  | Maidenhair Tree        | 60-100'       |
| Gleditsia triacanthos          | Thornless Honey Locust | 65-100'       |
| Gymnocladus dioicus            | Kentucky Coffee Tree   | 60-80'        |
| Juglans nigra                  | Black Walnut           | 50-90'        |
| Liriodendron tulipifera        | Tulip Poplar Tree      | 60-90'        |
| Liquidambar styraciflua        | American Sweetgum      | 50-60'        |
| Magnolia acuminata             | Cucumber Tree          | 40-70'        |

|                              |                   |         |
|------------------------------|-------------------|---------|
| Metasequoia glyptostroboides | Dawn Redwood      | 75-100' |
| Platanus x acerfolia         | London Planetree  | 70-100' |
| Quercus palustris            | Pin Oak           | 50-70'  |
| Quercus robur                | English Oak       | 40-70'  |
| Salix alba 'Tristis'         | Weeping Willow    | 50-75   |
| Taxodium distichum           | Bald Cypress      | 35-100' |
| Tilia cordata                | Littleleaf Linden | 50-70'  |
| Tilia tomentosa              | Silver Linden     | 50-70'  |
| Zelkova serrata              | Zelkova           | 80-100' |

| LARGE EVERGREEN TREES          |                              |               |
|--------------------------------|------------------------------|---------------|
| Preferred Species              |                              |               |
| Scientific Name                | Common Name                  | Mature Height |
| Abies balsamea                 | Balsam Fir                   | 60-70'        |
| Abies concolor                 | White Fir                    | 30-50'        |
| Abies fraseri                  | Fraser Fir                   | 30-50'        |
| Chamaecyparis thyoides         | Atlantic White Cedar         | 30-50'        |
| Juniperus virginiana           | Eastern Red Cedar            | 20-60'        |
| Picea glauca                   | White Spruce                 | 60-90'        |
| Picea rubens                   | Red Spruce                   | 60-80'        |
| Picea mariana                  | Black Spruce                 | 50-70'        |
| Pinus banksiana                | Jack Pine                    | 50-60'        |
| Pinus rigida                   | Pitch Pine                   | 30-40'        |
| Pinus resinosa                 | Red/Norway Pine              | 60-80'        |
| Pinus strobus                  | Eastern White Pine           | 70-80'        |
| Thuja occidentalis             | Cedar Northern White         | 20-40'        |
| LARGE EVERGREEN TREES          |                              |               |
| Acceptable Alternative Species |                              |               |
| Scientific Name                | Common Name                  | Mature Height |
| Chamaecyparis spp.             | Cypress                      | 10-60'        |
| Picea abies                    | Norway Spruce                | 70-120'       |
| Picea engelmannii              | Engelmann Spruce             | 80-130'       |
| Picea omorika                  | Serbian Spruce               | 50-60'        |
| Picea pungens                  | Colorado Spruce              | 30-60'        |
| Pinus flexilis                 | Limber Pine                  | 60-80'        |
| Pinus nigra                    | Austrian Pine                | 60-180'       |
| Pinus sylvestris               | Scots Pine                   | 30-80'        |
| Thuja plicata                  | Western Red Cedar/Arborvitae | 50-70'        |

| SMALL ORNAMENTAL TREES |
|------------------------|
| Preferred Species      |

| Scientific Name                  | Common Name            | Mature Height       |
|----------------------------------|------------------------|---------------------|
| <i>Acer pensylvanicum</i>        | Striped Maple          | 15-25'              |
| <i>Amelanchier canadensis</i>    | Eastern Serviceberry   | 30-40'              |
| <i>Amelanchier arborea</i>       | Downy Serviceberry     | 20-40'              |
| <i>Amelanchier x grandiflora</i> | Apple Serviceberry     | 15-25'              |
| <i>Amelanchier laevis</i>        | Alleghany Serviceberry | 15-40'              |
| <i>Carpinus caroliniana</i>      | American Hornbeam      | 10-25'              |
| <i>Cercis canadensis</i>         | Eastern Redbud         | 20-30'              |
| <i>Cornus alternifolia</i>       | Alternate Leaf Dogwood | 15-25'              |
| <i>Cornus florida</i>            | Flowering Dogwood      | 12-20'              |
| <i>Corylus Americana</i>         | American Hazelnut      | 8-12' (also shrub)  |
| <i>Crataegus crus-galli</i>      | Cockspur Hawthorn      | 15-30'              |
| <i>Hamamelis virginiana</i>      | Common Witch-Hazel     | 15-20'              |
| <i>Ostrya virginiana</i>         | Eastern Hop Hornbeam   | 20-30'              |
| <i>Oxydendrum arboretum</i>      | Sourwood               | 20-25'              |
| <i>Prunus virginiana</i>         | Common Chokeberry      | 20-30'              |
| <i>Sorbus americana</i>          | American Mountain Ash  | 10-30'              |
| <i>Cornus alternifolia</i>       | Pagoda Dogwood         | 10-20'              |
| <i>Viburnum lentago</i>          | Nannyberry             | 10-30' (also shrub) |

| SMALL ORNAMENTAL TREES         |                           |                    |
|--------------------------------|---------------------------|--------------------|
| Acceptable Alternative Species |                           |                    |
| Scientific Name                | Common Name               | Mature Height      |
| <i>Acer campestre</i>          | Hedge Maple               | 20-25'             |
| <i>Acer griseum</i>            | Paperbark Maple           | 20-30'             |
| <i>Acer palmatum</i>           | Japanese Maple            | 10-25'             |
| <i>Acer triflorum</i>          | Three Flower Maple        | 25-30'             |
| <i>Amelanchier alnifolia</i>   | Western Serviceberry      | 10-15'             |
| <i>Chionanthus Virginicus</i>  | American Fringetree       | 12-20'             |
| <i>Cornus kousa</i>            | Kousa Dogwood             | 20-30'             |
| <i>Cornus mas</i>              | Cornealian Cherry Dogwood | 15-25'             |
| <i>Cotinus obovatus</i>        | American Smoketree        | 20-30'             |
| <i>Crataegus viridis</i>       | Winter King Hawthorne     | 20-35'             |
| <i>Halesia Carolina</i>        | Carolina Silverbell       | 30-40'             |
| <i>Hamamelis vernalis</i>      | Witchhazel                | 6-10' (also shrub) |
| <i>Hamamelis x intermedia</i>  | Witchhazel                | 12-15'             |
| <i>Maackia amurensis</i>       | Amur Maackia              | 20-30'             |
| <i>Magnolia x liliiflora</i>   | Lily Magnolia             | 8-12' (also shrub) |
| <i>Magnolia loebneri</i>       | Loebner Magnolia          | 20-30'             |
| <i>Magnolia soulangiana</i>    | Saucer Magnolia           | 20-25'             |
| <i>Magnolia stellata</i>       | Star Magnolia             | 15-20'             |
| <i>Malus species</i>           | Flowering Crabapple       | 15-25'             |

|                          |                           |        |
|--------------------------|---------------------------|--------|
| Pinus mugo               | Mugo Pine                 | 20-25' |
| Prunus x accolade        | Accolade Flowering Cherry | 20-25' |
| Prunus sargentii         | Sargent Cherry            | 20-40' |
| Stewartia pseudocamellia | Stewartia                 | 20-40' |
| Syringa reticulata       | Japanese Tree Lilac       | 20-30' |

| SHRUBS                         |                         |                           |                             |
|--------------------------------|-------------------------|---------------------------|-----------------------------|
| Preferred Species              |                         |                           |                             |
| Scientific Name                | Common Name             | Scientific Name           | Common Name                 |
| Aesculus parviflora            | Bottlebrush Buckeye     | Leucothoe fontanesiana    | Drooping Laurel             |
| Amelanchier arborea            | Downy Serviceberry      | Lindera benzoin           | Spicebush                   |
| Amelanchier canadensis         | Canadian Serviceberry   | Myrica gale               | Sweet Gale                  |
| Amelanchier stolonifera        | Running Serviceberry    | Myrica pennsylvanica      | Bayberry                    |
| Aronia arbutifolia             | Red Chokeberry          | Physocarpus opulifolius   | Ninebark                    |
| Aronia melanocarpa             | Black Chokeberry        | Prunus maritima           | Beach Plum                  |
| Ceanothus americanus           | New Jersey Tea, Redroot | Rhus aromatica            | Fragrant Sumac              |
| Cephalanthus occidentalis      | Buttonbush              | Rhus hirta                | Smooth Sumac                |
| Clethra alnifolia              | Sweet Pepperbush        | Rhus typhina              | Staghorn Sumac              |
| Comptonia peregrina            | Sweetfern               | Rosa carolina             | Pasture Rose, Carolina Rose |
| Corylus Americana              | American Hazelnut       | Rosa palustris            | Swamp rose                  |
| Cornus racemosa                | Gray Dogwood            | Rosa virginiana           | Virginia Rose               |
| Cornus sericea                 | Redosier Dogwood        | Rubus odoratus            | Flowering Raspberry         |
| Diervilla lonicera             | Bush Honeysuckle        | Sambucus                  | Elderberry                  |
| Illex glabra                   | Inkberry                | Vaccinium corymbosum      | Highbush Blueberry          |
| Ilex verticillata              | Winterberry             | Viburnum spp.             | Viburnum                    |
| Juniperus communis             | Common Juniper          | Xanthorhiza simplicissima | Yellowroot                  |
| Kalmia angustifolia            | Sheep Laurel            |                           |                             |
| SHRUBS                         |                         |                           |                             |
| Acceptable Alternative Species |                         |                           |                             |
| Scientific Name                | Common Name             | Scientific Name           | Common Name                 |
| Azalea spp.                    | Azalea                  | Hydrangea spp.            | Hydrangea                   |
| Buxus spp.                     | Boxwood                 | Pieris spp.               | Andromeda                   |
| Cotoneaster spp.               | Cotoneaster             | Rhododendron spp.         | Rhododendron                |
| Deutzia gracilis               | Slender Deutzia         | Rose spp.                 | Rose                        |
| Enkianthus campanulatus        | Redveined Enkianthus    | Salix spp.                | Willow                      |
| Fothergilla gardenia           | Dwarf Fothergilla       | Spiraea spp.              | Spiraea                     |
| Fothergilla major              | Bottlebrush Bush        | Syringa spp.              | Lilac                       |

|                |           |              |         |
|----------------|-----------|--------------|---------|
| Forsythia spp. | Forsythia | Weigela spp. | Weigela |
|----------------|-----------|--------------|---------|

## PERENNIALS

### Preferred Species

| Scientific Name                | Common Name                    | Scientific Name              | Common Name                  |
|--------------------------------|--------------------------------|------------------------------|------------------------------|
| Achillea millefolium           | Yarrow                         | Iris versicolor              | Blue Flag Iris               |
| Actaea rubra, Actaea pachypoda | Red Baneberry, White baneberry | Liatris spicata              | Gayfeather                   |
| Anemone canadensis             | Canadian Anemone               | Lobelia cardinalis           | Cardinal Flower              |
| Aquilegia canadensis           | Eastern Red Columbine          | Lupinus perennis             | Wild Lupine                  |
| Asclepias tuberosa             | Butterfly weed                 | Monarda didyma               | Scarlet Bee Balm, Oswego Tea |
| Columbine aquilegia            | Columbine                      | Monarda fistulosa            | Wild Bergamot                |
| Coreopsis lanceolata           | Lanceleaf Coreopsis            | Polygonatum pubescens        | Solomon's Seal               |
| Coreopsis verticillata         | Moonbeam Coreopsis             | Rudbeckia hirta              | Black-Eyed Susan             |
| Echinacea purpurea             | Purple coneflower              | Symphyotrichum novae-angliae | New England Aster            |
| Eutrochium purpureum           | Joe Pye Weed                   | Symphyotrichum novi-belgii   | New York Aster               |

## PERENNIALS

### Acceptable Alternative Species

| Scientific Name      | Common Name  | Scientific Name          | Common Name          |
|----------------------|--------------|--------------------------|----------------------|
| Astilbe varieteis    | Astilbe      | Hosta spp.               | Hosta                |
| Agastache            | Anise Hyssop | Leucanthemum             | Ox-eye Daisy         |
| Aruncus dioicus      | Goatsbeard   | Malva alcea 'fastigiata' | Hollyhock Mallow     |
| Baptisia             | Wild Indigo  | Nepeta x faassenii       | Walker's Low Catmint |
| Epimedium            | Barrenwort   | Perovskia atriplicifolia | Russian Sage         |
| Geranium spp.        | Geraniums    | Phlox spp.               | Garden Phlox         |
| Hemerocallis species | Daylilies    | Sedum telephium          | Autumn Joy Sedum     |
| Heuchera spp.        | Coral Bells  |                          |                      |

## FERNS

### Preferred and Acceptable Species

| Scientific Name                             | Common Name     | Scientific Name                  | Common Name      |
|---|-----------------|----------------------------------|------------------|
| Adiantum pedatum                            | Maidenhair Fern | Osmundastrum cinnamomeum         | Cinnamon Fern    |
| Athyrium angustum                           | Lady Fern       | Osmunda claytoniana              | Interrupted Fern |
| Dennstaedtia punctilobula                   | Hayscented Fern | Osmunda regalis var. spectabilis | Royal Fern       |
| Matteuccia struthiopteris var. pensylvanica | Ostrich Fern    | Polystichum acrostichoides       | Christmas Fern   |
| Onoclea sensibilis                          | Sensitive Fern  |                                  |                  |

## GRASSES



| Preferred Species                |                           |                                 |                    |
|----------------------------------|---------------------------|---------------------------------|--------------------|
| Scientific Name                  | Common Name               | Scientific Name                 | Common Name        |
| Ammophila breviligulata          | Beachgrass                | Deschampsia cespitosa           | Tufted Hairgrass   |
| Andropogon gerardii              | Big Bluestem              | Deschampsia flexuosa            | Crinkled Hairgrass |
| Carex appalachica                | Appalachian Sedge         | Panicum virgatum                | Switchgrass        |
| Carex pensylvanica               | Pennsylvania Sedge        | Juncus spp.                     | Rush               |
| Chasmanthium latifolium          | Northern Sea Oats         | Schizachyrium scoparium         | Little Bluestem    |
| Eragrostis spectabilis           | Purple Lovegrass          | Sporobolus heterolepis          | Prairie Dropseed   |
| GRASSES                          |                           |                                 |                    |
| Acceptable Alternative Species   |                           |                                 |                    |
| Scientific Name                  | Common Name               | Scientific Name                 | Common Name        |
| Calamagrostis x acutiflora       | Feather-Reed Grass        | Miscanthus sinensis             | Maiden Grass       |
| Calamagrostis brachytricha       | Feather-Reed Grass        | Molinia caerulea subsp. Arundin | Moor Grass         |
| Festuca glauca                   | Blue Fescue               | Pennisetum alopecuroides        | Fountain Grass     |
| Hakonechloa macra                | Hakone Grass              |                                 |                    |
| GROUNDCOVERS                     |                           |                                 |                    |
| Preferred and Acceptable Species |                           |                                 |                    |
| Scientific Name                  | Common Name               | Scientific Name                 | Common Name        |
| Arctostaphylos uva-ursi          | Bearberry                 | Juniperus horizontalis          | Creeping Juniper   |
| Cornus canadensis                | Bunchberry                | Mitchella repens                | Partridgeberry     |
| Gaultheria procumbens            | Checkerberry, Wintergreen | Vaccinium angustifolium         | Lowbush blueberry  |

Plant materials shall meet the following minimum sizes, unless alternative sizes are required given a particular site or location:

| Landscape Element               | Minimum Size   |
|---------------------------------|----------------|
| Large Deciduous Trees           | 2 ½" caliper   |
| Large Evergreen Trees           | 5-7' in height |
| Small Ornamental Trees          | 2" caliper     |
| Shrubs                          | 3gallons       |
| Perennials                      | 1 gallon       |
| Ferns                           | 1 gallon       |
| Grasses                         | 1 gallon       |
| Groundcovers (plugs acceptable) | 1 gallon       |

The Planning Board may require larger plants for special locations, such as within the Route One right-of-way and along Haigis Parkway.

## **17. Installation, Guarantee and Maintenance**

**Installation.** The ultimate form and height of plantings shall be considered so they will not create unsafe conditions or block sight lines for pedestrians, bicyclists, or motorists as they mature.

Trees shall be planted in locations where their root development and branching patterns will not interfere with window displays, signage, underground or overhead utilities, streets, and sidewalks.

The installation of underground irrigation is encouraged in front setbacks, public spaces, and other highly visible areas. It shall be coordinated so it does not cause overflow or flooding in pedestrian use areas, such as walkways, sidewalks, or parking lots.

The Town recognizes the seasonal nature of landscape installation; however, all landscaping shall be installed according to the approved site plan prior to Certificate of Occupancy or within six (6) months after the Certificate of Occupancy has been issued and a performance guarantee has been provided and accepted by the Town.

**Maintenance.** Landscape plans shall anticipate a three (3) to eight (8) year growing cycle to achieve maturity for shrubs and fifteen (15) to twenty (20) plus years for trees. The plan shall be designed and plantings selected with due consideration for maintenance requirements.

A written maintenance plan shall be provided for the landscape elements to be installed on the site. The plan shall include initial installation, guarantee period, replacement policy, annual maintenance, and irrigation provisions. Maintenance plans shall include alternatives to regular mowing and pesticide use if possible. This may be established on the landscape plan with standard notes.

Trees and shrubs in and near parking areas and walkways shall be trimmed and maintained so that they do not block views needed for safe movement of motorists and pedestrians. Vertical clearances of at least eight (8) feet shall be maintained. Shrubs in parking lot islands shall not exceed three (3) feet in height to avoid blocking visibility.

All plant material shall be allowed to achieve their natural forms without excessive pruning. Shaping evergreen shrubs into tight geometrical forms shall be avoided.

**Guarantee.** All lawns and plant materials shall be guaranteed for a period of not less than two (2) years. The developer shall submit a copy of a guarantee and a contract with the landscape contractor, indicating the terms of the guarantee period, or may obtain a letter of credit. The guarantee period does not begin until all landscaping has been installed.

Where plant materials specified on the planting plan do not survive or are damaged, they shall be replaced and/or reinforced in accordance with the two-year performance guarantee to maintain conformance with the approved planting plan and to provide the necessary landscape effect.

Plants that die must be replaced in kind, unless another species is more appropriate given the site's growing conditions. A fine may be levied if the landscaping has not been maintained, and new plants required to be planted.

## 18. Landscape Plan Required

If site improvements will create ten (10) or more new parking spaces or create 2,000 sq. ft. or more of new building footprint, a landscape plan shall be prepared by a landscape architect registered in Maine.

The Planning Board, at their discretion, may require a peer review of landscape plans.

Landscaping for multiple building developments shall be coordinated with all other elements of the site. As part of the application for Site Plan approval, applicants shall submit a master landscape plan that shows how landscaping will be used to complement proposed buildings, reinforce circulation paths, help define pedestrian use areas, highlight entrances, provide shade, and add seasonal interest to the landscape.

Plantings used in stormwater treatment facilities should be designed by a qualified professional.

The planting plan shall illustrate how plantings shall be coordinated with the location of underground and overhead utilities and lighting.

Each landscape plan shall include the following table filled out for the specific site:

| Minimum Landscape Required              | Required     | Provided |
|---|--------------|----------|
| Minimum Landscape Area<br>(square feet) |              |          |
| Minimum Trees Required                  |              |          |
| Trees<br>(Preferred Species)            | Min 60% = ## | % and #  |
| Trees<br>(Alternative Species)          | Max 40% = ## | % and #  |
| Minimum Shrubs Required                 |              |          |
| Shrubs<br>(Preferred Species)           | Min 40% = ## | % and #  |
| Shrubs<br>(Alternative Species)         | Max 60% = ## | % and #  |
| Shrubs (Unlisted)                       | Max 25% = ## | % and #  |

| Buffer Yard - Streetscape  | Required | Provided |
|--|----------|----------|
| Street Name  |          |          |
| Street Frontage Depth  |          |          |
| Street Frontage Length<br>(excluding entryways)<br>(linear feet) |          |          |
| Street Frontage Area<br>(square feet)                            |          |          |

|   |                 |                 |
|---|-----------------|-----------------|
| Street Trees  |                 |                 |
| <b>Buffer Yard - Residential Adjacency (if required)</b>          | <b>Required</b> | <b>Provided</b> |
| RA Type Required  |                 |                 |
| RA Buffer Depth (feet)  |                 |                 |
| RA Buffer Length (linear feet)                                    |                 |                 |
| RA Buffer Area (square feet)                                      |                 |                 |
| RA Buffer Trees   |                 |                 |
| <b>Parking Lot Screening (if required)</b>                        | <b>Required</b> | <b>Provided</b> |
| Parking Lot Screen Depth (feet)                                   |                 |                 |
| Parking Lot Screen Length (excluding entryways) (linear feet)     |                 |                 |
| Parking Lot Screen Area (square feet)                             |                 |                 |
| Parking Lot Screening Shrubs                                      |                 |                 |
| <b>Parking Lot Landscape</b>                                      | <b>Required</b> | <b>Provided</b> |
| Parking Calculation Type  |                 |                 |
| Parking Spaces  |                 |                 |
| Parking Islands (number)  |                 |                 |
| Parking Islands Total Area (square feet)                          |                 |                 |
| Parking Island Trees  |                 |                 |
| Parking Island Shrubs   |                 |                 |
| Entryway Trees  |                 |                 |
| Entryway Shrubs   |                 |                 |
| Continuous 5' Landscape Area - All Applicable Sides (square feet) |                 |                 |
| <b>Foundation Landscape</b>                                       | <b>Required</b> | <b>Provided</b> |
| Landscape Bed Depth (feet)  |                 |                 |
| Landscape Bed Length - All Applicable Sides (linear feet)         |                 |                 |
| Landscape Bed Area - All Applicable Sides (square feet)           |                 |                 |
| Landscape Bed Shrubs  |                 |                 |
| Landscape Bed Ornamental  |                 |                 |

|   |                 |                 |
|---|-----------------|-----------------|
| Trees (if provided)                       |                 |                 |
| <b>Additional Screening (if required)</b> | <b>Required</b> | <b>Provided</b> |
| Dumpster Area Fence                       |                 |                 |
| Dumpster Areas Shrubs                     |                 |                 |
| Mechanical Screening Fence                |                 |                 |
| Mechanical Screening Shrubs               |                 |                 |

## 19. Waivers Landscape and Screening Standards

The Planning Board may review and approve requests for waivers to landscaping standards for the following:

- a. The Planning Board may reduce the amount of landscaping required for parking lots if additional landscaping of equal or greater value is provided on other areas on site.
- b. The Planning Board may approve an alternative interior parking island design to address stormwater runoff if recommended for approval by the Town Engineer.
- c. The Planning Board may approve stormwater treatment areas located in the streetscape buffer yard if recommended for approval by the Town Engineer.
- d. The Planning Board may approve an alternative planting plan if the site is not able to accommodate the required plantings, only as follows:
  - i. One large tree may be substituted by two (2) ornamental trees
- e. The Planning Board may waive or decrease the five (5) foot landscape strip requirement between all parking areas and buildings if the development is in an urban setting.
- f. The Planning Board may waive residential adjacency buffer requirements if the site is in conjunction with a master planned development or within a mixed-use district.
- g. The Planning Board may waive the required snow storage areas if a snow storage management plan is submitted and approved by the Town that includes the following:
  - i. Designated temporary or interim snow storage areas that do not interfere with more than one-third (1/3) of the project required minimum parking.
  - ii. Interim snow storage shall be removed within five (5) calendar days following a storm cycle.
  - iii. Interim snow storage shall not be in a location that will damage trees, landscape or other facilities.
  - iv. Interim snow storage shall not block any required access, sidewalk, trail or public way.
  - v. Snow shall be hauled to approved and permitted locations. The location shall be provided.
  - vi. Snow hauling shall generally be completed during non-business hours.
  - vii.

The snow management plan shall designate the removal methods.

#### **G. Stormwater Management [amended 04/21/2021]**

Adequate provisions shall be made for the control, collection and disposal of all stormwater runoff from the site. Drainage plans, details, and calculations shall address the two, ten and twenty-five year, twenty-four hour storm events. These plans shall be designed to compliment the hydrology and natural features of the site and shall not cause adverse impacts to abutters, downstream properties, or receiving waters. Post-development stormwater flow rates must be equal to or less than pre-development stormwater flow rates.

1. Stormwater management areas shall be treated as integral, attractive and natural parts of the landscape. Natural areas shall be used to retain and drain stormwater to the extent possible.
2. When areas of the site are to be paved they may be designed and constructed with pervious and semi-pervious alternatives to bituminous pavement. Alternative parking surfaces, such as porous pavement, are intended to minimize storm water run-off and facilitate infiltration and natural hydrological functions to the extent feasible.
3. Stormwater treatment basins shall be patterned after natural features and shall avoid hard geometric shapes. These basins shall be planted with wetland species to improve their aesthetic and habitat values.
4. Abrupt changes to natural drainage ways and grades shall be avoided. Natural drainage ways shall not be filled unless specifically permitted by the Applicable Reviewing Authority and transitional grading shall be used to blend all earthworks into the natural contours of the site.
5. Drainage systems shall be designed so as to not impact streets, adjacent properties, downstream properties, and local soils and vegetation. The system shall also consider and incorporate the upstream runoff that may pass over the site. Systems should include green infrastructure and low impact development practices.
6. The water quality of receiving waters shall not be degraded by the stormwater runoff from the site. Oil and grease traps, on-site vegetated waterways, drainage swales, and vegetated buffer strips shall be utilized as needed to aid in the prevention of degraded receiving waters.
7. Where ground protection and rip rap is necessary in visible locations it shall be constructed of hand-placed rock or geo-grid, rather than course rip-rap.
8. Wherever feasible, drainage basins shall be designed to be shared between abutting properties to lessen the amount of land area devoted to stormwater management.
9. If applicable, the site must comply with and submit all documentation required in accordance to Chapter 419 – Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance.
10. Erosion and sedimentation control plan and narrative is required in accordance to Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.

## **H. Outdoor Lighting Standards [amended 04/21/2021; 10/18/2023]**

### **1. Purpose**

Outdoor lighting shall be designed to balance visibility and safety on the site, while respecting abutting properties and minimizing light pollution and sky glow. Function, safety, energy consumption and demand, and aesthetic goals shall be achieved with fixtures, color rendering and locations that are planned as part of the overall site design.

### **2. Applicability**

All outdoor lighting installed after the date of effect of this Ordinance shall comply with these requirements. This includes, but is not limited to, new lighting, replacement lighting, or any other lighting whether attached to structures, poles, the earth, or any other location.

The provisions of this section shall not apply to individual single and two-family dwellings and their accessory buildings, structures, and areas for parking.

The provisions of this section shall not apply to streetlights installed in public rights-of-way. See the Town of Scarborough Streetlight policy.

Temporary outdoor decorative lighting (including lighting for temporary uses, special events, and seasonal holiday lighting) is exempt where the lighting does not exceed sixty (60) consecutive days or more than 120 days during any one-year period and does not cause undue burden on adjacent properties.

### **3. General Standards**

The location, design, and color of fixtures (poles and luminaries) shall complement the architecture, landscaping, parking areas, and street furnishings of the site to be developed or redeveloped in terms of form, style, and placement.

Lighting shall not cause spillover onto neighboring residential properties or create dangerous conditions due to glare on adjacent roadways.

### **4. Definitions**

**Astronomic Time Switch:** An automatic lighting control device that switches outdoor lighting relative to time of solar day with time of year correction.

**Decorative Lighting:** Lighting that does not impact the function and safety of an area but is purely decorative, or used to illuminate architecture and/or landscaping, and installed for aesthetic effect.

**Footcandle:** The unit of measure expressing the quantity of light received on a surface.

**Full cut-off fixture:** Full-cutoff fixtures permit zero light intensity at or above horizontal (90° above nadir) and limited to a value not exceeding 10% of lamp lumens at or above 80°.

**Glare:** Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

**IES:** Illuminating Engineering Society.

**Lamp:** A generic term for a source of optical radiation (i.e. “light”), often called a “bulb” or “tube”.

**Light Pollution:** Any adverse effect of artificial light including, but not limited to, glare, light trespass, skyglow, energy waste, compromised safety and security, and impacts on the nocturnal environment.

**Light Trespass:** Light that falls beyond the property it is intended to illuminate.

**Luminaire:** The complete lighting unit (fixture), consisting of a lamp, or lamps and ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

**Mounting Height:** The height of the photometric center of a luminaire above grade level.

**Sky Glow:** The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the night sky.

**Uplight:** For an exterior luminaire, light directed in the hemisphere at or above the horizontal plane.

**Vertical Illuminance:** Illuminance measured or calculated in a plane perpendicular to the site boundary or property line.

## **5. Lighting Plan Required**

A lighting plan shall be furnished with all site plan applications or amended site plan applications. It shall include the following:

- a. Narrative that describes the hierarchy of site lighting, how lighting will be used to provide safety and security, and aesthetic effects. The lighting plan narrative shall describe how the facades of individual buildings and/or landscaping will be lit (if at all) and the design intent behind such lighting.
- b. Photometric diagram showing the illumination levels that will result from the proposed lighting; including the location of all lighting fixtures proposed to illuminate the buildings, entryways, travelways, loading areas, service areas, walkways and landscaping on the site.
- c. Calculation Summary indicating foot-candle levels on the lighting plan, noting the maximum, average, and minimum, as well as the uniformity ratio of maximum to minimum and average to minimum levels to avoid “hot” spots of light.
- d. Summary of the IES lighting standards applied to the site and table showing compliance not exceeding minimum requirements.
- e. Lighting manufacturer-supplied specifications that include photographs of the fixtures, lamp source type, lumen output, color rendering and wattage. This specification must contain the exact make and model number of the light fixture.
- f. Mounting height with distance noted to the nearest property line for each luminaire. All façade mounted lights are also required to be shown on the architectural elevations.
- g. Permanently installed decorative outdoor lighting, such as string lights or patio lights, must be included on the lighting plan submitted with site plan submittals.
- h. Types of timing devices used to control the hours set for illumination, as well as the proposed hours when each fixture will be operated.
- i. An environmental impact statement may be required as to the impact of the exterior lighting proposed on adjacent open space or waterways to include flora, fauna, and the night sky. Location of species sensitive to light at night needs to be indicated.
- j. A note stating no substitutions, additions, or changes may be made without prior approval by the governing authority; and that all lighting not on the plan shall be removed and no additional lighting shall be installed without prior approvals.
- k. Maintenance and Replacement Plan discussing lighting maintenance.

## **6. Lighting Levels**

For safety and energy conservation purposes, illumination levels shall not exceed the current recommended minimums by the [Illuminating Engineering Society](#) (IES) except as outlined below:

- a. Light levels at the property line should not exceed 0.1 foot-candles (fc) adjacent to business properties, and 0.05 fc at residential property boundaries.

## **7. Permitted Lighting**



- a. All lamps source to be used on site are required to be classified as dark sky compliant and full cutoff, except as otherwise permitted in this ordinance.
- b. Exterior light sources shall be LED or the current highest efficiency available.
- c. Warm lighting color temperature is to be specified for all exterior light applications. Provide a maximum color temperature of 3000K, with a color rendering index (CRI) of 80.

## **8. Time Limits for Outdoor Lighting**

- a. All outdoor lighting located more than 30 feet from any building or outdoor product display or storage area shall be turned off no later than 30 minutes after the business closes and remain off for the remainder of the night or until the business reopens. All exterior lights that remain on during after-hours must be dimmed to fifty (50) percent of their total lumen output until 30 minutes before business reopens. An astronomic time switch or other permanent lighting control device must be provided to facilitate controlled dimming.
- b. All landscape lighting must be turned off when the business is closed.
- c. All temporary or permanent decorative outdoor lights must be turned off when the business is closed. Temporary decorative lights not related to the functionality of the business that are seasonal and/or related to a Federal Holiday may remain on at the business' discretion.

## **9. Fixture Height and Placement**

The location and alignment of fixtures shall be coordinated with the orientation of buildings, the layout of parking and landscaped islands, and the driveway patterns. Light fixtures shall be sited within raised landscaped areas to avoid damage from vehicles and plows. Light poles must not obstruct sidewalks or bicycle paths.

The following requirements apply:

- a. Façade mounted lights adjacent to driveways or access ways shall not exceed 25 feet in height from ground level.
- b. Façade mounted lights adjacent to sidewalks shall be a minimum of twelve (12) feet high from ground level and not exceed sixteen (16) feet from ground level.
- c. Indirect landscape lighting (uplighting and washes) may be used.
- d. High branch-mounted flood-lights aimed toward the ground are prohibited.
- e. Bollard fixtures (full cutoff) are permitted up to 3-4 feet in height from ground level.
- f. Ornamental fixtures are permitted up to 12 feet in height from ground level upon approval by the Planning Board.
- g. Parking Areas light fixtures shall have a maximum overall pole height of 20 feet from grade level to the top of the fixture.

## **10. Outdoor Recreation Facilities**

- a. Any light source permitted by this Ordinance may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all of the following conditions are met:
- b. All fixtures used for event lighting shall be fully shielded, or be designed or provided with full cut-off capability, so as to minimize up-light, spill-light, and glare.
- c. All events shall be scheduled so as to complete all activity before or as near to 10:30 p.m. as practical, but under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.
- d. The maximum height permitted is to be determined during the site plan process as approved by the Planning Board.

## **11. Prohibited Fixtures and Lighting**

- a. Bare lamps are not allowed, unless permitted as temporary outdoor lighting or approved as permanent decorative lighting by the Planning Board through the waiver process.
- b. Neon tubes as lighting features are not allowed on building exteriors. The use of internally illuminated bands of color and/or light is prohibited.
- c. Non-cutoff fixtures, other than those specifically permitted by this ordinance.
- d. Mercury vapor lamps.
- e. Outdoor floodlighting by flood light projection above the horizontal plane. f. Search lights, flood lights, laser source lights, or any similar high intensity light, except in emergencies by police, fire, or medical personnel or at their direction; or for meteorological data gathering purposes.
- g. Any lighting device located on the exterior of a building or on the inside of a window which is visible beyond the boundaries of the lot or parcel with intermittent fading, flashing, blinking, rotating or strobe light illumination.

## **12. Waivers**

The Planning Board may review waivers to lighting standards for the following:

- a. Maximum pole and fixture height greater than 20' for large parking lots over 150 spaces if the increase in height can significantly reduce the number of fixtures necessary. Under no circumstances shall the combined height of the pole and light exceed 30' in height. Poles within 200' of residential property lines shall not exceed 20' in height.
- b. Non-cut-off fixtures, such as decorative or historic lamps, may be allowed by the Planning Board where they are designed to be lower luminance, limited in number, or distant from abutting residential uses.

- c. Nonconforming (exposed lamps) permanent decorative lighting may be permitted by the Planning Board where they are limited in number, or distant from abutting residential uses.

### **13. Signs**

Standards for external and internal sign illumination are provided in Section XII of the Zoning Ordinance. Lighting used for the external illumination of signs is included toward the Total Outdoor Light Output standards.

## **I. Architecture & Signage**

The architecture of the building(s) and the aesthetics of the signage on a site shall follow traditional New England building forms and shall be designed to complement the neighborhood or village in which the site is located.

1. The signage for a site shall comply with Section XII, Sign Regulations of the Zoning Ordinance and shall be reviewed in conjunction with the site plan.
2. Buildings shall present an inviting, human-scaled façade to the street, internal drives, parking areas, and abutting properties. Wherever possible, entrances shall be clearly visible from the street and reinforced through site and architectural features designed to direct visitors to the building.
3. Building materials shall be treated as important design elements that define the appearance of the structure and strengthen the sense of identity throughout Scarborough. The use of materials that give the appearance of New England architectural forms are strongly encouraged.
4. Rooflines shall be designed to provide diversity in the form of the building and add visual interest to the streetscape. Specifically, rooflines shall be designed to reduce the mass of large buildings, emphasize building entrances, provide shelter or shade for pedestrians, and incorporate elements unique to Maine and New England.
5. Large retail buildings, linear commercial buildings, national franchise buildings, and service stations shall all comply with the specific requirements for such structures found in the *Design Standards for Scarborough's Commercial Districts, January 27, 2003*.

## **J. Public & Private Utilities [amended 04/21/2021]**

1. The Applicable Reviewing Authority may require electric, cable television, and telephone lines to be underground. If these services are underground in the street or on adjoining properties, the new service shall be placed underground. Any utility installations permitted above ground shall be designed and located so as to have a harmonious relation to both neighboring properties and the site.
2. The site shall be served by an adequate supply of drinking water as well as sufficient flows for fire suppression. If a development intends to be served by a public water supply, the applicant shall furnish a written statement from the water supplier confirming that the project can be served.
3. The project shall provide for an adequate means of sewage disposal, whether it is on-site or tied into the public sewage collection and treatment system. An on-site system shall be in conformance with Scarborough's Local Plumbing Ordinance, Chapter 404A. If a development intends to be served by a public sewage system, the applicant shall furnish a written statement from the sanitary district confirming the project can be served.

## **K. Outdoor Storage**

~~Outdoor storage shall be permitted only as allowed by the Scarborough Zoning Ordinance. The outside storage of goods, materials, merchandise, automobiles, automobile parts, waste collection facilities, dumpsters, containers, and the like shall be located to the side or rear of sites and screened from view, if feasible.~~

- ~~1. Fencing or vegetation shall be used to screen dumpsters or recycling areas from view. These facilities shall be consolidated where possible.~~
- ~~2. Areas for outdoor storage or containers shall be designed as an integral part of the site, landscaping, and architectural plan and shall be setback and screened from public and private ways, main entrances, public spaces, and abutting residential neighborhoods.~~

## **K. Design Standards for Commercial Districts [amended 04/21/2021]**

In addition to complying with the foregoing performance and design standards, all site plans for properties located in the Residence and Professional Office District (RPO), the Local Business District (B-1), the Town and Village Centers District (TVC), the General Business District (B-2), the Highway Business District (B-H), the Haigis Parkway District (HP), and any commercial uses within the Traditional Neighborhood Development Overlay (TND) shall comply with the more specific Design Standards for Scarborough's Commercial Districts. In determining whether a project is designed in accordance with the Commercial Design Standards, the Applicable Reviewing Authority may engage the services of appropriate professionals to review (at the applicant's expense) the materials submitted. In the event of a conflict or inconsistency between any requirement of the Design Standards and a requirement of this Ordinance, the Scarborough Zoning Ordinance, the Scarborough Shoreland Zoning Ordinance, or the Scarborough Subdivision Regulations, the more restrictive requirement shall apply.

## **L. L. Preservation of Historic and Archeological Resources**

Any historic or archeological resource that has been identified by the Maine Historic Preservation Commission, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance should be preserved and incorporated into the development plan in a manner that retains its historic or archeological value if feasible. If an identified resource will be removed or will be altered in a manner that diminishes its historic or archeological value, the burden is on the applicant to demonstrate that options for preserving the resource have been explored. The Planning Board, Planning Department, and the applicant may consult the State Historic Preservation Office, the Scarborough Historical Society, or similar organizations with the mission of historic and archeological preservation on options for preserving the resource. If the resource will be removed, the applicant must demonstrate that reasonable efforts have been made to preserve the resource value or relocate it to another location. [03/19/2014][Amended 03/18/2015]

## **M. Municipal Capacity and State Agency Review**

Within the Town's designated growth areas as depicted in the current version of the Comprehensive Plan, the Town of Scarborough's Planning Board has municipal capacity to review development activities that otherwise would require review by the Maine Department of Environmental Protection under the Site Location of Development Law. This authority has been provided for under 38 M.R.S.A. Section 488(19). Municipal capacity shall only apply to development projects that are located wholly within the Town of Scarborough and wholly within a designated growth area. All other development projects that meet or exceed the thresholds for Site Location of Development Law shall be reviewed by the Maine Department of Environmental Protection accordingly. Municipal capacity

within the Town's growth areas shall apply to both new development projects and modifications to past development projects that may have existing Site Location of Development approvals.

In addition to meeting, the standards and requirements of this Ordinance, the Scarborough Zoning Ordinance, and any other applicable local ordinances, site plans that include a minimum of three (3) acres or more of building and impervious coverage shall also be submitted and reviewed by the State of Maine regarding significant wildlife and fisheries habitat and natural resources and significant historic and archeological resources as follows:

1. The Maine Department of Inland Fisheries and Wildlife shall be provided with a complete site plan application and shall have the ability to review and provide advisory comments on the site plan's impact on any significant wildlife habitat, aquatic habitat, fisheries habitat, or wildlife travel corridor. The Planning Board shall not issue a final decision on a site plan application until it receives comments from the Maine Department of Inland Fisheries and Wildlife or thirty (30) days from the submission of the application to the department, whichever comes first. [03/19/2014]
2. The Maine Historic Preservation Commission shall be provided with a complete site plan application and shall have the ability to review and provide advisory comments on the presence of any significant historic or archeological resources that may exist on the site. The Planning Board shall not issue a final decision on a site plan application until it receives comments from the Maine Historic Preservation Commission or thirty (30) days from the submission of the application to the department, whichever comes first. [03/19/2014]

## **V. Site Conditions & Environmental Considerations**

Before and during construction, the applicant or developer shall abide by the following conservation, erosion, and sediment control measures as well as the site construction, safety, and hazardous waste standards.

### **A. Conservation, Erosion, & Sediment Control [amended 04/21/2021]**

1. All sites must comply with Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
2. Stripping of vegetation, re-grading and other development shall be performed in such a way as to minimize erosion.
3. Development shall preserve prominent natural features, keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water run-off.
4. Wherever feasible, natural vegetation shall be retained, protected, and supplemented.
5. The extent of disturbed area and the duration of exposure shall be proposed by the applicant for consideration by the Applicable Reviewing Authority. The proposal shall conform to time schedules acceptable to the Applicable Reviewing Authority or to the Town Planner and Town Engineer if the Applicable Reviewing Authority so directs.
6. Disturbed soils shall be stabilized as efficiently as possible.
7. Temporary vegetation or mulching shall be used to protect exposed critical areas during development.

8. The permanent vegetation and mechanical erosion control measures shall be installed in conformance with a specified schedule as approved by the Applicable Reviewing Authority or by the Town Planner and Town Engineer if the Applicable Reviewing Authority so directs.
9. Until the disturbed area is stabilized, sediment in the runoff shall be trapped and contained by the use of debris basins, sediment basins, silt traps, silt fencing or other acceptable measures.
10. Whenever sedimentation is caused by stripping vegetation, re-grading or other development, it shall be the responsibility of the developer causing the sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any resulting damages in an efficient manner.
11. Any developer conducting an activity on or across a stream, watercourse or swale or upon a floodway or right-of-way thereof shall maintain, as nearly as possible, the state of the stream, watercourse, swale, floodway or right-of-way during the activity. Following the activity, the water feature shall be returned to its original, or equal, condition.
12. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

## **B. Site Conditions**

1. During construction, the site shall be maintained and left each day in a safe and sanitary manner. Any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon order by the Code Enforcement Officer or other authorized personnel. The developer shall make provisions for the disposal of oil, grease, and any other materials or equipment which may pose a threat to public health and safety. The site shall be regularly sprayed to control dust from construction activity.
2. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials. Such material shall be removed or destroyed upon the request, and to the satisfaction, of the Code Enforcement Officer and must be accomplished prior to the issuance of an occupancy permit.
3. No substantial change shall be made in the elevation or contour of any lot or site by the removal or addition of earth, except as shown on an approved site plan. Minimal changes in elevations may be made only after approval by the Code Enforcement Officer. All permitted changes necessitated by field conditions shall be shown on the as built plans.
4. Prior to or during construction, the Code Enforcement Officer may require the installation or construction of improvements in order to prevent or correct a temporary condition on the site that could cause personal injury, damage to property, erosion, flooding, heavy construction traffic, creation of steep grades, or pollution. Required improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads, and other improvements specific to a condition. All temporary improvements shall remain in place and operation until otherwise directed by the Code Enforcement Officer.

## **VI. Fees**

### **A. Application Fee**

At the time of submission of a site plan review application, the applicant shall pay to the Town Treasurer an application fee. Said fee shall be non-refundable and shall be computed as specified in the *Schedule of Licenses, Permit and Application Fees* established by the Town Council.

### **B. Development Review and Construction Inspection Fee**

Prior to the issuance of a building permit for the construction authorized by the site plan approval, the applicant shall pay to the Town Treasurer a Development Review and Construction Inspection Fee. Said fee shall be non-refundable and shall be computed and paid as follows:

1. The amount of the fee shall be determined by the Town Engineer, and shall include the actual costs incurred by the Town to engage consultants to undertake review of the applicant's site plan submissions plus the estimated cost to the Town of retaining the services of a qualified construction or site inspector under the employ of a licensed professional engineer to observe and inspect any improvements associated with the site plan approval.
2. If, upon completion of the required improvements, the actual cost of monitoring and inspection exceeds the amount paid at the time of issuance of the building permit, the applicant shall pay the additional amount to the Town Treasurer before the certificate of occupancy for the building or site shall be issued. If, upon completion of the required improvements, the actual cost of monitoring and inspection is less than the amount paid the Town shall return the unused portion to the applicant.

## **VII. Enforcement, Occupancy and Performance Guaranty**

**[amended 04/21/2021]**

This ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer. It shall be a violation of this ordinance (1) to undertake an activity requiring site plan review without first obtaining site plan approval from the Applicable Reviewing Authority, (2) to develop or use any property for which a site plan has been approved except in the manner shown on the approved site plan and as per Section III(B)(8) of this ordinance, or (3) to violate any condition of approval of an approved site plan. Any person who violates this ordinance shall be penalized pursuant to 30-A M.R.S.A. section 4452. Each day a violation exists constitutes a separate violation.

### **A. Occupancy Permit and Performance Guaranty**

An occupancy permit for the use or occupancy of any land, building, structure or part thereof requiring site plan approval shall be issued in accordance with Section IV(G), Certificate of Occupancy, of the Town of Scarborough Zoning Ordinance.

No occupancy for full or partial occupancy shall be issued by the Code Enforcement Officer until the Town Engineer, Town Planner or their designee are satisfied that the property has been constructed in accordance with the approved site plan and conditions of approval, or that the Town has received a performance guarantee for the completion of specific outstanding site elements within a specified timeframe, as well as final documentation required in all applicable Town ordinances including but not limited to as-builts.

A performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. The amount of a performance guarantee shall be determined by the Town Engineer or her/his designee, following the submission of a cost estimate by the applicant, and shall be in an amount at least equal to the total cost of the remaining work to be completed. [amended 11/01/17]

As-built plans shall be prepared by an engineer, architect, landscape architect, or land surveyor registered in Maine. Prior to the release of the letter of credit and inspection fee account, the developer shall submit to the Planning Office a digital copy of the final site plan approved by the Planning Board, including all approved amendments to the plan during construction. The digital data shall be a single composite AutoCAD (up to Release 2019) drawing file as well as a .pdf file may be submitted via e-mail, or other format acceptable to the Town Engineer. The following standards shall be followed:

1. Plan units: decimal feet, NAD83, Maine State Plane West, vertical datum NAVD1988. (2) Georeferencing: drawing features should be tied into state plane coordinates.
2. Rotation of grid north maintained. Plan data should not be "rotated" in any way which might compromise data coordinate integrity. (Alternately, a "dview twist" or similar CAD display operation will allow for convenient plotting/layout fitting while still properly maintaining spatial reference.)
3. Coordinates shall be shown on at least four corners of the site plan. Coordinates shall be referenced to the Maine State Coordinate System.
4. AutoCAD (up to Release 2019) drawing or equivalent.
5. Any dependent external referenced (xref's) should be bound to the drawing file(s).
6. Drawing layers should be named in a logical fashion to allow identification of features; preferably, all drawings should be accompanied by a file that describes the layer structure.
7. Significant proposed polygon features, i.e., building footprints, parking areas, and driveways, should be closed 2-D polylines (looped for closure).

## **VIII. Severability and Conflicts**

### **A. Severability**

In the event that any section, subsection or any portion of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection, or other portion of this ordinance.

### **B. Conflict**

In the event that any provision of this ordinance is in conflict with or inconsistent with any provision of any other ordinance of the Town of Scarborough, the provision which establishes the most stringent requirement shall prevail.

## **IX. Meanings of Words**

Where words or terms used in this ordinance are defined in the Town of Scarborough Zoning Ordinance, the Town of Scarborough Subdivision Ordinance or the Town of Scarborough Shoreland Zoning Ordinance, such definitions shall apply to this ordinance as well. Words or terms not so defined shall have their ordinary, customary meanings.

## **Appendix— Plant Materials List**



The plants on this list have been derived from a number of sources to inspire a greater landscape variety in Scarborough. The final selection of materials shall consider the specific growing requirements and characteristics of each plant and the conditions of the site.

| STREET TREES            |                        | ORNAMENTAL TREES        |                         |
|-------------------------|------------------------|-------------------------|-------------------------|
| Aesculus hippocastan    | Baumanii Horsechest    | Acer campestre          | Hedge Maple             |
| Acer campestre          | Hedge Maple            | Acer ginnala            | Amur Maple              |
| Acer ginnala            | Amur Maple             | Aesculus carnea         | Red Horsechestnut       |
| Acer x. freemanii       | Armstrong Maple        | Amelanchier canadensis  | Serviceberry            |
| Acer x. freemanii       | Autumn Blaze Maple     | Carpinus betulus        | European Hornbeam       |
| Acer rubrum             | Red Maple              | Carpinus carolinianum   | American Hornbeam       |
| Acer saccharum          | Sugar Maple            | Celtis occidentalis     | Hackberry               |
| Acer tataricum          | Tartarian Maple        | Cornus kousa            | Kousa Dogwood           |
| Acer triflorum          | Three-flower Maple     | Cornus mas              | Cornealancherry Dogwood |
| Amelanchier             | Shadblow               | Cotinus obovatus        | American Smoketree      |
| Betula nigra            | River Birch            | Crataegus crus-galli    | Cockspur Hawthorne      |
| Carpinus betula fastig. | Upright Hornbeam       | Crataegus viridis       | Winter King Hawthorne   |
| Carpinus caroliniana    | American Hornbeam      | Halesia carolina        | Carolina Silverbell     |
| Cercidiphyllum japon.   | Katsura Tree           | Maackia amurensis       | Maackia                 |
| Cladrastis lutea        | Yellowwood             | Magnolia loebneri       | Loebner Magnolia        |
| Corylus colurna         | Turkish Filbert        | Magnolia stellata       | Star Magnolia           |
| Crataegus crusgalli     | Cockspur Hawthorn      | Malus species           | Crabapple               |
| Fraxinus americana      | White Ash              | Nyssa sylvatica         | Tupelo                  |
| Ginkgo biloba           | Maidenhair Tree        | Ostrya virginiana       | Ironwood                |
| Gleditsia triacanthos   | Thornless Honey Locust | Phellodendron arboretum | Amur Corktree           |
| Gymnocladus dioica      | Kentucky Coffee Tree   | Prunus sargentii        | Sargent Cherry          |
| Liriodendron tulipifera | Tulip Poplar Tree      | Prunus subhirtell       | Higan Cherry            |
| Magnolia acuminata      | Cucumber Tree          | Pyrus calleryana        | Bradford Pear           |
| Prunus accolade         | Accolade Cheery        | Sorbus alnifolia        | Korean Mountain Ash     |
| Prunus maackii          | Amur Chokecherry       | Syringa reticulata      | Tree Lilac 'Ivory Silk' |
| Quercus alba            | White Oak              |                         |                         |
| Quercus bicolor         | Swamp White Oak        | EVERGREEN TREES         |                         |
| Quercus coccinea        | Scarlet Oak            | Abies concolor          | White Fir               |
| Quercus imbricaria      | Shingle Oak            | Abies fraseri           | Fraser Fir              |
| Quercus palustris       | Pin Oak                | Picea abies             | Norway Spruce           |
| Quercus robur           | Upright English Oak    | Picea glauca            | White Spruce            |
| Quercus rubra           | Red Oak                | Picea omorika           | Serbian Spruce          |

|                         |                        |                           |                     |
|-------------------------|------------------------|---------------------------|---------------------|
| <i>Quercus shumardi</i> | Shumard Red Oak        | <i>Picea pungens</i>      | Colorado Spruce     |
| <i>Sophora japonica</i> | Regent Scholartree     | <i>Pinus resinosa</i>     | Red/Norway Pine     |
| <i>Tilia cordata</i>    | Littleleaf Linden      | <i>Pinus strobus</i>      | Eastern White Pine  |
| <i>Ulmus parvifolia</i> | Lacebark Elm           | <i>Thuja occidentalis</i> | American Arborvitae |
| <i>Ulmus americana</i>  | Princeton American Elm | <i>Tsuga canadensis</i>   | Canadian Hemlock    |
| <i>Zelkova serrata</i>  | Greenvase Zelkova      | <i>Tsuga caroliniana</i>  | Carolina Hemlock    |

| FLOWERING & ORNAMENTAL SHRUBS    |                      | PERENNIALS                         |                       |
|----------------------------------|----------------------|------------------------------------|-----------------------|
| <i>Aesculus parviflora</i>       | Bottlebrush Buckeye  | <i>Achillea millefolium</i>        | Yarrow                |
| <i>Aronia arbutifolia</i>        | Red Chokeberry       | <i>Aster x frikartii</i>           | New England Aster     |
| <i>Cotinus coggygria</i>         | Common Smoketree     | <i>Astilbe varieteis</i>           | Astilbe               |
| <i>Cotoneaster adpressa</i>      | Creeping Cotoneaster | <i>Coreopsis verticillata</i>      | Moonbeam<br>Coreopsis |
| <i>Deutzia gracilis</i>          | Slender Deutzia      | <i>Echinacea purpurea</i>          | Purple coneflower     |
| <i>Enkianthus campanulat.</i>    | Redveined Enkianthus | <i>Hemerocallis species</i>        | Daylilies             |
| <i>Forsythia 'Sunrise'</i>       | Sunrise Forsythia    | <i>Liatris spicata</i>             | Gayfeather            |
| <i>Hydrangea paniculata</i>      | Panicle Hydrangea    | <i>Malva alcea</i><br>'fastigiata' | Hollyhock Mallow      |
| <i>Ilex verticillata</i>         | Winterberry          | <i>Perovskia atriplicifolia</i>    | Russian Sage          |
| <i>Myrica pensylvanica</i>       | Bayberry             | <i>Rudbeckia</i><br>'Goldsturm'    | Black Eyed Susan      |
| <i>Potentilla fruticosa</i>      | Bush Cinquefoil      | <i>Sedum telephium</i>             | Autumn Joy Sedum      |
| <i>Prunus maritima</i>           | Beach Plum           |                                    |                       |
| <i>Rhododendron species</i>      | Rhododendron Species | ORNAMENTAL GRASSES                 |                       |
| <i>Rosa rugosa</i>               | Beach Rose           | <i>Deschampsia caespitosa</i>      | Tufted hair Grass     |
| <i>Viburnum prunifolium</i>      | Blackhaw Viburnum    | <i>Miscanthus sinensis</i>         | Purple Silver Grass   |
| <i>Viburnum sargentii</i>        | Sargent Viburnum     |                                    |                       |
| <i>Viburnum trilobum</i>         | Amer. Cranberrybush  |                                    |                       |
| <i>Xanthorhiza simplicissima</i> | Yellowroot           |                                    |                       |

# DESIGN STANDARDS for Scarborough's Commercial Districts



**Adopted July 16, 2001**

**[Amended February 18, 2009]**

**[Amended October 18, 2023; Lighting Standards  
Repealed, See Chapter 405B Section H]**

### Planning Board Policy Approving Site Planning Goals

The Planning Board approves the attached Site Planning Goals as guidelines to assist applicants in designing proposals which will comply with the standards of Section C of the Site Plan Review Ordinance. Proposals that are designed in accordance with the Site Planning Goals will be presumed to comply with the standards of Section C. Proposals that are not designed in accordance with the Site Planning Goals will need to demonstrate compliance with each of the standards of Section C. In determining whether a project is designed in accordance with the Site Planning Goals or meets the standards of Section C, the Planning Board may engage the services of appropriate professionals to review, at the applicant's expense, the materials submitted by the applicant.

### DEFINITION OF TERMS

**These definitions are provided to assist the reader while using Scarborough's Design Standards.**

**Adaptive Reuse** - The development of a new use for a preexisting building. If a historic structure is involved, the conversion strives to maintain the structure's historic character.

**Americans with Disabilities Act.** A 1990 federal law designed to bring disabled Americans into the economic mainstream to provide them equal access to jobs, transportation, public facilities, and services.

**Architectural Feature** -A prominent or significant part or element of a building, structure or site.

**Bollards** -Posts used in the landscape for functional (e.g., separation of pedestrian and vehicular traffic) or decorative purposes.

**Building Mass** The height, width, and depth of a structure.

**Cape Cod Curbs** -A relatively low fiat asphalt curb, typically used at the edge of parking lots or roadways to minimize snow plow damage.

**Community Character** - The image of a community as defined by such factors as its built environment, natural features, open space, architectural styles of houses and buildings, infrastructure, and the type and quality of public facilities and services.

**Compact Parking** -A parking space with a dimension of 8' in width and 15 feet in depth.

**Cross Easement** \_The reciprocal legal right to pass from one property to another.

**Curb Cut** - The opening along the curb line at which point vehicles may enter or leave the roadway.

**Fenestration** - Window treatment in a building or on a building facade.

**Gateways** -Entrances into recognizable places or areas of significant changes in land use.

**Human Scale.** The relationships of a development and/or its elements in terms of size, height, bulk, intensity, and aesthetics, to human beings.

**Massing** - The grouping of three-dimensional forms to achieve variation (as in a building or landscape planting).

**Mixed-Use Development** -The combination of two or more land uses within one building, project, or site. The most common combination of uses is business/retail and residential.

**Modular Pavers** -Preformed paving blocks that are installed on the ground to form patterns.

**Neckdowns** -Located at the openings of curb lines, the curb width is extended, usually 7-8", to decrease the distance between opposing curb lines and to prohibit parking. Sometimes referred to as "bump outs."

**Outdoor Storage** - The keeping, in an unenclosed area, of any goods, materials, merchandise, junk, or vehicles in the same place for more than twenty-four hours.

**Parapet** - The extension of the main walls of a building above the roof line.

**Peer Review** - The use of qualified professionals to review specific aspects of a Site Plan application for conformance with the Town's Ordinances or Design Standards.

**Performance Guarantee** -Any security that may be accepted by a municipality to assure that improvements required as part of an application for development will be satisfactorily completed.

**Reader boards** -A sign affiliated with a business or institution that contains temporary announcements about events or activities occurring on the premises.

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**Redevelopment** - The reconstruction, reuse or change in use of any developed property including an increase in intensity of use or structural enlargement.

**Rehabilitation/Renovation/Restoration** - To construct an addition, make alterations, or to upgrade to the design and layout of a building.

**Scale** .The relationships of a development and/or its elements in terms of size, height, bulk, intensity, and aesthetics, to one another and the surroundings.

**Service Areas** -A designated area, either attached to or separated from the main commercial building, where a business accommodates services such as product shipping and delivery, trash pickup, machinery and equipment repair, utility storage, etc.

**Sight Triangle** -A triangular shaped portion of land established at street intersections in which nothing is erected, placed, or planted that would limit or obstruct the motorists vision as they enter or depart the intersection.

**Strip Commercial Centers**- Continuous or intermittent linear roadside development, generally one store deep and characterized by multiple roadway access points, highly visible off-street parking and an assortment of commercial uses with direct access to abutting roads.

**Stacking Lanes** -A designated area of a parking lot that accommodates the queuing of cars (for instance, at a drive-through restaurant).

**Temporary Signs** -A sign which is installed for a limited time and is not constructed or intended for long-term use.

**Vernacular Architecture** -Architectural forms which are indigenous to an area, having developed in response to available materials, environmental conditions, and local cultural traditions.

## INTRODUCTION

Each property within Scarborough's commercial district is unique. Development plans should be based upon a careful understanding of the site in order to meet the **requirements of the business while improving the** functionality, safety, and visual character of Scarborough's commercial community.

### Site Planning Goals

- Distinctive, attractive gateways that welcome people to Scarborough.
- Quality development that respects the uniqueness of each property and reinforces Scarborough's sense of place and character.
- Public open space throughout the commercial area to enhance its appearance and support pedestrian use.
- An attractive, functional, and safe environment that is conducive to commerce and other permitted activities.
- Quality redevelopment of transitional or substandard properties.
- Protection for abutting residential properties through sensitive site planning, buffering, and architectural design.
- Upgrading the visual character and human scale of commercial districts through particular attention to architecture, site planning, signage, and lighting.
- Encourage increased walking and cycling activity within commercial district's by providing safe, attractive, interconnected facilities.
- Universal accessibility for all that meets the Americans with Disabilities Act (ADA).
- Sound access management throughout the commercial district to maintain efficient traffic flow and high levels of safety.

## CONTENTS

|                                |    |
|--------------------------------|----|
| General Site Plan Principles   | 2  |
| Circulation Planning           | 4  |
| Parking Areas                  | 6  |
| Pedestrian Spaces              | 8  |
| Public Sidewalks               | 9  |
| Internal Sidewalks             | 10 |
| Multiple Building Developments | 13 |
| Service Areas                  | 15 |
| Buffers & Screening            | 17 |
| Stormwater Management          | 18 |





### OBJECTIVES

Good site planning shall result in an attractive, safe, and economically viable relationship between buildings, parking, signage, lighting, landscaping, and the surrounding environment. Site plans shall minimize the visual effects of parking, feature high-quality landscaping, accommodate pedestrian movement where possible, and encourage connections to nearby properties.

### DESIGN STANDARDS

#### **Proximity of Buildings to Roadways.**

Buildings shall be located as close to the front property line as possible to provide scale and interest to the auto and pedestrian environment. The majority of parking shall be located at the rear or side of the building.

#### **Relationships to Residential Properties.**

The facades of buildings which abut or are visible from residential neighborhoods shall use forms, materials, and details which are residential in nature and appearance. Services areas, parking lots, outdoor storage yards, and other similar features shall avoid facing residential neighborhoods.

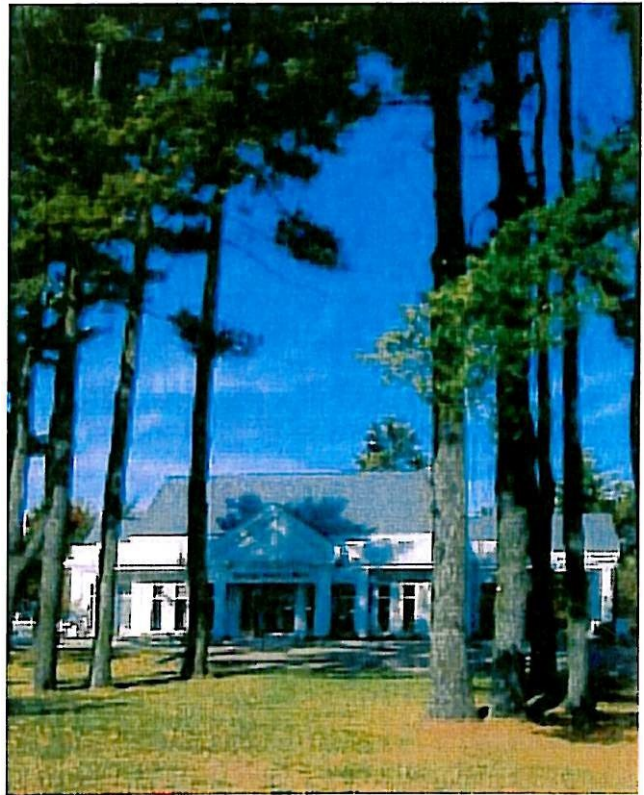
**Licensed Professionals.** All plans for development/redevelopment shall be designed by appropriate licensed professionals (e.g., architects, landscape architects, civil engineers, traffic engineers) to address issues of public health, safety, and welfare.

**Access Management.** Site plan involving curb cuts onto major roadways shall demonstrate an adherence to sound access management principles to promote efficient traffic flow and maintain a high level of safety for pedestrians and motorists.

**Standard Note.** All plans submitted for Planning Board Approval shall contain the following standard note:

*The property shown on this plan may be developed*

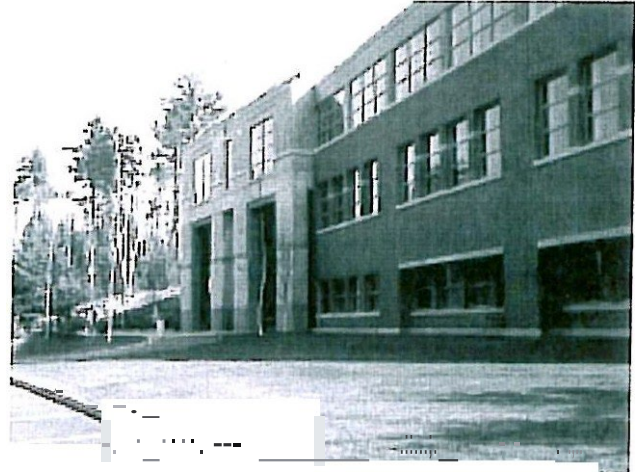
*and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.*







*Pedestrian walkways are clearly identified through changes in color and materials.*



*An example of a high-quality contemporary office building that has retained many of the natural features of the site.*



*The proportions and site features give this building a strong sense of scale. The stone wall, plantings, and walkway lighting create a welcome entrance. The building used to be a flat-roofed commercial structure.*



*A human-scaled shopping plaza that offers a variety of interesting and inviting exterior spaces*



*This well-detailed outdoor space provided an attractive opportunity for pedestrians. The wooden trellis and landscaping complement the building and add human scale.*

## OBJECTIVES

All development activities shall be characterized by safe, user-friendly, and efficient traffic flow. Access management principles shall be followed to reduce the number of curb cuts, provide a safer vehicular and pedestrian environment, encourage intra-parcel travel, and minimize the number of trips on roadways.

## DESIGN STANDARDS

**Curb Cuts on Major Roads.** Site plans shall be designed to minimize the number of curb cuts on major roadways to increase vehicular and pedestrian safety.

**Shared Access.** Entrances to abutting commercial properties shall be combined to the maximum extent possible.

**Internal Traffic Flow.** To ensure the safety of motorists, delivery trucks, and pedestrians, the site plan shall clearly delineate internal traffic patterns. Site plans shall be designed by a professional engineer familiar with the Scarborough Ordinances. Parking space, directional arrows, crosswalks, and other markings on the ground shall be delineated with pavement paint or other suitable material to ensure safe circulation.

**Internal Connections.** Where feasible, connections between parking lots and driveways on adjacent parcels shall be provided to facilitate deliveries and minimize turning movements onto major roadways. Internal connections shall provide safe, direct access between adjacent lots in a manner that prevents them from becoming vehicular shortcuts. Cross easements shall be provided as required to facilitate circulation. The site plan shall anticipate future vehicular connections to abutting undeveloped property.

**Internal Pedestrian Connections.** Safe pedestrian connections between abutting land uses shall be provided where possible to encourage foot traffic and minimize vehicular movement.

**Traffic Calming.** Traffic calming measures shall be included where appropriate to discourage speeding within the site and between abutting properties. Measures may include speed tables, on-street

parking, raised crosswalks, vertical curbing, curvilinear road alignment, roadside plantings, neck-downs, curbed islands, and signage.

**Drive-Throughs.** Access routes leading to or from takeout windows or other drive-throughs shall minimize conflicts with pedestrian circulation routes. Motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving, or other devices. The site plan shall be designed to prevent queuing in parking lots or other areas which would cause congestion or unsafe conditions.

**Pedestrian and Bicycle Movement.** The circulation plan shall provide safe pedestrian and bicycle movement within the site. The plan shall demonstrate how linkage(s) can be made to adjacent properties, both developed and undeveloped. Pedestrian and bicycle connections between abutting properties shall be coordinated with vehicular routes to encourage foot traffic and minimize vehicular movement.

**Refuge Zones.** Pedestrian islands (five feet minimum width) shall be installed in driveways and streets where the crossing distance is greater than 32 ft.



*This curbed, landscaped island divides entering and exiting traffic. The identification sign is located away from the intersection to avoid interfering with the motorists' line of sight.*



**Outparcel Development.** Plans for multi-building developments shall accommodate future buildings, access roads, sidewalks, esplanades, and signage in a coordinated fashion. See *Mull/Building Development pp. 14-15*, for further standards.

**Service Drives.** Service drives shall be separated from internal walkways, parking areas, or pedestrian use areas by landscaped islands, grade changes, or other devices to minimize pedestrian contact.



*This planted bed serves as an attractive way to separate entering and exiting traffic. The planting bed has also helped preserved a large, mature tree located on the site.*



*An island provides a refuge zone for pedestrians crossing this wide driveway. Permanent crosswalks would have minimized annual maintenance costs.*



*This fast-food restaurant is an outparcel of a larger commercial retail development. Circulation, including drive-through, parking, and pedestrian access, has been carefully integrated into the surrounding site.*



*The predominance of curb cuts along this roadway creates an unsafe/uninviting environment for the pedestrian.*

## OBJECTIVES

Parking lots shall be designed to complement adjacent buildings, the site, and the commercial district without becoming a dominant visual element. Every effort shall be made to reduce the scale of parking lots by minimizing the total amount of paved surface visible from the road.

Parking lots shall be designed as inviting, pedestrian-friendly places by careful attention to landscaping, lighting, and internal walkways. With proper planning, parking lots can balance the needs of both the vehicle and the pedestrian.

## DESIGN STANDARDS

**Siting.** Whenever possible, the majority of parking areas shall be located at the rear or sides of commercial buildings, except where parking would be located adjacent to a residential neighborhood, or when included as part of a multi-building site plan (see pp. 13-14). Where land use conflicts occur, (e.g., unavoidable siting of a parking lot next to a home) the lot shall be screened with evergreen trees, earth berms, fences, or shrubs.

**Orientation.** Parking lots shall be designed as part of the overall plan for the site, and coordinated with building entrances, lighting, and landscaping.

**Scale.** The scale of parking areas with more than 1s spaces shall be broken up with trees, landscaped islands, grade changes, low walls, or other appropriate features. See Landscaping for specific standards regarding parking areas.

**Dead End Parking Lots.** Parking lots with a single point of access are strongly discouraged. Dead-end parking lots shall not contain more than ten spaces. Where dead-end lots are unavoidable, space shall be provided to safely turn a vehicle around without having to back out.

**Shared Parking.** Shared parking is strongly encouraged where appropriate, particularly where abutting land uses have differing hours of peak parking demand. Cross easements may be required to allow shared parking.

**Safety.** Crosswalks shall be marked by a change in pavement texture, pattern, or color to maximize





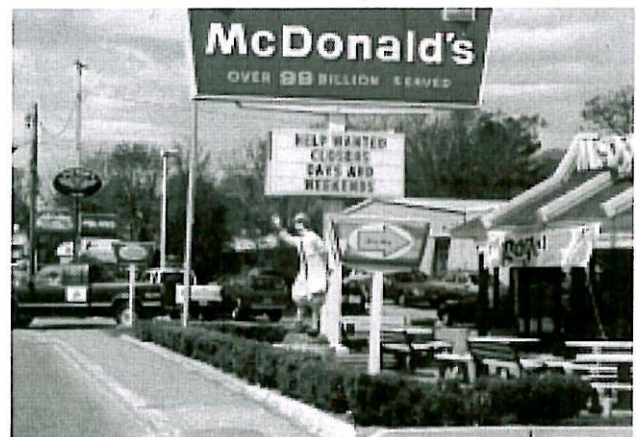
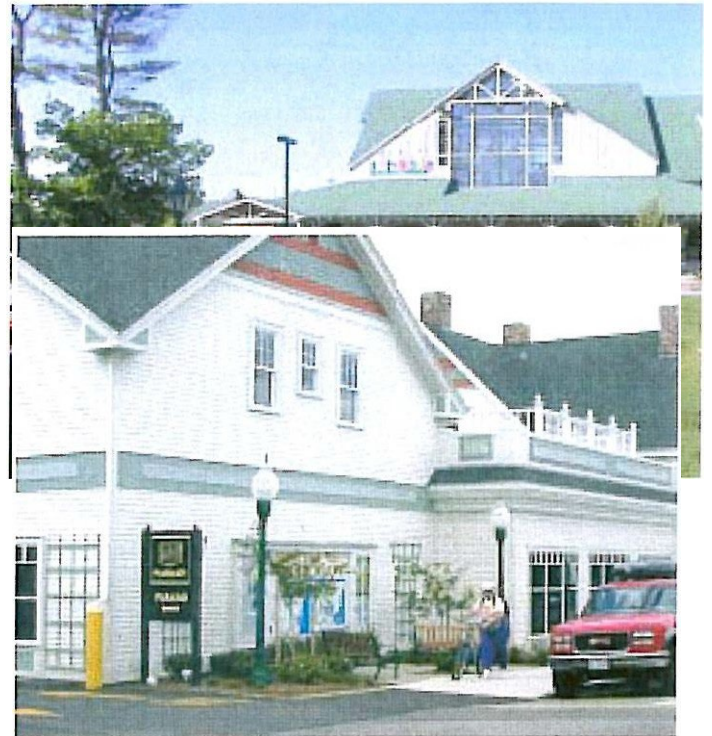
**Side Lot Parking.** Parking on the side of buildings shall not extend closer to the street than the front facade. The space between the end of the parking lot and the roadway shall be landscaped according to an overall plan for the property.

**Buildings in Existing Parking Lots.** The development of smaller commercial buildings on out-parcels is strongly encouraged to break up the scale of large parking areas.



## OBJECTIVES

## DESIGN STANDARDS





## OBJECTIVES

Public sidewalks should be provided wherever possible throughout Scarborough's commercial areas. Existing and proposed road corridors should include sidewalks, planted esplanades, crosswalks, and pedestrian amenities to encourage a safe flow of non-motorized traffic.

There are many areas in Scarborough's commercial areas which are currently not pedestrian or bicycle friendly. The long-term objective is to encourage an interconnected network of sidewalks that encourage exercise for the general population.

## DESIGN STANDARDS

**Public Sidewalks.** Wherever possible, sidewalks and planted esplanades shall be provided within or near the right-of-way on both sides of all streets to encourage safe pedestrian movement. Facilities shall be coordinated with abutting land uses to create interconnections throughout the commercial area and linkages to surrounding residential neighborhoods. lighting and other amenities abutting walkways should be at human scale.

**Coordination with Site Plan.** All new sidewalks shall be coordinated with the Site Plan to avoid conflicts with landscaping, utilities, grading, drainage structures, signs, and other elements. MI walks shall be designed to facilitate snow removal and allow year-round use. Sheet flow of stormwater across sidewalks shall be avoided. Underground storm drainage systems are strongly encouraged.

**Material Selection.** Concrete sidewalks with granite curbing shall be used on sidewalks within the public ROW.

**Crosswalks.** Where sidewalks intersect with commercial drives or roads, crosswalks shall be installed to alert the motorist and improve visibility. Crosswalks shall offer a noticeable change in texture and color. Materials for crosswalks shall be highly durable and slip resistant.

**Lighting.** Sidewalks shall be lit to the minimum standards recommended by the Illuminating Engineering Society of North America (IESNA) to promote safe use during evening hours.

**Accessibility.** All new and renovated facilities shall be located, designed, and detailed in full compliance with the Americans with Disabilities Act (ADA), as revised.



*This photo simulation, illustrates the improvements sidewalks and pedestrian amenities can add to a public roadway.*

## OBJECTIVES

Commercial properties shall provide attractive, safe, and functional walkways between the public right-of-way and the main entrance. Internal walkways shall invite pedestrians onto the property and make them feel welcome.

## DESIGN STANDARDS

**Internal Walkways.** Continuous internal walkways shall be provided from the public sidewalk to the principal customer entrance of all principal buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, and building entrances.

**Location.** Walkways shall be located where motorists can anticipate pedestrians and react accordingly. Likewise, walkways shall be designed to give the pedestrian a full view of oncoming vehicles, with minimal interference from trees, shrubs, and parked cars. Walkways shall avoid drive-through lanes, access and service drives, and other high-traffic routes. Traffic control signs, light fixtures, trees, or other potential obstacles shall be located far enough from walkways to prevent interference with pedestrian movement.



*An internal walkway that is an integral part of the site plan.*

**Orientation.** Walkways in parking lots shall be aligned with the main entry or a focal point on the building to assist in wayfinding.

**Curbing.** Internal walkways shall be separated from parking bays and/or travel lanes by raised curbing. Granite is preferred for its longevity, low maintenance, and appearance.

**Width.** Internal walkways shall be a minimum of five feet wide to allow two people to pass comfortably. Additional width may be necessary in certain conditions, e.g., where shopping carts may be used, where heavy pedestrian traffic is anticipated, or where cars overhang the walkway.



*This circulation system results in excessive width in front of the storefronts and creates an auto-oriented environment. The painted walkway offers little contrast and leads to tire parking aisle.*



*This raised walkway provides a high level of contrast with the surrounding parking lot. However the width is compromised by the overhang of cars, making pedestrian movement difficult.*





**Crosswalks.** Internal crosswalks shall be marked by a change in pavement texture, pattern, or color to maximize pedestrian safety in parking areas and other potentially hazardous areas. The materials selected for road crossings shall be highly durable and low maintenance. Raised crosswalks shall be considered at key locations as a traffic calming device to make crosswalks more visible. Signs may be warranted in certain situations as determined by the Institute for Traffic Engineers (ITE). Materials selected for crosswalks shall allow safe bicycle movement across the surface.

**Maintenance.** All internal walkways shall be designed to facilitate maintenance by the property owner. The site plan shall coordinate the location of walkways with utilities, plantings, drainage, and other site elements that could affect long-term maintenance.



*A wide walkway that provides a well-marked, attractive pathway to the main entrance. Separated walkways are more desirable than systems that end behind parked cars.*

**Snow Storage.** All walkways shall be designed for ease of snow removal to encourage year-round use. Site plans shall indicate locations for snow storage in areas where they will not interfere with pedestrian movement, block visibility, or cause dangerous conditions from freezing meltwater.

**Accessibility.** Walkways shall be located, designed, and detailed in full compliance with the Americans with Disabilities Act (ADA), as revised.



*The walkway in the parking lot leads to a well-defined crosswalk to maintain continuity.*



*The pedestrian circulation system in this shopping center includes well marked crosswalks and sidewalks.*



*This internal walkway crosses over a curb, making access difficult for people with disabilities.*



*A highly visible internal crosswalk that effectively connects the parking lot to the storefronts.*



## OBJECTIVES

Multiple building developments shall exhibit a high degree of coordination in site planning, architectural design, site design, and site detailing. MB physical components shall be designed to complement an overall plan.

## DESIGN STANDARDS

**Master Plan.** For multi-building developments (MBD's), a conceptual master plan shall be prepared to show the Town the general location of future buildings, parking lots, roads and driveways, walkways, common open spaces, utilities, service areas, stormwater management, and other components of site development. The master plan shall also show how traffic, stormwater, and utilities will be coordinated with adjacent properties. The plan shall also illustrate the measures that will be taken to preserve significant natural or cultural features, such as wetlands, specimen trees, or stone walls.

**Phasing \_Plan.** As part of the Site Plan application, the applicant shall provide a phasing plan that illustrates the sequence of development and what steps will be taken to ensure compatibility between current and future activities.

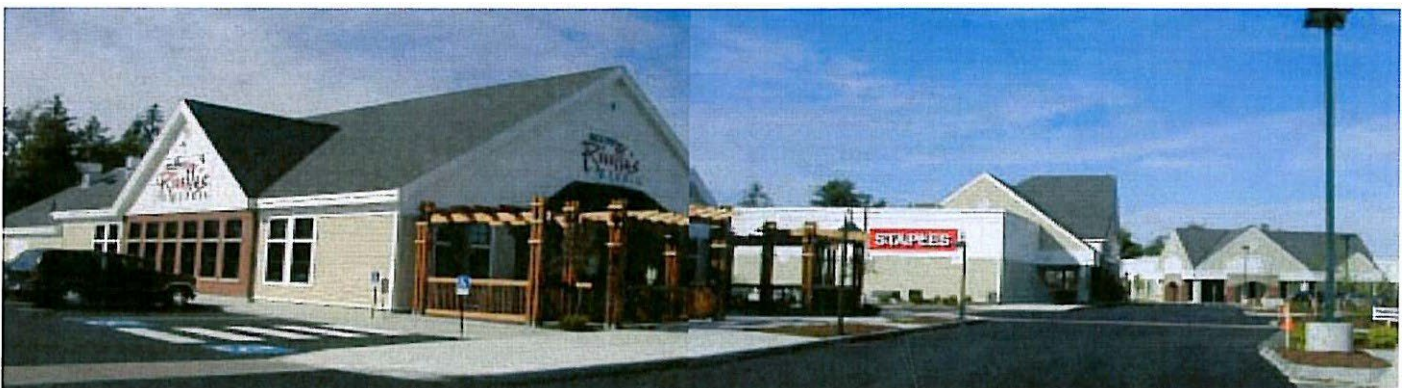
**Building Orientation.** All buildings in MBD's shall be oriented to create usable, safe and attractive pedestrian spaces, preserve significant site features and minimize the appearance of parking areas.



*The buildings in this MBD have been sited to reinforce pedestrian circulation patterns and reduce the scale of the overall development.*

**Focal Points.** In MBD's, a limited number of buildings or other elements shall be designed as focal points. These structures shall be visually more prominent, enhanced by height, massing, distinctive architectural treatment, lighting, landscaping, or other distinguishing features.

**Outdoor Spaces.** MBD's shall include outdoor use areas such as greens, plazas, and courtyards. Buildings may be oriented toward open spaces rather than roadways. In these situations, buildings shall have a major access on the space as well as a secondary access point(s) oriented to parking areas. Outdoor spaces shall be coordinated with the pedestrian circulation plan to encourage pedestrian use, with provisions for seating and outdoor activities. Outdoor spaces shall be designed to separate pedestrian and vehicular traffic with landscaping, grade changes, and other site features.



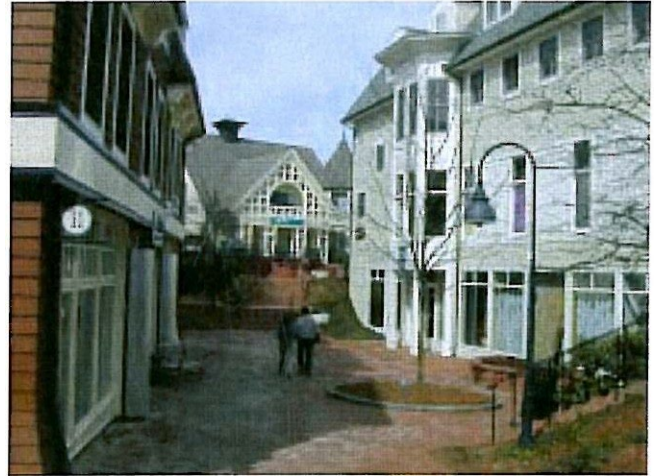
*Similar roof pitches, pedestrian use areas, and traditional building materials help unify this multi-building development.*

**Drive Through Facilities.** Where drive-through facilities are a component of a MBD, the building and site plan shall emphasize pedestrian access.

**Signage Plan.** Applicants for MBD's shall submit a master signage plan that shows how graphics will complement and unify the proposed development. See **Signage**.



*This MBD is unified by a common architectural style and coordinated landscaping, lighting, and outdoor spaces.*



*This MBD encourages pedestrian use and enjoyment through well-connected sidewalks, mature landscaping, high quality lighting and paved public plaza.*



*Buildings in this multi-building development are oriented to a grid pattern, with strong pedestrian circulation.*

## OBJECTIVES

Service areas shall be integrated into the overall site plan. They shall be designed to meet the functional needs of the facility while minimizing any traffic or visual conflicts, audible noise, or smells.

## DESIGN STANDARDS

**Locations.** All facilities for service, including waste collection and storage facilities, off-street loading and unloading areas, loading docks, storage facilities, dumpsters, fueling areas, and vehicle service and maintenance areas, shall be located at the side or rear of the principal building. Locations that face public roadways or abutting residential properties shall be avoided. Overhead doors or other vehicle entrances or exits shall not be located on any facade that faces a public street or residential neighborhood.

**Design.** Service areas shall be sized to fit the specific needs of the building and its intended operations. The smallest size needed to meet the building's requirements is encouraged.

**Service Access.** Service areas shall be sited to accommodate the turning movements of vehicles used for trash pickup, deliveries, and similar functions without conflicting with other vehicles.

**Coordination.** Prior to Town submittal, the applicant shall contact the representatives of utility companies, fuel suppliers, trash haulers, the fire department, and others who may have input into the design and siting of service areas and facilities.

**Protection.** Where architectural screening or freestanding fencing is used for screening, it shall be protected with granite posts or concrete filled steel bollards, or reinforced in a manner that will prevent damage from service vehicles.

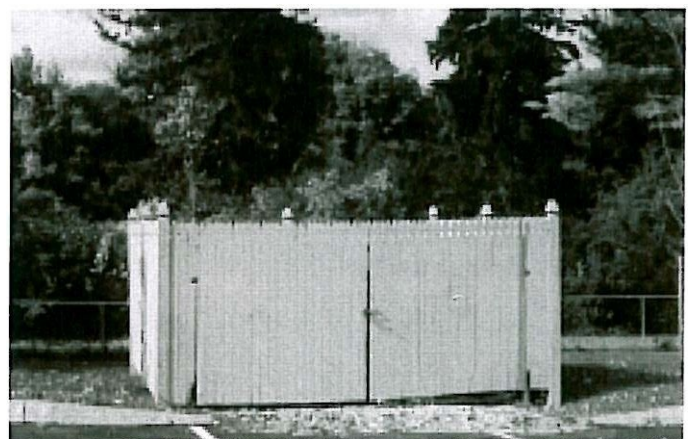
**Recycling Facilities.** The installation and use of recycling bins is encouraged. All recycling facilities shall be screened in a manner similar to other service areas. Dumpsters and recycling areas shall be consolidated where possible.







**OBEDESIGN STANDARDS**

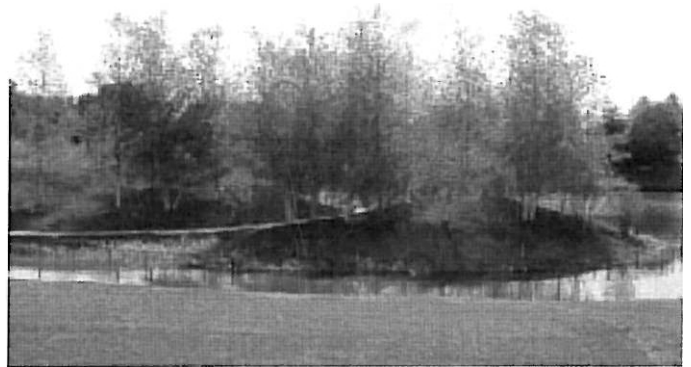


**OBJECTIVES**

**DESIGN STANDARDS**



**OBJECTIVES**





## INTRODUCTION

These Design Standards establish criteria for new or renovated buildings in Scarborough's commercial districts. They anticipate a greater sense of continuity and identity by illustrating high quality architectural design. They are not intended to dictate building styles.

### Architectural Goals

Architecture that offers a positive experience from three perspectives: by the motorist driving along the road corridor, by the pedestrian viewing the buildings up close, and in relation to surrounding buildings that tie into the community's identity.

- Good neighborhood buildings that thoughtfully consider scale, form, orientation, height, setback, massing, materials, and architectural features.
- Buildings that are designed to human scale that address the comfort, enjoyment, and safety of the users.
- Buildings that are designed as permanent, positive additions to the commercial district, constructed of high quality, long lasting materials.
- Street corners that are treated as special places.
- Architecture that utilizes energy conservation measures wherever possible.
- Older buildings that are restored and/or reused to maintain the integrity of Scarborough's historic heritage.

## CONTENTS

|   |    |
|---|----|
| General Architectural Principles                  | 2  |
| Renovations & Additions                           | 5  |
| Facade Design                                     | 6  |
| Building Materials                                | 9  |
| Awnings & Canopies                                | 12 |
| Rooflines   | 13 |
| Street Corners                                    | 14 |
| Design of National Franchises                     | 15 |
| Large-Scale Buildings                             | 17 |
| Linear Commercial Buildings                       | 20 |
| Gas Stations, Convenience Stores,<br>& Car Washes | 22 |
| Drive-Throughs                                    | 23 |



*Drawing from traditional forms, the scale of this commercial building is reduced by variations in roofline, massing, and high-quality architectural details.*

## OBJECTIVES

The purpose of these standards is to encourage architecture within Scarborough's commercial districts that draw its inspiration from traditional New England examples. Building design shall reinforce a human scaled environment through careful consideration of architectural forms, massing, detailing, number and use of materials, and color.

## DESIGN STANDARDS

**Design.** New buildings shall be designed to fit the individual characteristics of their particular site. The architecture shall be influenced by traditional New England building forms and town-making patterns, the specific needs of the intended users, the nature of the intended use, and other site-specific factors. Contemporary architectural styles are appropriate, provided they meet these standards.

**Human Scale.** Buildings and site elements shall be designed to human scale. The forms, massing, and openings of buildings shall be proportional to the size of a human figure. Many architectural elements can add scale to a building: water tables, integral planters, recessed openings, windows with divided panes, building mounted light fixtures, dormers, cupolas, projecting rooflines, covered walkways, colonnades, and similar features.

**Licensed Architects.** Any structure subject to site plan review shall be designed by an architect licensed in the State of Maine.

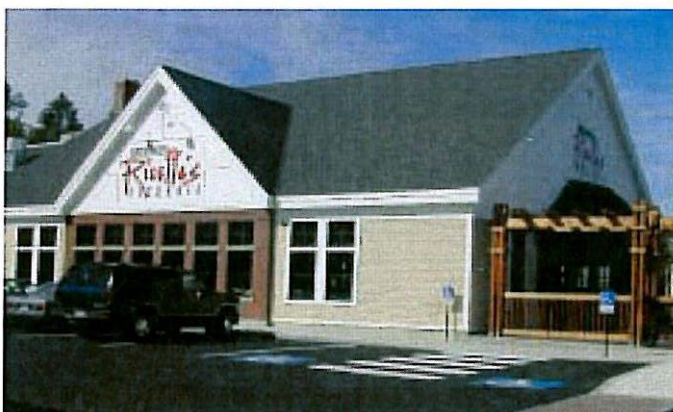
**Freestanding Accessory Structures.** Non-habitable structures, such as freestanding ATMs, garages, service stations, canopies, storage units, recycling sheds, trash enclosures, cart corrals, and utility buildings shall meet the same design standards as the principal building(s) on the site. The design of freestanding structures shall be coordinated with the principal building through repetition of architectural forms, materials, colors, and detailing.

**Energy Conscious Design.** Commercial architecture and site planning shall promote energy conservation wherever possible. Consideration shall be given to solar orientation and siting, use of maximum insulating materials, reduced lighting loads, and landscaping for windbreaks and shading.



*Examples of high-quality Maine architecture -a medical office, a retail store, and a library -that have been designed at human scale and fit their unique sites.*





*Three examples of buildings that have little reference to traditional New England forms or materials.*

*Finely detailed commercial buildings using traditional New England forms and materials. Entrances are well marked and provide users with areas for shelter and/or interaction.*





*A free standing ATM and remote teller located in the rear of the building designed to complement the main bank building in color scale, and detailing.*



*This restaurant occupies a highly visible corner location, yet provides the public with a scale less, blank wall that does not contribute to the aesthetics of the street.*



*A free-standing canopy designed with the same form and detailing as the main building. The signage is well integrated into the facades.*



*A commercial building that lacks scale. There are virtually no distinguishing features to give the structure character or relate it to the context of New England.*



*An office complex that offers a variety of exterior spaces and relates well to surrounding residential areas by paying particular attention to design, scale, and details.*



*This cart corral does not reflect the architectural treatment of the large retail establishment and appears out of place in the parking lot.*

## OBJECTIVES

Many existing commercial buildings may be coming before the Planning Board for Site Plan approval as they undergo major renovations or additions. This is an opportunity to add visual interest to the building and to strengthen its relationship with the site and nearby structures. The Town expects high quality architectural and site design for all renovated structures.

## DESIGN STANDARDS

**Alterations.** Where the existing building currently meets the design standards, proposed renovations must be designed to respect the proportions, fenestration patterns, and details of the original building. Where the existing building does not meet the design standards, the owner is strongly encouraged to upgrade the entire structure.

**Design.** Applications to the Planning Board that involve renovations and additions shall show all improvements as well as the existing structure. A narrative shall accompany the application which explains the designer's intent to relate the old with the new.

**Materials.** Where existing buildings meet the design standards, additions or renovations shall complement or match the materials, form, color, and detailing of the original structure. Where the original building does not meet the standards, the owner shall demonstrate how the materials used in the renovation will complement the existing structure.

**Architectural Features.** Renovations shall retain any distinctive architectural features or examples of skilled craftsmanship.

**Architectural Features.** Renovations shall retain any distinctive architectural features or examples of skilled craftsmanship.



*The repetition of architectural and landscape details help to integrate a shopping center with a historic building.*



*A shingle-style renovation transformed a small nondescript building into a noteworthy restaurant.*



*The additions on both sides of this restaurant do not relate to the form of the central structure.*



## OBJECTIVES

All buildings shall present an inviting, human scaled facade to the street, internal drives, parking areas, and surrounding neighborhoods. Wherever possible, entrances shall be clearly visible from the street and reinforced through site and architectural features.

## DESIGN STANDARDS

**Facade Treatment.** The facade containing the main entrance shall be treated as a front facade and shall be designed in a manner that is consistent with the design standards. Building entrances shall be designed to be visible from the street and provide unobstructed areas for pedestrians. The front facade shall contain a clearly defined, highly visible customer entrance and three or more of the following elements to add scale to the building:

- canopies
- overhanging rooflines to provide shelter for pedestrians
- recesses or projections in keeping with the scale of the building
- arcades
- raised corniced parapets over entrances
- gables and donners
- pilasters
- peaked roof forms
- outdoor sifting or dining areas
- display windows that are visible from the sidewalk
- architectural details such as moldings which are integrated into the building design
- other features which are designed to add scale and visual interest to the facade.

For retail structures, the front facade or any other facade that faces a public or private street shall have display windows, entry areas, or other transparent features along 40% or more of its horizontal length. This standard may be waived if other architectural elements are used to provide scale and visual interest to the front facade in keeping with these Design Standards.

**Offsets.** No uninterrupted length of any facade shall exceed 100 horizontal feet. Facades greater than 100

feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20 percent of the length of the facade. Where the plane of a wall is broken, the offset shall be proportional to the building's height and length. Strong shadow lines, changes in rooflines, pilasters and other architectural details, patterns in the surface material, and wall openings can all be effectively used to add visual interest and scale to the facade. Projections used to break up the mass of the building shall extend to the ground.

**Rear and Side Facades.** Blank walls facing public roads, residential neighborhoods, or abutting properties are prohibited. Where rear or side facades are visible from adjacent properties or roadways they shall be designed to match or complement the architectural treatment of the primary facade to give it scale and visual interest.



*Facade treatments on these two commercial buildings wrap around the corners to present a unified design from all visible faces.*

**Site Design.** Signage, lighting, landscaping, and other exterior elements shall all be designed to complement and be in scale with the facade, avoid visual or functional conflicts, and retain visibility.

**Trim.** Windows, door openings, ventilation openings, and other forms of exterior fenestration in frame construction shall be trimmed.

**Window Shapes.** Windows should be vertical in orientation, or square.

**Shutters.** If shutters are used, they must be sized to fit the openings and provided for all windows on a given wall.



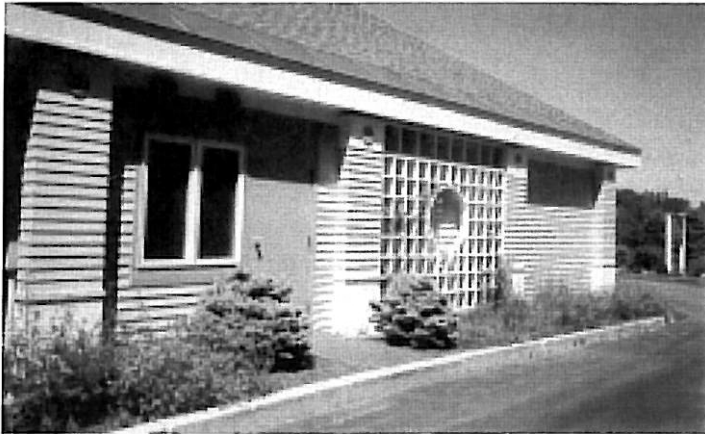
*While the front plane of the wall of this building is broken, the offset does not collide to the ground. The projection becomes a billboard and the building is seen as a large box.*



*The scale of this 'big box' has been effectively reduced by architectural elements and detailing. The overhang provides protection for pedestrians and emphasizes the entrance.*

*Three views of a branch bank set in a mixed-use village setting. All facades were treated with equal importance. The front (top) faces the street and is built to the sidewalk, encouraging pedestrian traffic. The side of the building (middle) facing a single-family home is residential in scale and design. The canopy at the rear (bottom) provides a transition area between the parking lot and the back entrance.*





*Small scale buildings, especially those viewed at close range, offer all opportunity to display a high level of detailing to enrich the pedestrian environment.*



*Highly articulated windows work successfully as design details in the front facade of this contemporary medical building.*



*This building's ventilation equipment and service connections are highly visible, adding unnecessary clutter.*

**Functional Elements.** All vents, downspouts, flashing, electrical conduits, meters, HVAC equipment, service areas, loading docks, service connections, and other functional elements shall be treated as integral parts of the architecture, starting at the conceptual building design phase. When these elements need to be part of the facade (e.g., downspouts, vents) they shall be incorporated into the architecture through detailing or matching colors. Meters, utility banks, HVAC equipment, and other exterior service elements shall be contained in service closets, behind walls, or located out of view from the public. Building elevations presented for Planning Board review shall show the location and treatment of all functional elements.

**Vending Machines.** Where vending machines are provided, they shall be sited in locations that are not visible from the street. The site plan and architectural elevations shall show the location of all vending machines.

**Illustrations.** All elevations of proposed buildings shall be evaluated as part of the design review. The Planning Board may request perspectives of the building to illustrate the three-dimensional relationship between the front and side elevations. Elevations and perspective drawings shall include all landscape elements (trees, shrubs, lighting, street furnishings, etc.) that will be seen in conjunction with the facade.



*The building's meters and service connections are located out of sight in this service closet.*



## OBJECTIVES

Building materials shall be treated as significant design elements that define the appearance of the structure and strengthen the sense of identity throughout Scarborough. The use of materials that give the appearance of New England architecture is strongly encouraged.

## DESIGN STANDARDS

**Materials Encouraged.** Traditional, high-quality building materials common to northern New England (e.g., brick, clapboard, shingles or other similar products) shall be used as the primary siding material. Contemporary materials that have the same visual characteristics (e.g., cement plank clapboards or vinyl siding) are acceptable if attention is paid to detailing (e.g., comers, trim at openings, changes in material). Painted MDO plywood is acceptable when used in combination with traditional materials to give it scale. Long-term maintenance needs shall be a consideration in the selection of all building materials.

**Materials Prohibited.** Highly reflective or processed materials (e.g., metal or plastic panels, brushed aluminum, bronzed glass, concrete block, T-111, untreated plywood, dryvit, etc.) and multicolored brick (incorporating occasional white bricks in a random pattern) shall not be used on the primary or front-facing facade.

**Colors.** Traditional colors commonly found in New England villages are appropriate for all components of the building. Facade colors shall be low reflectance. The use of high intensity, high reflectance, chrome, metallic, or fluorescent colors or black is prohibited as the primary color.



*Cement plank clapboard is a new material that resembles traditional wooden siding with less maintenance.*

**Trim.** Where trim is used, it shall be a color that complements to the building's primary color. Neon tubing shall not be allowed as an exterior trim or accent material.

**Detailing.** Arbitrary changes in materials or embellishments that are not in keeping with the rest of the building are discouraged.



*Three building that use traditional materials: brick, granite, and wood.*

*Metal panels*

-----, ,

*Split face block*

*Highly reflective glazed tile with bright plastic accents*

*Textured plywood and arbitrary changes in materials*

*Painted concrete block*

*Examples of primary building materials and treatments that are prohibited in Scarborough's commercial districts.*





Examples of the richness and variety of traditional New England color schemes.





## OBJECTIVES

Awnings and canopies can enhance the appearance and function of a building by providing shade, shelter, shadow patterns, and visual interest. Where awnings are used, they shall complement the design, materials, color, and appearance of the building.

## DESIGN STANDARDS

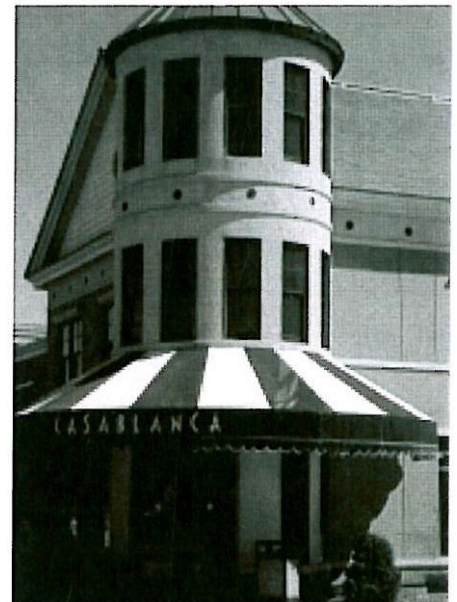
**Location.** Where awnings are used, both fixed or retractable, they shall be an integral element of the architecture. Awnings shall be located directly over windows or doors to provide protection from the elements.

**Materials.** Awnings and canopies shall not be made of reflective materials, such as metal or plastic. Their color shall match or complement the facade of the building.

**Design Elements.** Graphics used on awnings for identification or advertising shall be designed as an integral part of the signage program for the property, and shall be coordinated with other sign elements in terms of typeface, color, and spacing. Awnings shall not be used as advertising features or light sources. Backlit awnings are prohibited. Graphics on canopies are counted toward the total signage area.



*Canopies over the doorways emphasize the main entrance and provide effective protection from the elements.*



*Backlit, highly reflective canopies are not appropriate in Scarborough. These canopies (above and to the right) function primarily as a large sign, which is not acceptable.*

## OBJECTIVES

Rooflines shall be designed to provide diversity in the form of the building and add visual interest to the streetscape. When used properly, rooflines can reduce the mass of large buildings, emphasize entrances, and provide shelter and shade for the pedestrian.

## DESIGN STANDARDS

**Pitched Roofs.** Buildings with pitched roofs are strongly encouraged. Where pitched roofs are used, the minimal pitch shall be at least **5/12**. Projecting rooflines shall be designed to create strong shade/shadow patterns.

**Shapes to be Avoided.** False mansard, A-frames, and other non-traditional roof forms shall not be used as the primary roofline.

**Flat Roofs.** Flat roofs, especially on single-story isolated buildings, are discouraged in most applications. Where flat rooflines are used, the design shall create no horizontal line greater than 100 feet without a break, using features found on traditional New England buildings. See pp. 15-16 *Large Scale Buildings* for additional design standards. Flat roofs on multi-story office buildings are appropriate when designed in conformance with the *Office Building* design standards.

**Parapets.** Where parapets are used to break up a flat roofline, the height of the parapet shall be at least five percent of the total length of the wall.

**Preferred Materials for Pitched Roofs.** Composite asphalt shingles and standing-seam non-glare metal are preferred for visible roofing. High gloss roofing materials shall not be used. Roofing materials shall complement the color and texture of the building's facade. Roof colors shall be muted earth tones or a color that is darker than the facade. Stripes and patterns on the roof are strongly discouraged.

**Roof-Mounted Equipment.** Mechanical and other equipment mounted on rooftops must be screened from public view or grouped in a location where visibility is limited. Where used, screening for roof-mounted equipment shall be designed as an integral part of the architecture to complement the building's mass and appearance.

**Roof-Mounted Signs.** Roof mounted signs are prohibited by the Sign Regulations in the Zoning Ordinance.



*The scale of this linear shopping plaza has been effectively reduced through variations in roof planes, dormers and a cupola.*



*Standing seam metal roofing is a traditional material common in older commercial buildings in New England.*



*A cupola projecting from this steeply pitched roof is an example of traditional forms used in a contemporary structure. Roof-mounted mechanical equipment has been effectively screened by balustrades.*



## OBJECTIVES

Buildings located on comers are particularly important because they help define the character of two streets. These high-visibility locations shall be emphasized by quality architecture and site development.

## DESIGN STANDARDS [Amended 02-18-09]

**Siting on Corner Lots.** A building on the corner of two public streets shall be located close to the intersection and shall exhibit a strong relationship to both streets that it fronts. Where zoning allows, the Planning Board may permit a limited amount of parking and vehicular travel ways between the building and the property lines along one or more of the streets, but the majority of the parking shall be located to the side or rear of the building. The amount of parking and vehicular travel ways permitted between the building and the property lines along each street shall depend on both the zoning district and the context of the site.

**Corner Buildings.** Buildings on comers shall be a minimum of two stories or twenty feet (20') in height to add mass and visual prominence to the street.

**Facade Treatment.** Both facades of comer buildings shall be designed according to the standards in Facade Design, p. 5. Blank or unadorned facades facing streets on comer buildings are prohibited. The facade of the upper floor(s) shall be visually related to the ground floor through repetition of design elements, e.g., color, materials, window treatment, and detailing that will unify the structure and help frame the ground floor.

**Corner Treatment.** The architectural treatment of the street comer of the building shall emphasize its prominent position. This can be accomplished by greater massing and height, unique detailing, lighting, and other facade treatment to emphasize the front comer of the building. This comer treatment shall be designed to be visible from both streets. Where practical, an entrance to the building shall be located on the comer.

**Focal Points.** Comer locations offer opportunities to create dynamic focal points in the streetscape. These

can take the form of distinctive architectural elements, signs, sculpture, lighting, or landscaping. Focal points shall be visually related to the building as a whole, providing an accent without overwhelming it.



*A retail building that is well-sited in its corner location. Attention to design detail gives the building human scale and visual interest.*

## OBJECTIVES

National franchises (e.g., restaurants, service stations, retail stores) are a welcome and permitted use within Scarborough's commercial districts. However, the design of these buildings can contribute to the loss of identity for Scarborough by the repetition of generic architectural forms that are found throughout the country. Buildings for these types of uses shall reflect an awareness of New England architectural traditions in their form, detailing, and materials.

## DESIGN STANDARDS

**Franchise Styles.** Architectural forms primarily derived from building styles from other regions of the country are prohibited. New England regional prototypes from national franchises are permitted, provided they meet the Design Standards. Buildings that are stylized to the point where the structure is a form of advertising are not acceptable.

**Coordination of Site Features.** Applicants shall provide the Planning Board with illustrations that demonstrate how site features and accessory structures will be coordinated with the principle building. These may include dumpster screens, storage buildings, refrigeration lockers, playgrounds, signage, and lighting.



*A fast food restaurant t/rat was designed to complement t/re vision for a /highway corridor*



*An addition to house an indoor playground bears 110 relationship to the existing structure.*



*The designs used for national franchises are often repeated across the country. Generic architecture has little or no reference to traditional New England forms and can further the loss of identity in Scarborough.*





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*Examples of building forms used for national franchises (left column). Examples of architecture fit to the same franchises which have been designed to local design standards (right column).*

## OBJECTIVES

Due to their visibility and mass, large scale buildings (20,000 square feet or greater), such as 'big box' retail or grocery stores, can greatly enhance or detract from the visual character of the commercial district. These buildings shall be designed as attractive pieces of commercial architecture that are consistent with the scale and form found in Scarborough traditional buildings.

## DESIGN STANDARDS

**Design and Massing.** Large structures shall be designed to break up their mass into smaller visual components through the use of projections, recesses, and varied facade treatments. (See pp. 5-8, *Facade Treatment*).

**Site Design.** Scale reductions of large buildings shall be reinforced by appropriate site features such as pedestrian shelters, large trees, clearly-defined entrances, and site furnishings.

**Architectural Details.** Architectural details shall be used to reduce the scale and uniformity of large buildings. Elements such as colonnades, pilasters, gable ends, canopies, display windows, and light fixtures can be effective measures to add human scale.

**Facades and Exterior Walls.** Horizontal facades greater than too feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20% of the length of the facade. Nor uninterrupted length of any facade shall exceed 100 horizontal feet.

Other devices to add interest to long walls include strong shadow lines, changes in rooflines, pilasters and architectural details, patterns in the surface material, and wall openings. All facade elements shall be coordinated with the landscape plan to ensure balance, proportion, and continuity.

Ground floor facades that face public streets shall have display windows, entry areas, or other such transparent features along 40% or more of their horizontal length.



*The mass of this large building has been reduced by a columns and subtle changes in geometry.*



*Main entrances on large-scale buildings shall be designed as prominent focal points to orient customers.*



*A large retail establishment that still projects the image of a big box, despite the canopy and entrance treatment.*



**Smaller Retail Stores.** Where principal buildings contain additional, separate stores which in total occupy less than 20,000 square feet of gross floor area, with separate, exterior customer entrances, the following standards shall apply:

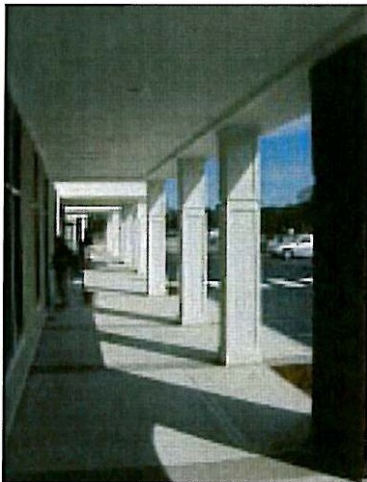
- The street level facade of such stores shall be transparent between the height of three feet and eight feet above the walkway grade for no less than 40% of the horizontal length of the building facade of such additional stores.
- Windows shall be trimmed and include visually prominent sills, shutters or other such forms of framing.

**Entryways.** Each principal building shall have a clearly defined, highly visible customer entrance featuring three or more of the following:

- Canopies
- Overhangs or recesses provide shelter
- Arcades that lead to entrances
- Raised corniced parapets over the door
- Peaked roof forms
- Outdoor patios
- Architectural details such as tile work and moldings which are integrated into the building structure and design, or
- Other features which are designed to add scale and visual interest to the buildings.

Where additional stores are located in the principal building, and customer entrances to such stores are outdoors, each additional store shall conform to the above requirements. All components used to enhance entranceways or provide a distinctive look shall be designed or detailed as integral parts of the whole building.

**Multiple Entrances.** All sides of a large scaled building that face an abutting public or private street shall feature at least one customer entrance to facilitate pedestrian access, minimize walking distances from cars, and reduce the scale of facades. Where a building abuts more than two streets, this requirement shall apply to only two sides of the building, including the side facing the primary public street and another side facing a second street.



*Arcades call be an effective way to add lillmall scale to large buildings. Architectural detailing and shadow patterns creates an inviting space.*



*The entrances to this larger grocery store are emphasized by projecting canopies, distinctive opellings, and a covered arcade.*

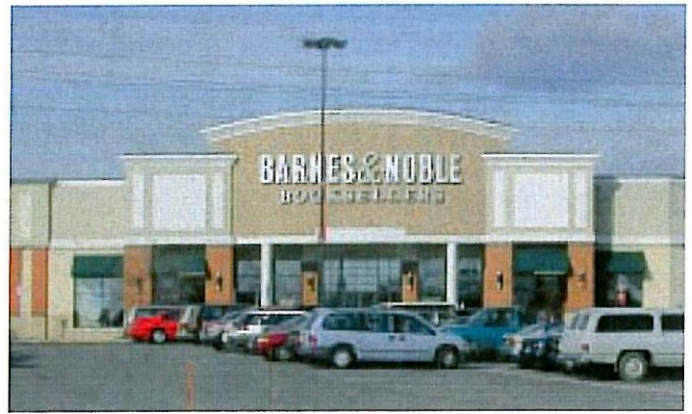
**Features and Amenities.** Large scale buildings shall contribute to the establishment or enhancement of the pedestrian environment by providing at least two of the following:

- Patio/seating area
- Pedestrian area with benches
- Window shopping walkway
- Outdoor playground area
- Kiosk area
- Water fountain
- Clock tower
- Other focal features or amenities that enhance the pedestrian environment.

Any such area shall have direct access to the public sidewalk. Such features shall be constructed of materials that are equivalent in quality to the building and landscape.

**Outdoor Sales and Storage.** Where allowable, areas for outdoor sales, storage, or service shall be designed as an integral part of the site and architectural plan, and shall meet the Service Areas standards (See Site Planning, *Service Areas*).

**Cart Storage.** Shopping carts must be stored inside the building, or in 'cart corrals', out of the way of pedestrian circulation. Cart storage areas shall meet the standards for accessory structures.  
(See *General/Architectural Principles*, p. 2)



*Examples of large retail buildings that have been effectively designed to avoid the appearance of a 'big box'.*



*This retail store, attached to a large grocery store, has been designed as a 11 individual building, with a separate entrance and architectural detailing. A covered walkway connects all the storejwIts.*



## OBJECTIVES

Linear commercial structures (e.g., strip shopping centers, multi-tenant offices, or commercial buildings) shall be designed with facade and roofline elements that reduce their scale and add architectural interest.

## DESIGN STANDARDS

**Design.** Buildings with multiple storefronts (e.g., strip shopping centers, one story office buildings) shall be visually unified through the use of complimentary architectural forms, similar materials and colors, consistent details, and coordinated signage. Variations in the front setbacks are strongly encouraged to add visual interest, create spaces for common entries, outdoor eating / social spaces, and landscaped spaces.

**Scale.** Linear structures shall include architectural elements designed to provide shelter, encourage pedestrian movement, and visually unite the building. These can include covered walkways, open colonnades, arcades, and similar features.

**Entrances.** Pedestrian entrances to each building shall be clearly delineated to convey a sense of individuality. This can be accomplished by architectural detailing, roofline breaks, landscaping, lighting or a combination of these elements. Where covered walkways are used, they should extend the full length of the facade.

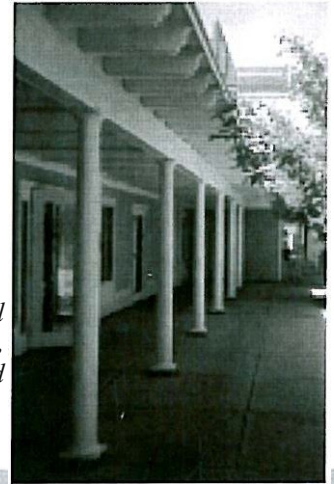


*Covered walkways add a shadow line which can reduce the scale of a long building and unify the facade.*

**Rooflines.** Variations in rooflines, detailing, and building heights shall be included to break up the scale of connected linear buildings.

**Focal Points.** Linear commercial buildings shall include a focal point \_such as raised entrance way, clock tower, or other architectural elements - to add visual interest and help reduce the scale of the building.

*Colonnades add visual interest to linear buildings, while providing scale and protection from the elements.*



*A commercial building that uses a clock tower as a focal point. Offset in the roofline helps to break up the mass of the building*



*A multi-tenant building with no variation in the roofline or facades to break up the scale.*



*A linear building that has been effectively scaled down by variations in the roofline and facade. Each storefront is treated as a separate entity. Variety in the use of materials adds visual interest to all facades. The covered walkway encourages pedestrian movement and window shopping.*



## OBJECTIVES

Service stations, car washes, and convenience stores shall be designed with facade and roofline elements that reduce their scale and add architectural interest.

## DESIGN STANDARDS

**Orientation.** Service stations, convenience stores, and similar uses shall be sited to face the street. Pump islands and canopies shall be located in the rear so the primary building is the major feature seen from the road.

**Architecture.** The architecture shall be designed so all four sides are in compliance with these design guidelines. Windows or other forms of fenestration shall be included on the facade facing the street which shall be treated as a front facade (see *Facade Design*, p. 6-7). The front facade shall include a pedestrian entrance from the street.

**Canopies.** Service station canopies shall be visually compatible with the main structure through consistency in roof pitch, architectural detailing, materials, and color. Pitched roofs and fascia trim are preferred for canopies. Bands of bold color on the canopy and backlighting inside the canopy are prohibited.

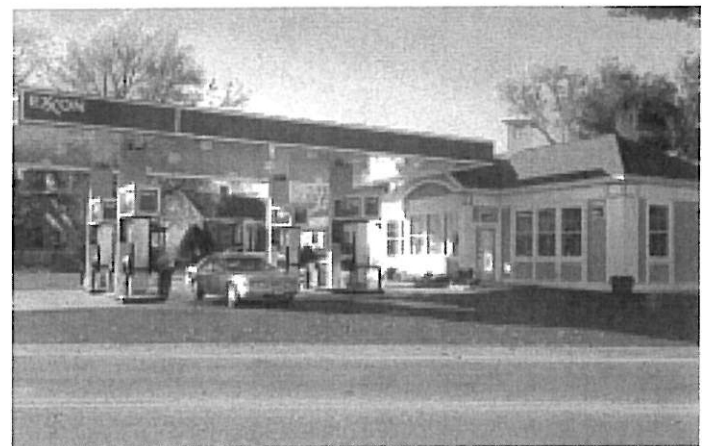
**Large Openings.** Openings for car washes or service bays must be integrated with the design of the building and sited so they are not directly visible from public roadways or adjacent residential areas.

**Site Design.** The site design must address the issues of off-site noise exposure, underground drainage systems to keep water off public streets (in the case of car washes), snow storage, circulation patterns, room for vehicle stacking, and other issues peculiar to these uses.

**Pedestrian Circulation.** Connections to the public sidewalk shall be included in the site plan to encourage pedestrian use. Access routes leading to or from service stations and convenience stores shall minimize conflicts with pedestrian circulation.



*This service station canopy is designed to be an extension of the building. The columns, roofline, details, and signage contribute to a sense of continuity in the architecture.*



*The flat-roofed canopy bears no design relationship to the well-detailed convenience store in terms of form, materials, or architectural style. The store was designed to fit into its residential surroundings.*

## OBJECTIVES

In the HP, RH and BOR Districts, large scale, multi-story office, research and hi-tech buildings (40,000 square feet or greater) are allowed and encouraged. These buildings shall be designed as attractive pieces of commercial architecture that help define the Town of Scarborough. Given the context and type of development in the HP, RH and BOR Districts, the Planning Board may apply alternative design standards to large scale office, research and hi-tech buildings which vary from a few specific sections of the Design Standards. These alternative standards are outline below. Other than these alternatives, the remainder of the Design Standards for Scarborough's Commercial Districts shall apply.

## DESIGN STANDARDS

**Permitted Materials.** Metal panels and brushed aluminum are contemporary materials used in large scale office, research and hi-tech building construction. The Planning Board may allow non-reflective metal panels and brushed aluminum to be incorporated into the facade design of these structures. These materials shall be supplemented with the tradition, high quality building materials common to northern New England to maintain a regional vernacular and sense of identity throughout Scarborough.

**Roof Treatment.** Under the Flat Roofs Standard in the ROOFLINE Section (pp. 13), flat roofs are discouraged in most applications. In the HP, RH and BOR Districts, flat roofs are anticipated and acceptable on office, research and hi-tech buildings which are three or more stories in height. In these instances, changes in the roofline, pilasters, trim and other architectural detailing shall be used to vary and break up a flat roofline. Further, roof-mounted equipment must be screen from public view in accordance with the Roof-Mounted Equipment Standard on pp. 13.



*Examples of multi-story office, research and hi-tech buildings that have employed metal panels and brushed aluminum, coupled with brick and other traditional northern New England building materials.*



*Each of these buildings exhibit predominately flat roofs, but the roof lines vary with the introduction of different roofline elevations and screened rooftop equipment and mechanicals.*





## OBJECTIVES

Drive-throughs shall be subordinate to the design of the main building to maintain the pedestrian orientation of the structure. Architectural design and circulation planning for buildings with drive-throughs require careful consideration to integrate them into the Scarborough environment. Drive-through operations and other automobile-oriented facilities shall be designed with facade and roofline elements that reduce their scale and add architectural interest.

## DESIGN STANDARDS

**Drive-Throughs.** Where drive-through windows are allowed, they shall be incorporated into the design of the building through their scale, color, detailing, massing, and other architectural treatments.

**Location.** Drive-throughs shall avoid facing public or private roadways and shall generally be located at the side or rear of the building. Where drive-throughs are located at the rear, the site should be designed to ensure the safety of the employees and patrons.

**Canopies.** Drive-through canopies shall be visually compatible with the main structure. This can be accomplished through consistency in roof pitch, architectural detailing, materials, and color. Pitched roofs and fascia trim are preferred for canopies. Bands of bold color on the canopy and backlighting inside the canopy are prohibited.

**Pedestrian Circulation.** Access routes leading to or from drive-through facilities shall minimize conflicts with pedestrian circulation. Where walkways must cross driveways, motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving, or other devices.



*These banks' drive-through windows have been designed as integral parts of the buildings. They repeat the rooflines, forms, and materials.*

BACKGROUND

Contents

Landscape Goals

III-2 III-5 III-  
7 III-8 III-9  
III-I0

**OBJECTIVES**

**DESIGN STANDARDS**

- .
- .









**OBJECTIVES**

*eye level for both drivers and pedestrians.*



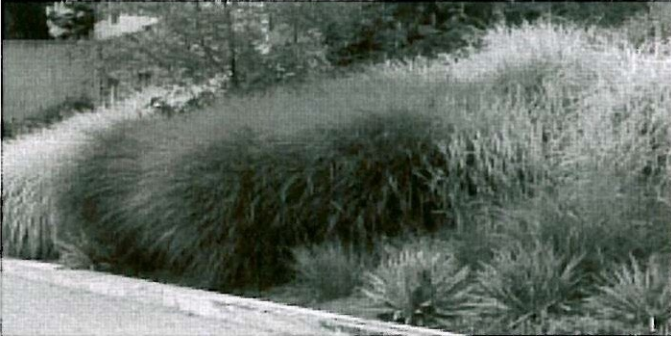
**OBJECTIVES**

**DESIGN STANDARDS**





## OBJECTIVES



## **OBJECTIVES**









## BACKGROUND

Signs play a central role in providing information, wayfinding, and setting the tone for Scarborough's commercial districts. They inform motorists and pedestrians, while having a direct effect on the overall appearance of the roadway.

### Signage Goals

- Provide basic, legible information about commercial establishments with attractive, highly legible signage.
- Encourage forethought in the design, size, placement, and graphic format of all signage used in the commercial areas of Scarborough.
- Create distinctive commercial corridors and nodes, where signage is compatible with quality architecture and site design.
- Reduce visual clutter along Scarborough's major roadways.
- Protect the investment of commercial interests throughout Scarborough by establishing a quality benchmark for future signage, in keeping with the design standards.

## Contents

|                         |      |
|-------------------------|------|
| Sign Design             | V-2  |
| Sign Content            | V-6  |
| Facade-Mounted Signs    | V-7  |
| Multi-Tenant Properties | V-8  |
| Externally-Lit Signs    | V-10 |
| Internally-Lit Signs    | V-11 |
| Temporary Signs         | V-12 |



*A simple, attractive sign that relates to the buildings style and materials.*

## OBJECTIVES

Commercial uses in Scarborough shall be identified by attractive, legible signs that serve the needs of the individual business, complement the site and the architecture, and are legible to both the motorist and pedestrian. All new and replacement signs erected within Scarborough's commercial districts shall be designed to meet these standards.

## DESIGN STANDARDS

**Signage Plan.** A Signage Plan shall be submitted as part of the Site Plan application. It shall be developed by design professionals experienced in commercial signage or environmental graphics. The applicant shall expect to resubmit the plan to the planning staff if the building's tenant is unknown at the time of application.

**Compatibility.** Sign shall be designed to achieve a high level of visual compatibility with the building(s) and its surroundings through the use of similar detailing, form, color, lighting, and materials.

**Design.** The shape of the sign shall complement the architectural features on the building. Simple geometric shapes are preferred for all signage. Signs shall be trimmed and detailed to complement the building.

**Lettering Size.** As a general rule, the minimum lettering size for identification signs shall be six inches in height. Smaller letters are generally unreadable at high speeds and may require motorists to slow down to read them, which could potentially be a safety hazard.

**Location.** Signs shall be mounted in locations that do not block motorists' line of sight or create a hazard for pedestrians or bicyclists. Roof mounted signs are strongly discouraged. Roof mounted signs that project above the roofline are prohibited.

**Street Numbers.** The principal site identification sign shall contain the street address shown in a prominent location to facilitate wayfinding and 911 emergency response.

**Advertising Features.** Objects other than signs designed primarily to attract public attention are prohibited in the commercial district because they distract motorists and contribute to visual clutter. Examples of prohibited advertising features include greater-than-life size models of food or other products, replicas of spokes-people associated with commercial products, rows of flags or banners, and internally-lit bands of color.

**Standard Note.** Any modifications to signage that has been approved by the Planning Board shall comply with the Standard Note. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.



*These discreet facade-mounted signs are well-integrated into their commercial buildings.*







*Highly legible signs near roadways characterized by simplicity in materials, forms, and letting.*



*Internally lit letters and logos are preferred over whole panels. Signage is scaled to the architectural elements that surrounds it.*

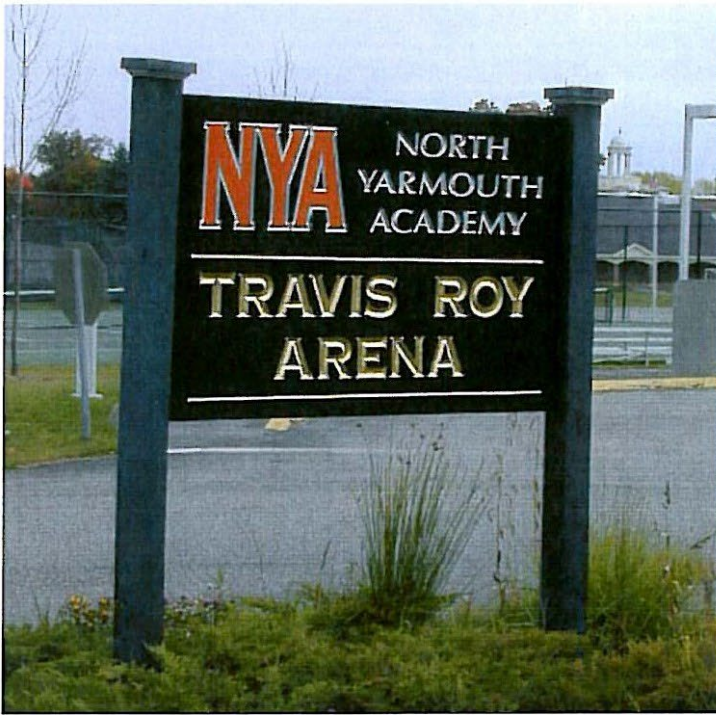


*This site directional clearly identifies destinations with a minimum of wording, allowing motorists to make decisions without having to stop.*



*The main sign provides enough information to orient people. The sign would be more legible without the lower panels.*





*These signs achieve compatibility through the repetition of form, detailing, and materials.*





*Advertising features distract motorists, add to visual clutter and diminish Scarborough -s sense of identity.*



*AjiwIchise sign that is out of scale with its surroIIIIIdillgs.*



*Information overload contributes to roadside clutter and diminishes the value of individual signs.*



## OBJECTIVES

Signs used to identify a business shall be kept simple and direct in message and content. They shall convey only the most essential information about the business. Motorists should not be distracted by signs containing excessive information.

## DESIGN STANDARDS

**Content.** Identification signs shall contain a maximum of either 30 letters or 7 bits of information. A bit can be a syllable or a symbol. Repetitious information between signs and buildings shall be avoided, regardless of the sign area allowed.

**Advertising.** The use of 'sponsor' logos, slogans, or other messages on a tenant sign to promote products or services other than the primary tenant, is strongly discouraged. If a sign is sponsored, the name of the sponsor and/or its logo shall not occupy more than 25% of the total face of the sign.

**Readerboards.** Readerboards, with stationary or electronic text, are strongly discouraged within Scarborough's commercial districts, and prohibited within the HPZ district. Where readerboards are part of a permanent sign, they shall contain no more than three lines of text. Lettering height shall be a maximum of 6". The readerboard shall be fully integrated into the overall sign design by virtue of its form, scale, color, and detailing. Readerboards will be considered part of the total signage area.



*A typical sign treatment for a large retailer*



*Readerboards are strongly discouraged throughout the commercial districts.*



*A sign where the sponsor covers 75% of the sign area.*



*National chains respond favorably to design standards.*



## OBJECTIVES

Facade mounted signs used to identify commercial properties shall provide the necessary information without overwhelming the building.

## DESIGN STANDARDS

**Design.** Facade mounted signs shall be designed as an integral element of the architecture. The shape and materials of the sign shall complement the architectural features on the building.

**Location.** Signs shall not be mounted in locations that obscure architectural details on the building. Signage shall be mounted on vertical surfaces without projecting above the fascia trim. In general, signs shall be located a minimum of 18" from the corner of the building.

**Hardware.** Signage shall be mounted with concealed hardware. Metal hardware shall be stainless steel or galvanized to prevent rust and corrosion that could stain or discolor the building. Where hardware will be painted to blend with the sign, rust inhibiting paint shall be used to prevent rust streaks.



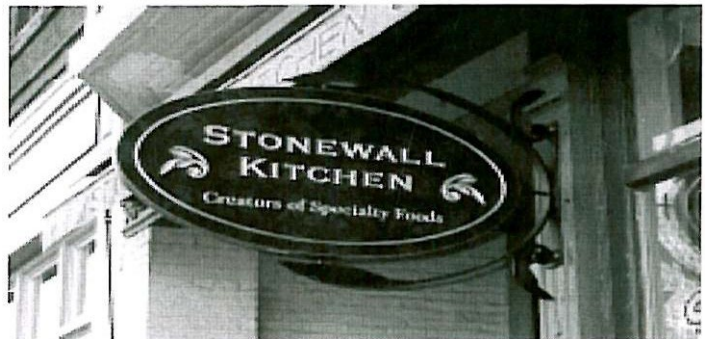
*This sign is well integrated with the architecture, using only the essential information about the retailer.*



*For the same type of establishment, the sign in the lower example serves as a billboard, with extraneous information.*



*This facade-mounted sign integrates well with the building design. Its placement emphasizes the corner entrance.*



*Mounting hardware can emphasize a sign and greatly enhance the building's appearance.*



## OBJECTIVES

Multi-tenant commercial properties shall provide legible, attractive signs that help people identify the property without contributing to the visual clutter in the commercial district. Signage shall stress the identity of the place and de-emphasize individual tenants that occupy it.

## DESIGN STANDARDS

**Hierarchy of Signs.** A hierarchy of sign age shall be established to facilitate wayfinding and minimize site clutter. Multi-tenant properties shall be identified by a simple identification sign in a highly visible location.

**Identification Signs.** Multi-tenant buildings or multi-building sites shall have one identification sign conveying an overall identity for the property. This sign shall be located near the main entrance to reinforce circulation patterns and minimize visual clutter.

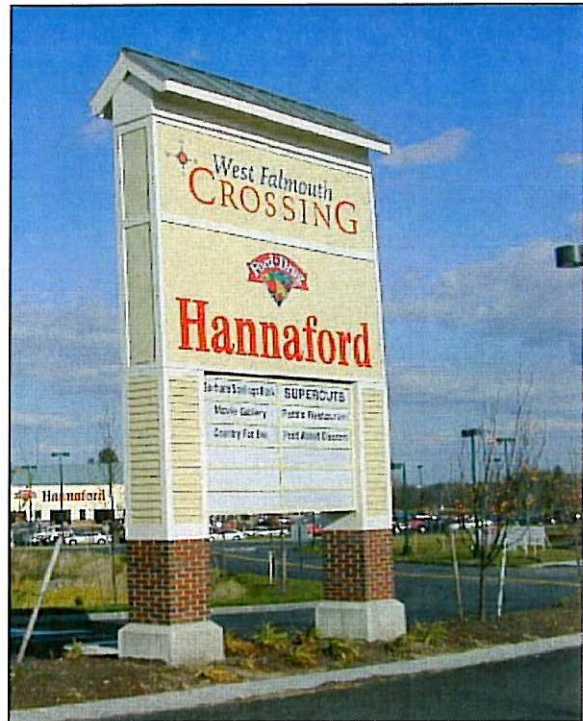
Identification signs that also list multiple tenants shall exhibit a logical hierarchy in the display of information (i.e., address, name of building/development, primary tenant, other tenants). Only essential information (the name of the tenant) shall be displayed on the main sign. Phone numbers, hours of operation, advertising slogans, etc. should not be listed.

**Street Numbers.** The main identification sign for multi-tenant properties shall incorporate the street address into the sign to facilitate wayfinding and 911 emergency response.

**Compatibility.** The design of multi-tenant signs shall be coordinated with the design of the principle building(s) in terms of color, materials, detailing, and style.

**Color Consistency.** Multi-tenant signs shall conform to a simple color and graphic palette in order to minimize the confusion and clutter of the sign. In general, multi-tenant signs shall have no more than three colors.

**Landscaping.** Landscaping surrounding signs for multi-tenant buildings shall be consistent with the landscape treatment for the entire property.



*Multi-tenant signs that establish a clear hierarchy within their shopping complexes. The detailing matches that found in the architecture. The lower sign is somewhat over scaled.*





The shopping center -c logo (at top) is overpowered by the individual signs below. There is too much information for a motorist to absorb while driving.



A multi-tenant sign with a clear hierarchy of information. The name of the plaza is at the top in bolder lettering. Individual tenants are listed on contrasting backgrounds for legibility.



The names of individual tenants on these signs (both above) compete for attention, making it easy difficult to read while driving by



## OBJECTIVES

Lighting for externally-lit signs shall be designed as an integral part of the sign design. Lighting shall not create glare that would distract motorists or pedestrians, nor shall the degree of illumination disturb the surrounding residential areas or contribute to light pollution. See **Lighting Chapter** for additional information.

## DESIGN STANDARDS

**Light Level.** The illumination level on the vertical surface of the sign shall be bright enough to provide a noticeable contrast with the surrounding building or landscape without causing undue glare or reflection.

**Lighting.** Lighting fixtures shall be carefully located, aimed, and shielded so that light is directed only onto the sign facade. Lights shall not be aimed toward adjacent streets, sidewalks, or abutting properties. Ground-mounted lighting shall be screened or partially buried to minimize the view of the light source.

**Light Sources.** Top-mounted lighting fixtures shall be used if they are directed downward in a manner that hides the light source. Uplighting may be used if the fixture can be aimed to prevent spillage beyond the sign.

**Design.** Light fixtures and mounting devices shall be selected to complement the color and design of the sign and the architecture. Concealed light sources are strongly encouraged.



*In both examples above and below the top-mounted light fixtures are well-located, aimed, and shielded so that only the sign is lit*



*These top-mounted light fixtures are not well shielded nor integrated into the sign.*



## OBJECTIVES

Internally lit signs shall consist of light lettering and/or symbols on a dark background, and shall not act as light fixtures in their own right.

## DESIGN STANDARDS

**Design.** Internally-lit signs shall consist of light lettering and/or symbols set against a dark background to minimize the amount of light emanating from the sign. Internally-lit letters and symbols are preferred over whole panels that are internally lit. Letters and/or symbols on panels shall constitute no more than 40% of the sign's surface area.

**Mounting Systems.** Signs shall be mounted in a manner that provides adequate support for the weight of the sign. Mounting systems shall be designed to be compatible with the architecture in terms of color, forms, and style. Electrical connections, wiring, junction boxes, and other similar devices shall not be visible from pedestrian pathways or roadways.

**Intensity.** Internally-lit signs shall not act as light fixtures or cause glare on nearby pathways or roadways. Lighting levels shall not exceed 1 fc of illumination measured 10 feet from the base.

**Maintenance.** Signs shall be located where they can be easily maintained. Non-functioning bulbs shall be replaced immediately.



*An effective use of individual internally-lit letters to create a simple identity for a commercial building.*



*The sign's dark background and light lettering emphasize the bank's name while minimizing glare. Information occupies about 40% of the sign.*



*The white background of this sign will increase glow*

## OBJECTIVES

Most commercial uses in Scarborough's commercial districts rely upon temporary signs on occasion to convey specific information, alert the public to special events, or announce new businesses. The design and placement of temporary signs shall be closely related to existing sign systems, landscape improvements, and the building design to avoid visual clutter.

## DESIGN STANDARDS

**Content and Design.** The same standards established for the content and design of permanent signs shall be applied to temporary signage.

**Location.** Temporary signs shall be installed in locations that do not create a hazard for pedestrians or vehicles.

**Size.** The total size of temporary signs, regardless of function, shall not exceed 20% of the business' total signage area.

**Lighting.** Temporary signs shall not include any additional source of illumination, either internal or external.



*Examples of temporary signs that are prohibited.*

Vote: 6 Yeas. Motion Passes.

**Order No. 24-042. First reading and schedule a public hearing and second reading to repeal in its entirety Chapter 415A Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District; repeal in its entirety Chapter 415B Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District, repeal in its entirety Chapter 410 Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts; and replace with amended Chapter 415 Impact Fee Ordinance with an effective date of July 1, 2024. [Planning Director, Town Engineer]** Autumn Speer, Planning Director and Angela Blanchette, Town Engineer gave a brief overview of this order and provided a presentation. The following public comments:

- Denise Hamilton of Two Rod Road spoke in regards to expanding Payne Road to four lanes.

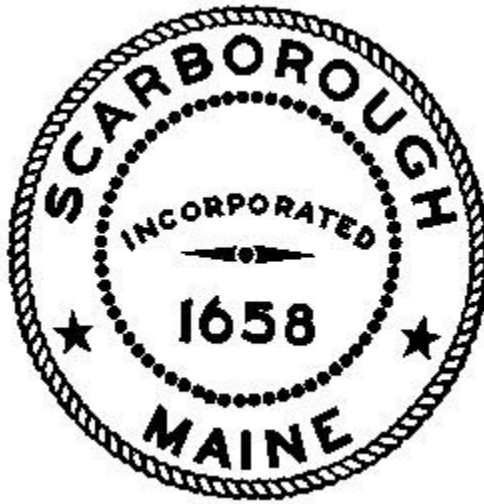
Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the first reading to repeal in its entirety Chapter 415A Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District; repeal in its entirety Chapter 415B Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District, repeal in its entirety Chapter 410 Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts; and replace with amended Chapter 415 Impact Fee Ordinance with an effective date of July 1, 2024, and schedule a public hearing and second reading for Wednesday, May 15, 2024, as follows:

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 415 Town of Scarborough Impact Fee Ordinance is amended as recommended by the Planning Director.

# **CHAPTER 415**

## **TOWN OF SCARBOROUGH**

### **IMPACT FEE ORDINANCE**



**ADOPTED JANUARY 02, 2002; EFFECTIVE JANUARY 03, 2002  
AMENDED MARCH 3, 2003; UPDATED FEBRUARY 01, 2020  
UPDATED xx, 2024 CHAPTER 415  
TOWN OF SCARBOROUGH  
DEVELOPMENT IMPACT FEE ORDINANCE**

**SECTION 1. IMPACT FEE GENERAL PROVISIONS**

**A. Authority.**

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

**B. Purpose.**

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

**C. Definitions.**

Unless otherwise defined in this ordinance, terms used in this ordinance shall have the same meanings as defined terms in Chapter 405, Zoning Ordinance of the Town of Scarborough, Maine.

**D. Use of Impact Fees.**

Impact fees collected by the Town pursuant to this ordinance may be used only for financing facility improvements which the Town Council has determined are made necessary by new development. The Town Council has determined that fees imposed by schedules in subsequent sections of this ordinance

are reasonably related to the demands created by new development and are reasonably related to the portion or percentage of existing infrastructure used by new development. Impact fees collected pursuant to this ordinance shall be used exclusively for capital improvements, and shall not be used for operational expenses. The Town of Scarborough shall expend funds collected from impact fees solely for the purposes for which they were collected.

#### **E. Segregation of Impact Fees from General Revenues.**

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

#### **F. Collection of Impact Fees.**

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

#### **G. Refund of Unused Impact Fees.**

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

#### **H. Amendment of Fees.**

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

#### **I. Inflation Adjustment.**

The School and Recreation impact fees established by the Town Council in this ordinance shall be adjusted annually by the Town Treasurer to account for inflation. Commencing on February 1, 2003 and on each February 1<sup>st</sup> thereafter, the Treasurer shall increase each impact fee by the dollar amount (rounded to the nearest ten dollar increment) obtained by multiplying the amount of the fee then-in-effect by the inflation rate. As used in this paragraph, the term "inflation rate" means the percentage increase, if any, during the previous calendar year in the Consumer Price Index – All Urban Consumers, Northeast Urban Area, All Items, base period 1982-84 = 100 (not seasonally adjusted) published by the United States Department of Labor Bureau of Labor Statistics. If there has been no such increase, there shall



be no adjustment under this paragraph. Each year on February 1<sup>st</sup>, the Treasurer shall publish a schedule of impact fees adjusted pursuant to this paragraph (the “adjusted impact fees”) and provide a copy of such schedule to the Code Enforcement Officer. The adjusted impact fees shall apply to all building permits issued on or after March 5 in the calendar year 2003 and on or after February 1<sup>st</sup> of each calendar year thereafter, whether or not the applications for building permits were filed prior to such dates.

#### **J. Impact Fee Not Required for Replacement Dwelling Units.**

An impact fee shall not be required for:

1. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which was located on the same lot at any time between January 3, 2000 and January 3, 2002;
2. the placement on a mobile home park site of a mobile home which replaces a mobile home which was located on the same site at any time between January 3, 2000 and January 3, 2002;
3. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which is or was located on the same lot and for which an impact fee has already been paid under this ordinance; or
4. the placement on a mobile home park site of a mobile home which replaces an existing mobile home which is or was located on the same site and for which an impact fee has already been paid under this ordinance.

#### **K. Schedule of Fees.**

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

#### **L. Severability.**

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

## **SECTION II. SCHOOL IMPACT FEES**

#### **Use of School Impact Fees.**

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

#### **Calculation and Collection of School Impact Fees. [Updated 02/26/2020]**

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

**Type of Dwelling**

**Amount**

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

### **Exemptions.**

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

### **Impact Fees to Terminate Upon Completion of Projects.**

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

## **SECTION III. RECREATION IMPACT FEES**

### **A. Use of Recreation Impact Fees.**

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

### **Applicability.**

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

- ~~5.1~~ This Ordinance shall not apply to the issuance of a building permit for the repair, replacement or reconstruction of a residential structure that was unintentionally damaged or destroyed by fire, flood or other natural disaster, provided the number of dwelling units is not increased.
- 1. This Ordinance shall not apply to additions to residential structures existing at the time of the adoption of this ordinance.

### **Calculation and Collection of Recreation Impact Fees.**

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

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

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

| <b>Type of Dwelling</b> | <b>Amount</b>                            |
|-------------------------|--|
| Single Family Dwelling  | \$400 per bedroom, not to exceed \$1,600 |
| Two-Family Dwelling     | \$400 per bedroom, per unit              |
| Multifamily             | \$400 per bedroom                        |
| Senior Housing Unit     | \$400 per bedroom                        |
| Affordable Housing Unit | \$400 per bedroom                        |

#### **Waiver of Impact Fees.**

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

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

#### **Refund of Fees.**

1. If a building permit or other relevant permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance. A request for a refund shall be made in writing to the Town Planner, and shall occur within ninety (90) days of the expiration of the permit.
2. If the funds collected annually are not expended or obligated by contract for their intended purpose by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid, the prorated share of the funds shall be returned to the current owner of the property for which the fee was paid, provided that a request is made in writing to the Town Planner within one hundred eighty (180) days of the expiration of the ten (10) year period.

#### **SECTION IV. RESERVED**

## **SECTION V. ROADWAY IMPACT FEES**

### **A. Roadway Impact Fee Applicability**

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

### **g.B. Roadway Impact Fee Exemptions**

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

1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
2. Construction of accessory buildings or structures which do not generate additional vehicle trips.
3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

### **Roadway Impact Fee Procedures**

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

### **Roadway Impact Fee Calculations**

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

1. As per Section V(C) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through a designated Roadway Impact Fee District in the P.M. peak commuter hour.
2. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers “Trip Generation” Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).
3. The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through a designated Roadway Impact Fee District within the P.M. peak commuter hour. All new trips that pass through a designated Roadway Impact Fee District, regardless of whether they pass through the specific intersections, shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.
4. For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to the specific roadway impact fee district, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board’s written approval document and endorsed on any final plan for the development.
5. For any development not requiring Planning Board review but requiring the payment of an impact fee under this ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to the specific roadway impact fee district.
6. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

### **Roadway Impact Fee Payment**

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



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

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

### **Use of Roadway Impact Fee Funds**

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

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

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

~~J.4.~~ Funds may be used to provide refunds in accordance with Section V(G) below.

~~2.5.~~ Funds shall not be used to pay for any site specific geometry improvements at a developments entrance, etc., that are required of a development project that is proposed and constructed within a public right-of-way or on any lot abutting a roadway section within a designated Roadway Impact Fee District. Such project and site specific improvements shall be the responsibility of the developer.

### **Refund of Roadway Impact Fees**

1. If a building permit, site plan, subdivision plan, private way or extractive industries plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the specific roadway impact fee paid as required by this ordinance. The developer must submit a formal application request for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan, private way or extractive industries approval.
2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following twenty (20) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the twenty (20) year period.

### **Roadway Impact Fee District - Dunstan Corner District**

1. **Purpose.** Dunstan Corner is one of Scarborough's town centers within which four locally and regionally significant roads intersect. The capacity of Route One, and it's intersections with Pine

Point Road (Route 9), Broadturn Road and Payne Road, are critical to the mobility of regional vehicular traffic through Dunstan Corner and the access of local vehicular traffic to destinations within Dunstan Corner. In order for Dunstan Corner to continue to serve and evolve as a town center, while also maintaining and increasing vehicular mobility and access, the area was in need of adequate roadway infrastructure to support future development and the accompanying traffic generation and demands.

**3.2 Master Plan.** The Town has completed a master plan for roadway infrastructure improvements that accommodates the traffic growth projected through 2026 which established the additional vehicular capacity and adequate levels of service necessary to serve, accommodate and benefit new development. The purpose of the Dunstan Corner District is to procure the Town's share of the cost of implementing these roadway infrastructure improvements from future development projects that are benefiting from the increased capacity. The remaining roadway infrastructure improvement costs were funded through cost sharing between PACTS (Portland Area Comprehensive Transportation System) and the Maine Department of Transportation.

As per Section V(F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

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

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

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

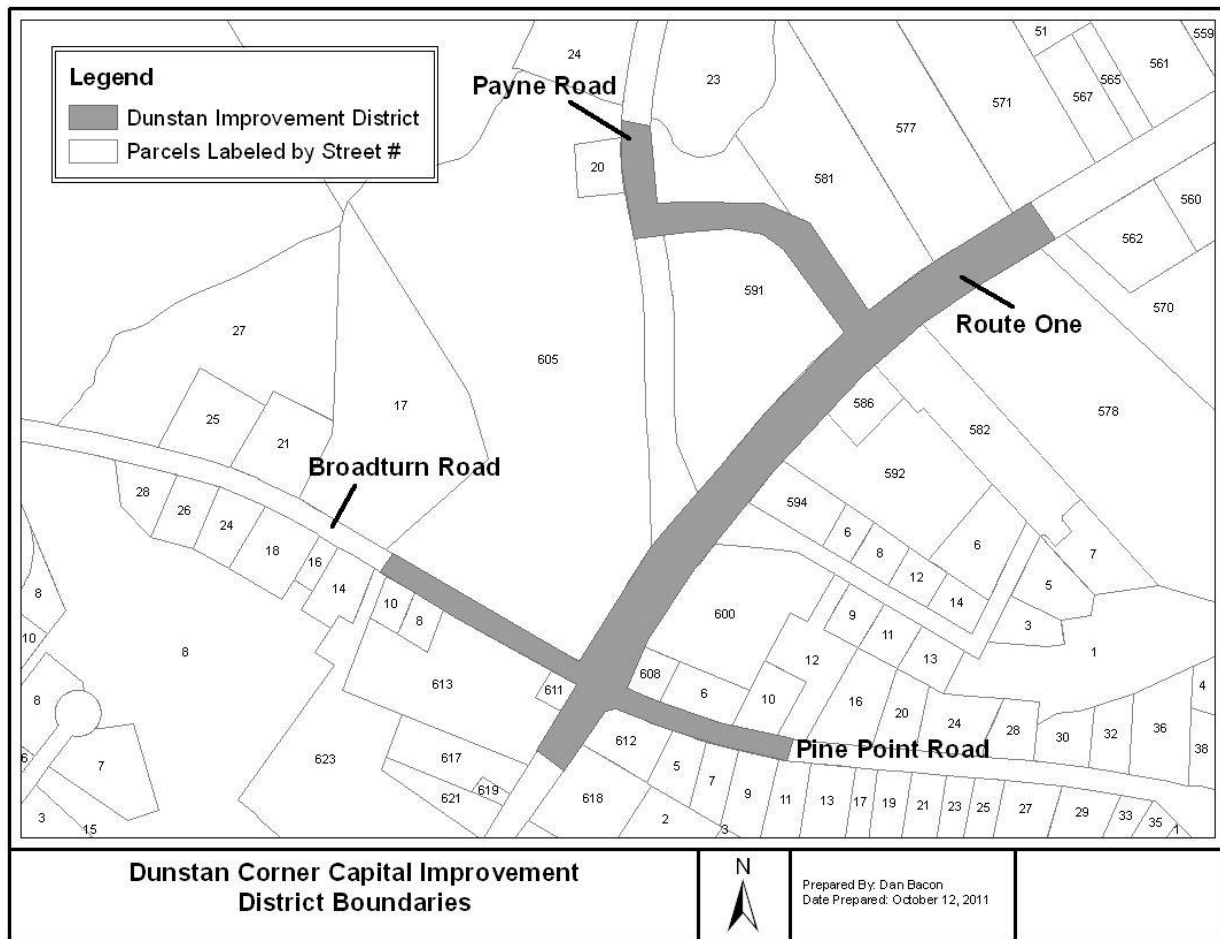
**A.a.** Route 1 beginning 550 feet south of Broadturn Road extending northerly 2000 feet.

**B.a.** Pine Point Road beginning at its intersection with Route 1 extending easterly 850 feet.

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

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

a. All of Harlow Street and Higgins Street.



**2.4. Dunstan Corner District Fee.** The Dunstan Corner District fee determination shall be based on the following:

- a. The Town cost of the master plan for roadway infrastructure improvements in the Dunstan Corner District will amount to \$1,430,000, which is to be funded from this impact fee ordinance. (amended 02/07/2007)(amended 11/16/2011)
- b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1020 trip ends in the P.M. peak commuter hour of traffic.
- c. Each additional trip generated by new development will benefit from the 1020 trip ends of capacity and will utilize one trip end of that additional capacity.

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

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

## Roadway Impact Fee District – Haigis Parkway / Route One District

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

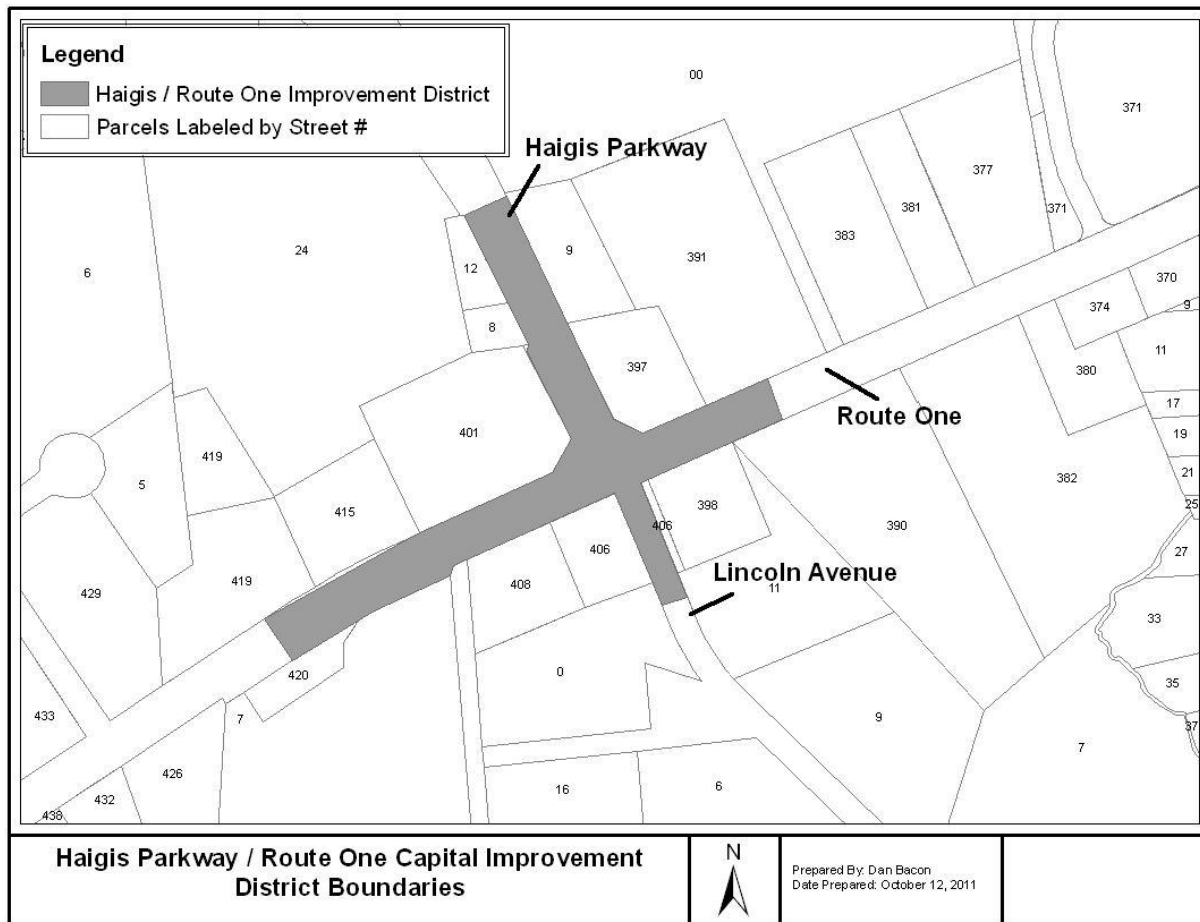
In order for the Haigis Parkway / Route One / Lincoln Avenue intersection to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and the accompanying traffic generation and demands, roadway infrastructure improvements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

**E.2. Master Plan.** To that end the Town has completed a master plan for roadway infrastructure improvements that accommodates the traffic growth projected through 2026 and which established the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. These roadway infrastructure improvements also include provisions for pedestrians in order to enhance the walk-ability and pedestrian safety of this section of Route One. The purpose of the Haigis Parkway / Route One District is to reimburse the portion of the Town's cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

As per Section V(F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

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

**2.3 Haigis Parkway / Route One District Boundaries.** The Haigis Parkway / Route One District is depicted on the map below:



**3.4. Haigis Parkway / Route One District Fee.** The fee determination shall be based on the following:

- The Town cost of the master plan for roadway infrastructure improvements in the Haigis Parkway / Route One District amounts to \$1,005,000, which is to be funded from this impact fee ordinance. \*(This cost total is less than the total project cost for the Fiscal Year 2010 CIP Project because the improvements associated with the Dunstan Corner intersection plan, the Southgate intersection plan, landscaping enhancements, and the Haigis/Scottow Hill Rd. and Route One/Enterprise Dr. improvements were not included).
- The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1015 trip ends in the P.M. peak commuter hour of traffic.
- Each additional trip generated by new development will benefit from the 1,015 trip ends of capacity and will utilize one trip end of that additional capacity.

**3.d.** The fee per trip, therefore, shall be \$990.00. This fee per trip equals \$1,005,000 / 1,015 trip ends.



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

#### **Roadway Impact Fee District – Payne Road District 5**

1. **Purpose.** The Town must expand and maximize the efficiencies of its road system in order to provide adequate levels of service in the Payne Road Area of the Town so that new development in the Payne Road, Gorham Road, and County Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare.
2. **Master Plan.** The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of additional rights-of-way, road construction and road improvements, and traffic signal upgrades in the Town. Further refinement of the District scope of work has taken place through public engagement, as well as with State and Regional Agencies, which is incorporated into the preliminary design included in the "North Scarborough Three Intersection Design, Draft Preliminary Design" dated August 2019, which alleviates constraints on the Gorham Rd and ultimately on the Payne Rd District. A portion of the improvements are being paid for by a private developer through their individual Traffic Movement Permit requirements with the Maine Department of Transportation.
3. **Payne Road District 5 Boundaries.** The Payne Road District 5 encompasses the following sections of roadway:
  - a. **District 5** - Route 114, between Maine Turnpike and Beech Ridge Road, which are directly impacted by the two County Road intersections at Saco St and Gorham Rd.
4. **Payne Road District 5 Fee.** At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.
  - a. The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.
  - b. Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.
  - c. Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

- d. Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.
  - e. Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use.
5. **Impact Fee Trust Funds.** There is hereby established a Payne Road District 5 Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section V(F) of this ordinance.

### **Roadway Impact Fee District – Payne Road / Ginn Road District**

**A-1. Purpose.** The intersection of Payne Road at Ginn Road is a critical intersection along the Payne Road corridor for future roadway improvements. Payne Road is an important North/South corridor in the Town, and is particularly valuable as an alternative corridor to Route 1 and mitigating traffic on the Route 1 corridor. It is also important to the future development of the Scarborough Downs neighborhood and in connecting Haigis Parkway and Exit 42 from the Maine Turnpike to Scarborough Downs and the Maine Mall area.

In order to accommodate future development and pedestrian, cyclist, and traffic growth needs in the Town of Scarborough, the intersection of Payne Road and Ginn Road will need to be improved to support multimodal traffic along this corridor. The proposed improvements are included in the 2024 Town Wide Transportation Study.

1. **Master Plan.** To that end the Town has finalized a Master Plan for roadway infrastructure improvements that will accommodate future traffic growth and will provide space for pedestrians and cyclists to safely travel along Payne Road. These improvements will benefit new development on and around the Payne Road corridor, as well as alleviating some of the congestion on Route 1.

As per Section V (F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the "Payne Road Conceptual Plan" prepared by Barton & Loguidice, dated December 2023, which following master plan: sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for costs of additional rights-of-way, road construction and road improvements in the Town.

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



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

### **Roadway Impact Fee District – Payne Road / Nonesuch River District**

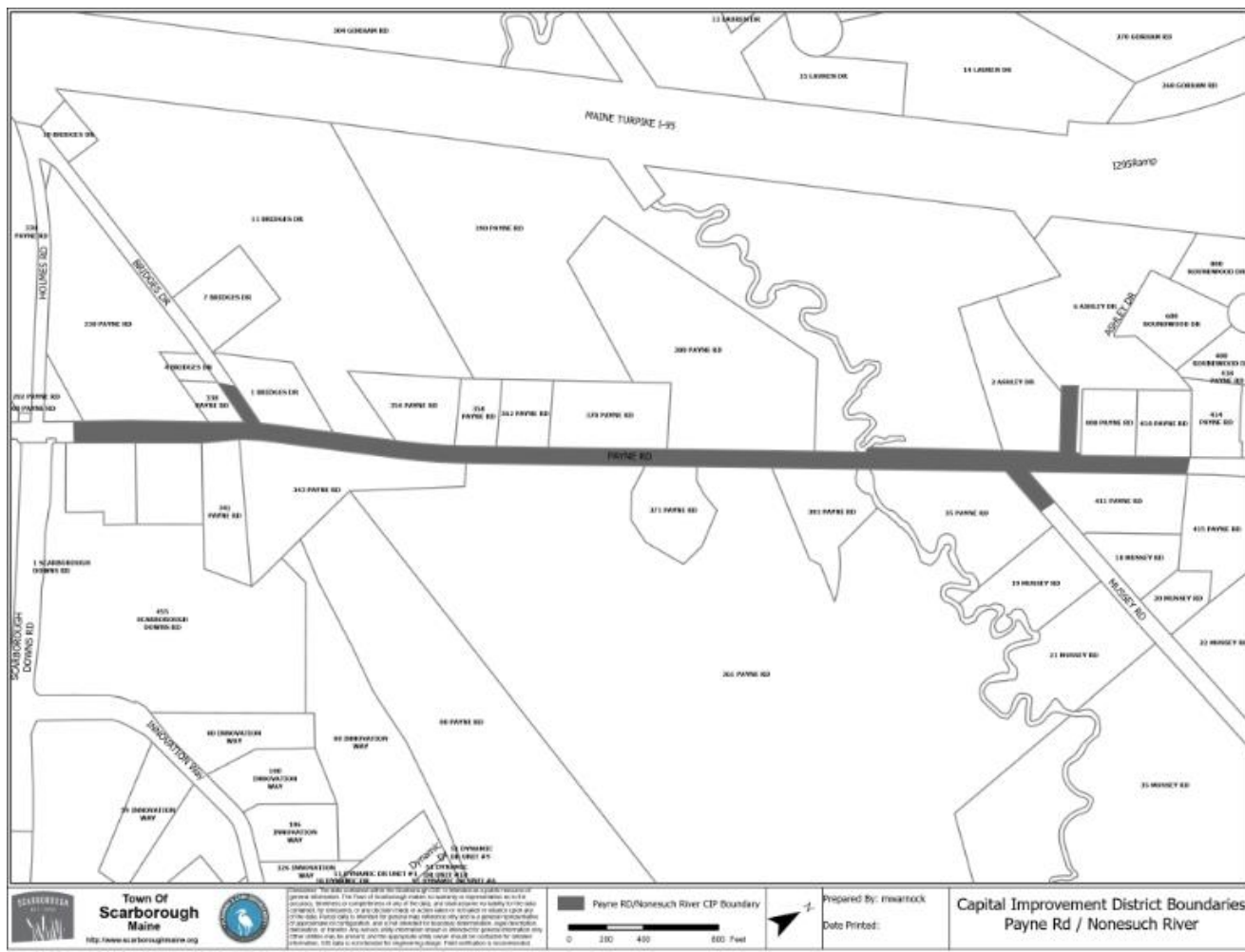
1. **Purpose.** Libby Bridge on Payne Road over the Nonesuch River, and the associated approaches to the bridge, is a critical segment of the Payne Road corridor for future roadway improvements. Payne Road is an important North/South corridor in the Town, and is particularly valuable as an alternative corridor to Route 1 and mitigating traffic on the Route 1 corridor. It is also important to the future development of the Scarborough Downs neighborhood and in connecting Haigis Parkway and Exit 42 from the Maine Turnpike to Scarborough Downs and the Maine Mall area.

In order to accommodate future development and pedestrian, cyclist, and traffic growth needs in the Town of Scarborough, Libby Bridge and the approaches to Libby Bridge will need to be improved to support multimodal traffic along this corridor. The proposed improvements are included in the 2024 Town Wide Transportation Study.

2. **Master Plan.** To that end the Town has completed a Master Plan for roadway infrastructure improvements that will accommodate future traffic growth and will provide space for pedestrians and cyclists to safely travel along Payne Road. These improvements will benefit new development on and around the Payne Road corridor, as well as alleviating some of the congestion on Route 1.

As per Section V(F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the “Payne Road Conceptual Plan” prepared by Barton & Loguidice, dated December 2023, which sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for costs of additional rights-of-way, road construction and road improvements in the Town.

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



4. **Payne Road / Nonesuch River District Fee.** The fee determination shall be based on the following:
  - a. The Town cost of the master plan for roadway infrastructure improvements in the Payne Road / Nonesuch River District will amount to \$23,913,345, which is to be funded from this impact fee ordinance.
  - b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 3,337 trip ends in the P.M. peak commuter hour of traffic.
  - c. Each additional trip generated by new development will benefit from the 3,337 trip ends of capacity and will utilize one trip end of that additional capacity.
  - d. The total fee per trip, therefore, shall be \$7,166. The developer portion for the fee per trip shall be 50% of the total per trip cost or \$3,583.
5. **Impact Fee Trust Funds.** There is hereby established a Payne Road / Ginn Road District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general



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

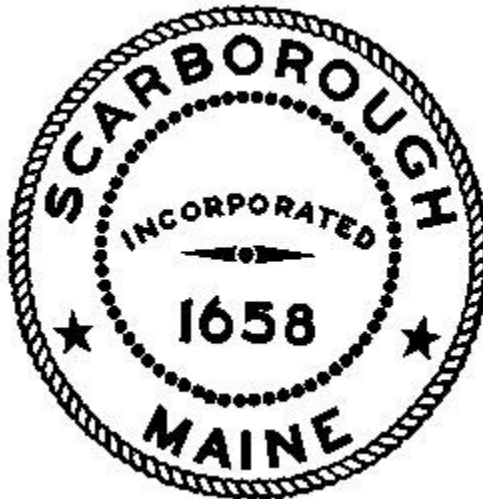
BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 410 Town of Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts is hereby repealed in its entirety and is replaced with amendments to Chapter 415 Town of Scarborough Impact Fee Ordinance as recommended by the Planning Director.

## **CHAPTER 410**

### **TOWN OF SCARBOROUGH**

#### **SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**

#### **PAYNE ROAD AREA CAPITAL IMPROVEMENT DISTRICTS**



**ADOPTED OCTOBER 17, 1990  
AMENDED SEPTEMBER 6, 1995  
AMENDED DECEMBER 7, 2011  
AMENDED NOVEMBER 1, 2017**

## Table of Contents

|  |    |
|--|----|
| <u>Section One: Purpose</u> .....  | 93 |
| <u>Section Two: Legislative Findings</u> .....   | 93 |
| <u>Section Three: Title, Authority, and Applicability</u> .....                              | 94 |
| <u>A. Title</u> .....  | 94 |
| <u>B. Authority</u> .....  | 94 |
| <u>C. Applicability</u> .....  | 94 |
| <u>Section Four: Definitions</u> .....   | 94 |
| <u>A. “Developer”</u> .....  | 94 |
| <u>B. “Capital improvement”</u> .....  | 94 |
| <u>C. “Development”</u> .....  | 95 |
| <u>D. “Expansion of road capacity”</u> .....   | 95 |
| <u>E. “Roads”</u> .....  | 95 |
| <u>F. “Site-related improvements”</u> .....  | 95 |
| <u>G. “Independent Fee Calculation Study”</u> .....  | 95 |
| <u>H. “Mandatory or Required right-of-way dedications and/or roadway improvements”</u> ..... | 95 |
| <u>I. “Payne Road Area”</u> .....  | 95 |
| <u>Section Five: Imposition of Road Impact Fee</u> .....                                     | 96 |
| <u>Section Six: Computation of Road Impact Fee</u> .....                                     | 96 |
| <u>Section Seven: Payment of Fee</u> .....   | 97 |
| <u>Section Eight: Road Impact Fee Districts</u> .....  | 97 |
| <u>Section Nine: Road Impact Fee Trust Funds Established</u> .....                           | 97 |
| <u>Section Ten: Use of Funds</u> .....   | 90 |
| <u>Section Eleven: Refund of Fees</u> .....  | 98 |
| <u>Section Twelve: Exemptions</u> .....  | 98 |
| <u>Section Thirteen: Credits</u> .....   | 98 |

## CHAPTER 410 TOWN OF SCARBOROUGH ROAD IMPACT FEE ORDINANCE

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

### **Section One: Purpose**

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

### **Section Two: Legislative Findings**

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

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

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

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

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

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

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

### **Section Three: Title, Authority, and Applicability**

A. Title.

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

B. Authority.

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

C. Applicability.

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

### **Section Four: Definitions**

A. "Developer"

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

B. "Capital improvement"

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

- (1) construction of new through lanes
- (2) construction of new turn lanes
- (3) construction of new bridges
- (4) construction of new drainage facilities in conjunction with new roadway construction
- (5) purchase and installation of traffic signalization (including new and upgraded signalization)
- (6) construction of curbs, medians, and shoulders
- (7) relocating utilities to accommodate new roadway construction

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

C. “Development”

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

D. “Expansion of road capacity”

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

E. “Roads”

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

F. “Site-related improvements”

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

- (1) access roads leading to the development
- (2) driveways and roads within the development
- (3) acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways
- (4) traffic control measurers for those roads and driveways

G. “Independent Fee Calculation Study”

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

H. “Mandatory or Required right-of-way dedications and/or roadway improvements”

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

I. “Payne Road Area”

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

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

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

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

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

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

#### **Section Five: Imposition of Road Impact Fee**

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

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

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

#### **Section Six: Computation of Road Impact Fee**

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

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

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

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

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



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

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

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

**Section Seven: Payment of Fee**

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

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

**Section Eight: Road Impact Fee Districts**

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

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

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

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

**Section Ten: Use of Funds**

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

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

C. Funds shall be used exclusively for capital improvements or expansion within the road impact fee district, including district boundary roads, as identified in the Report entitled Computation Procedure,

from which the funds were collected or for projects in other road impact districts which are of benefit to the road impact district from which the funds were collected. Funds shall be expended in the order in which they are collected.

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

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

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

### **Section Eleven: Refund of Fees**

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

B. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application of the developer, be returned to the developer, provided that the developer submits an application for a refund to the Code Enforcement Officer within 180 days of the ten (10) year period.

### **Section Twelve: Exemptions**

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

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

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

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

### **Section Thirteen: Credits**

A. Credit for the dedication of land for rights of way shall be valued at the most recent assessed value by the Town Assessor or by fair market value established by private appraisers acceptable to the

Town. Credit for the dedication of land shall be provided when property has been conveyed at no charge to, and accepted by, the Town in a manner satisfactory to the Town Council.

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

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

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

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

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

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

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

E. Credit may also be given for the costs of constructing capital improvements required as a condition of Planning Board subdivision approval or a Department of Environmental Protection Site Location of Development License if the development was approved prior to enactment of this ordinance but building permits are issued after enactment. Credit shall be in an amount determined by the Planning Board, based upon the scope of the development approved by the Planning Board and/or DEP and the value of the capital improvements actually constructed. Credit shall be given only to the extent that the

traffic impact of the proposed development, as determined at the time of construction, does not exceed the impacts anticipated by the subdivision or site location of development approval. The developer shall have the burden of establishing the cost of capital improvements constructed.

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

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

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

### **ORDER SETTING IMPACT FEES**

### **AND DESIGNATING APPROVED PROJECTS**

**BE IT ORDERED** by the Scarborough Town Council that pursuant to the Town of Scarborough Road Impact Fee Ordinance, the fees and charges shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council for development from the Highway Impact Fee Trust Fund.

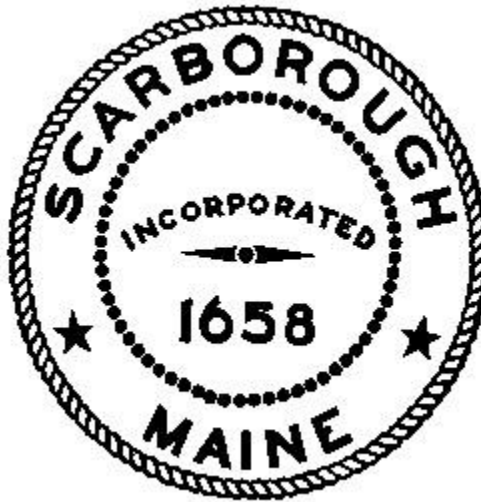
BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 415A Town of Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement Districts is hereby repealed in its entirety and is replaced with amendments to Chapter 415 Town of Scarborough Impact Fee Ordinance as recommended by the Planning Director.

## **CHAPTER 415A**

## **TOWN OF SCARBOROUGH**

### **SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**

### **DUNSTAN CORNER CAPITAL IMPROVEMENT DISTRICT**



**ADOPTED AUGUST 16, 2006  
AMENDED FEBRUARY 7, 2007  
AMENDED NOVEMBER 16, 2011  
TABLE OF CONTENTS**

|   |     |
|---|-----|
| Section I. Title.....   | 101 |
| Section II. Purpose.....  | 101 |
| Section III. Applicability .....  | 102 |
| Section IV. Impact Fee Procedures.....                                    | 102 |
| Section V. Impact Fee Calculations.....                                   | 103 |
| Section VI. Impact Fee Payment .....                                      | 104 |
| Section VII. Dunstan Corner Capital Improvement District Boundaries ..... | 104 |
| Section VIII. Impact Fee Trust Fund .....                                 | 105 |
| Section IX. Use of Impact Fee Funds .....                                 | 105 |
| Section X. Refund of Impact Fees .....                                    | 105 |
| Section XI. Master Plan for Roadway Infrastructure Improvements .....     | 106 |

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

**Section I. Title**

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

**Section II. Purpose**

Dunstan Corner is one of Scarborough’s town centers within which four locally and regionally significant roads intersect. The capacity of Route One, and it’s intersections with Pine Point Road (Route



9), Broadturn Road and Payne Road, are critical to the mobility of regional vehicular traffic through Dunstan Corner and the access of local vehicular traffic to destinations within Dunstan Corner. In order for Dunstan Corner to continue to serve and evolve as a town center, while also maintaining and increasing vehicular mobility and access, the area is in need of adequate roadway infrastructure to support future development and the accompanying traffic generation and demands.

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

### **Section III. Applicability**

- B.** This ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, all new extractive industry operations, and to any change in use requiring site plan approval when the proposed development, whether located within or without the Dunstan Corner Capital Improvement District, generates additional traffic within the Dunstan Corner Capital Improvement District. (amended 02/07/2007)
- C.** The following development and construction shall be exempt from this ordinance:
  - 1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
  - 2. Construction of accessory buildings or structures which do not generate additional vehicle trips.
  - 3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

### **Section IV. Impact Fee Procedures**

- 3. Any person who seeks a permit or approval for any development, activity or use described in Section III(A) of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance. (amended 02/07/2007)
- 4. Preliminary determinations regarding whether a proposed development will generate traffic within the Dunstan Corner Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis (in accordance with Section V of this ordinance), which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall

be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

## **Section V. Impact Fee Calculations**

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

7. As per Section IV(B) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the Dunstan Corner Capital Improvement District in the P.M. peak commuter hour.
8. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).
9. The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through the Dunstan Corner Capital Improvement District within the P.M. peak commuter hour. All new trips that pass through the District, regardless of whether they pass through the Dunstan Corner or Payne Road/Route One intersections, shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.
10. The fee determination shall be based on the following:
  - a. The Town cost of the master plan for roadway infrastructure improvements in the Dunstan Corner Capital Improvement District will amount to \$1,430,000, which is to be funded from this impact fee ordinance. (amended 02/07/2007)(amended 11/16/2011)
  - b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1020 trip ends in the P.M. peak commuter hour of traffic.
  - c. Each additional trip generated by new development will benefit from the 1020 trip ends of capacity and will utilize one trip end of that additional capacity.
  - d. The fee per trip, therefore, shall be \$1,402. This fee per trip equals  $\$1,430,000 / 1020$  trip ends. (amended 02/07/2007)(amended 11/16/2011)

11. For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to Section V, subsections A through D above, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.
12. For any development not requiring Planning Board review but requiring the payment of an impact fee under this ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to Section V, subsections A through E above.
13. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

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

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

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

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

## **Section VII. Dunstan Corner Capital Improvement District Boundaries**

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

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

## **Section VIII. Impact Fee Trust Fund**

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

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

## **Section IX. Use of Impact Fee Funds**

- A.** Funds generated by this ordinance will be used for the purpose of completing the capital improvements identified in the master plan for roadway infrastructure improvements within Dunstan Corner Capital Improvement District.
- B.** No funds shall be used for periodic or routine maintenance.
- C.** In the event that bonds or similar debt instruments are issued for advanced provision of capital improvements for which road impact fees may be expended, impact fee funds may be used to pay debt service on such bonds or similar debt instruments to the extent that the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section IX(A) of this ordinance.
- D.** Funds may be used to provide refunds in accordance with Section X.
- E.** Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the Dunstan Corner Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer.

## **Section X. Refund of Impact Fees**

- 3.** If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.
- 4.** Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

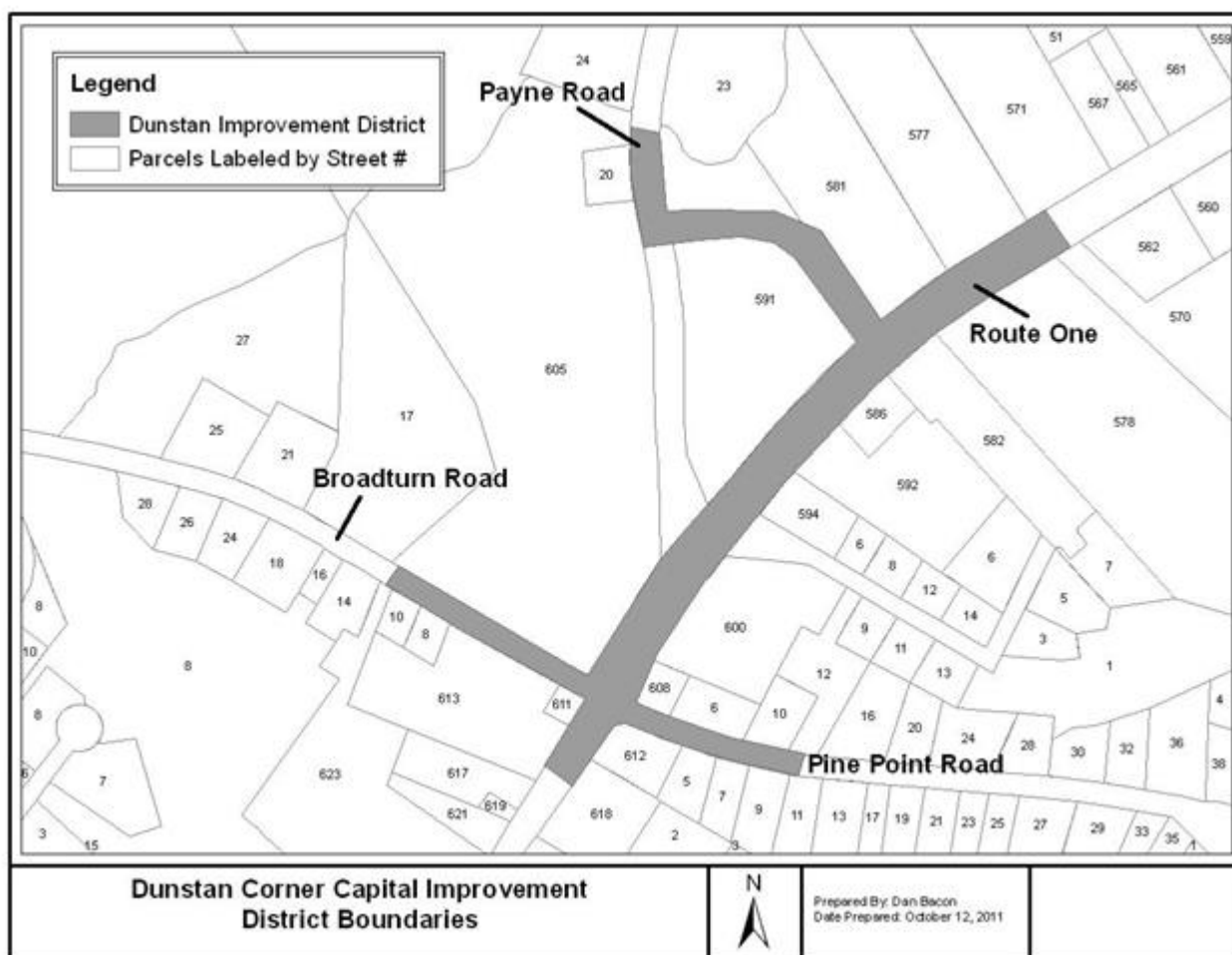
## Section XI. Master Plan for Roadway Infrastructure Improvements

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

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

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

### Appendix A.



BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 415B Town of Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement Districts is hereby repealed in its entirety



and is replaced with amendments to Chapter 415 Town of Scarborough Impact Fee Ordinance as recommended by the Planning Director.

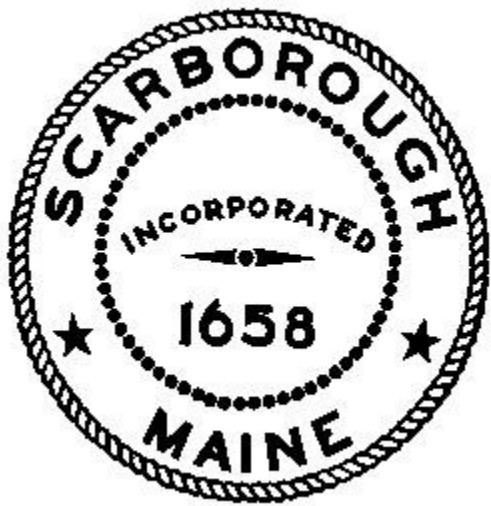
**CHAPTER 415B**

**TOWN OF SCARBOROUGH**

**SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**

**HAIGIS PARKWAY / ROUTE ONE CAPITAL IMPROVEMENT**

**DISTRICT**



ADOPTED November 2, 2011

TABLE OF CONTENTS

Section I. Title..... 1

Section II. Purpose..... 1

Section III. Applicability ..... 1

Section IV. Impact Fee Procedures..... 2

Section V. Impact Fee Calculations..... 2

Section VI. Impact Fee Payment ..... 4

|   |   |
|---|---|
| Section VII. Dunstan Corner Capital Improvement District Boundaries ..... | 5 |
| Section VIII. Impact Fee Trust Fund .....                                 | 5 |
| Section IX. Use of Impact Fee Funds .....                                 | 5 |
| Section X. Refund of Impact Fees .....                                    | 6 |
| Section XI. Master Plan for Roadway Infrastructure Improvements .....     | 6 |

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

### **Section I. Title**

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

### **Section II. Purpose**

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

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

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

### **Section III. Applicability**

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

District, generates additional traffic within the Haigis Parkway / Route One Capital Improvement District.

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

1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
2. Construction of accessory buildings or structures which do not generate additional vehicle trips.
3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

#### **Section IV. Impact Fee Procedures**

5. Any person who seeks a permit or approval for any development, activity or use described in Section III.A of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.
6. Preliminary determinations regarding whether a proposed development will generate traffic within the Haigis Parkway / Route One Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis (in accordance with Section V. of this ordinance), which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

#### **Section V. Impact Fee Calculations**

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

14. As per Section IV(B) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the Haigis Parkway / Route One Capital Improvement District in the P.M. peak commuter hour.
15. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or data collected at

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

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

  - a. The Town cost of the master plan for roadway infrastructure improvements in the Haigis Parkway / Route One Capital Improvement District amounts to \$1,005,000, which is to be funded from this impact fee ordinance.  
\*(This cost total is less than the total project cost for the Fiscal Year 2010 CIP Project because the improvements associated with the Dunstan Corner intersection plan, the Southgate intersection plan, landscaping enhancements, and the Haigis/Scottow Hill Rd. and Route One/Enterprise Dr. improvements were not included).
  - b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1015 trip ends in the P.M. peak commuter hour of traffic.
  - c. Each additional trip generated by new development will benefit from the 1015 trip ends of capacity and will utilize one trip end of that additional capacity.
  - d. The fee per trip, therefore, shall be \$990.00. This fee per trip equals \$1,005,000 / 1015 trip ends.
- 18.** For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to Section V, subsections A through D above, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.
- 19.** For any development not requiring Planning Board review but requiring the payment of an impact fee under this Ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to Section V, subsections A through E above.
- 20.** If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative

of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

#### Section VI. Impact Fee Payment

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

3. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.
4. For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.

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

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

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

#### Section VIII. Impact Fee Trust Fund

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

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

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

- F. Funds generated by this ordinance will be used for the purpose of financing the capital improvements identified in the master plan for roadway infrastructure improvements within the Haigis Parkway / Route One Capital Improvement District.
- G. No funds shall be used for periodic or routine maintenance.
- H. Given that bonds may be issued to finance the implementation of the capital improvements identified in the master plan for roadway infrastructure improvements within the Haigis Parkway / Route One Capital Improvement District, impact fee funds may be used to pay debt service on such bonds to the extent that the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section IX. A. of this ordinance.
- I. Funds may be used to provide refunds in accordance with Section X.



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

## **Section X. Refund of Impact Fees**

5. If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.
6. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

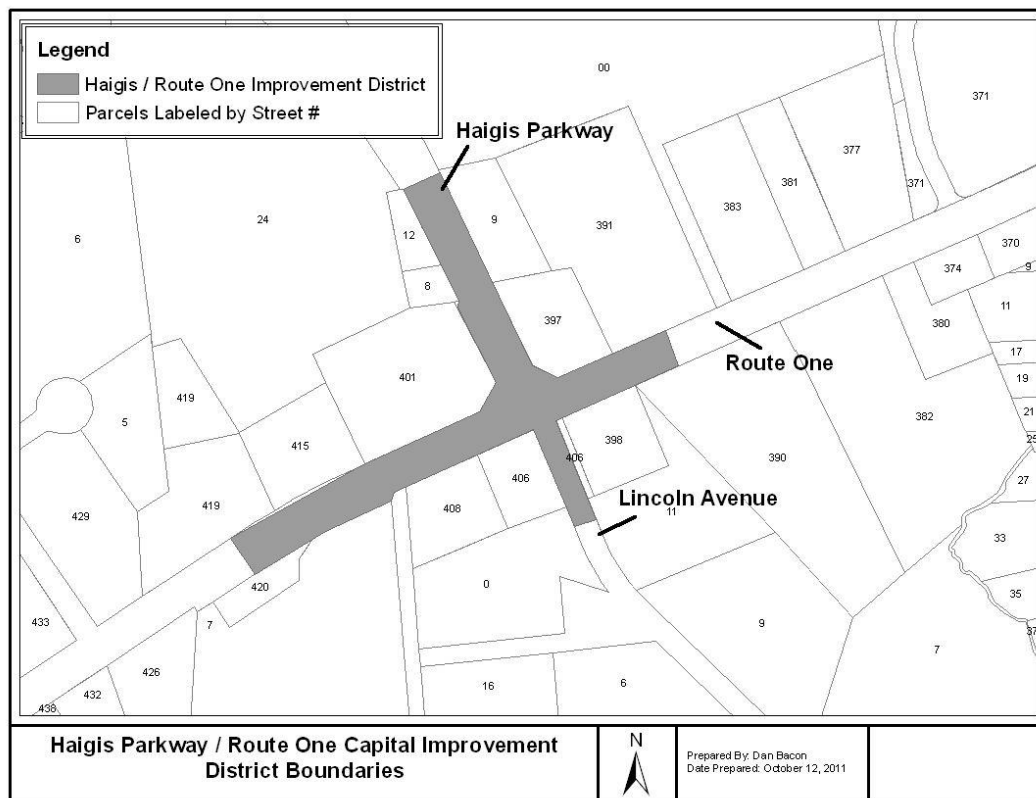
## **Section XI. Master Plan for Roadway Infrastructure Improvements**

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

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

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

## **Appendix A.**



Vote: 6 Yeas. Motion Passes.

**Order No. 24-043. Act on the request from the Police Chief and the Community Services Director to accept grants on behalf of the VIPS [Volunteer in Police Service] and Community Services in the amount of \$2,500 each from the Scarborough Chamber of Commerce. [Police Chief/Director of Community Services]** Thomas Hall, Town Manager provided a brief overview of this order. There were no public comments for or against this order.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval on the request from the Police Chief and the Community Services Director to accept grants on behalf of the VIPS [Volunteer in Police Service] and Community Services in the amount of \$2,500 each from the Scarborough Chamber of Commerce.

Vote: 6 Yeas. Motion Passes.

**Order No. 24-044. Act on the request to sign the Warrants for the Regular Municipal and School Budget Validation Referendum, scheduled for Tuesday, June 11, 2024, at the Scarborough High School – Alumni Gym; appoint the warden and warden clerk, set the hours for voter registration, and act on appointments of election clerks, pursuant to Chapter 200 – Article VIII. Nomination and Elections, Title 21-A, §503 and authorize the Town Clerk to make any additional appointments as necessary. [Town Clerk]** Kristen Barth, Deputy Town Clerk provided a brief overview of this order. There were no public comments for or against this order.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval on the request to sign the Warrants for the Regular Municipal and School Budget Validation Referendum, scheduled for

Tuesday, June 11, 2024, at the Scarborough High School – Alumni Gym; appoint the warden and warden clerk, set the hours for voter registration, and act on appointments of election clerks, pursuant to Chapter 200 – Article VIII. Nomination and Elections, Title 21-A, §503 and authorize the Town Clerk to make any additional appointments as necessary, as follows:

**WARRANT**  
**REGULAR MUNICIPAL AND SCHOOL BUDGET VALIDATION REFERENDUM**  
**(20-A M.R.S.A. § 1486 and 2307)**  
**TOWN OF SCARBOROUGH**  
TUESDAY, JUNE 11, 2024  
DAY AND DATE OF ELECTION

**Municipality:** Scarborough **Voting District:** Town Wide  
**Voting Place Name:** Scarborough High School **Voting Location:** 11 Municipal Drive  
**Polls Open at 7:00 A.M.** **Polls Close at 8:00 P.M.**

**Absentee Ballot Processing (check all that apply):**

**Processed by:** Clerk (Centrally) ☒ Clerk (At Polls)

**Date/Time of Processing:**

☒ **Friday, June 7, 2024\***

1- Hour Inspection Time Period: 9:00 a.m., if no inspection is requested or 10:00 a.m., if an  
Time Processing Begins: inspection is requested.

☒ **During** Election Day (6/11/2024) Processing Time(s): 8:00 a.m., 10:00 a.m. & 7:30 p.m.  
**Only** after 8:00 p.m. on Election Day (6/11/2024): \_\_\_\_\_

County of Cumberland, ss State of Maine

To: Mark A. Holmquist, the Police Chief of Scarborough:

You are hereby required in the name of the State of Maine to notify the voters of the Town of Scarborough of the Regular Municipal and School Budget Referendum Election, as described in this warrant.

To the Voters of the Town of Scarborough:

You are hereby notified that an election for the purpose of a Regular Municipal Election will be held on Tuesday, June 11, 2024, at the Scarborough High School Alumni Gymnasium, located at 11 Municipal Drive:

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**FOR BOARD OF EDUCATION**

Term of 3 Years Vote for Two

Lindstorm, Mary Shannon

Peterson, Alissa K.

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**School Budget Validation Referendum Question No. 1:**

YES      Do you favor approving the Scarborough School budget for the upcoming school  
NO      year that was adopted at the latest Town of Scarborough budget meeting?

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The polls shall be opened at 7:00 A.M. and closed at 8:00 P.M.

Absentee Ballots shall be processed as noted above.

The Registrar of Voters will hold office hours during regular business hours of the Town Hall and at the Polls to correct any error or change a name or address on the voting list; to accept the registration of any person eligible to vote and to accept new enrollments.

A person who is not registered as a voter may not vote in any Scarborough election.

Given under our hand this 1st day of May, 2024, at Scarborough, Maine.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A True Copy Attested:

Date:

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Vote: 6 Yeas. Motion Passes.

**Item 9. Non-Action Item.** None at this time.

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

- Councilor Sither spoke in regards to the Communications Committee meeting next week and the School Building Committee meeting weekly.
- Councilor Hamill spoke in regards to the Coastal Waters and Shellfish Committees upcoming meetings. In addition, the next date for Rules and Policies Committee meeting will be determined soon.

**Item 11. Council Member Comments.**

- Councilor Caterina spoke in regards to the public comments in regards to public comments on LD40 and what it does and does not include.
- Chairman McGee thanked the Council for a great night.

**Item 12. Adjournment.** Motion by Councilor Caterina, seconded by Councilor Anderson, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 6 Yeas. Motion Passes.

Meeting adjourned at 9:58 p.m.

Respectfully submitted,

Kristen Barth  
Deputy Town Clerk