

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

**Wednesday, September 11, 2024 – 6:00 P.M.**  
**Council Chambers- Town Hall**

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

**<https://scarboroughmaine.zoom.us/j/82399368021>**

**TO VIEW THE ORDINANCE MEETING ONLY:**

**<https://www.youtube.com/watch?v=MmsudOtPvgM>**

**Item 1.** Call to Order.

**Item 2.** Roll Call.

**Item 3.** Approval of minutes from June 12, 2024.

**Item 4.** Public Comment.

**Item 5.** Discussion on Agriculture Farm Stand Change.

**Item 6.** Discussion on Chapter 610 - Piping Plover Ordinance.

**Item 6.** Discussion on Short Term Rentals.

**Item 7.** Future Agenda Items.

**Item 8.** Adjournment.

# MEMO

**To: Ordinance Committee**

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

**Date: September 3, 2024**

**Re: Site Plan Amendments – Agriculture Farm Stand**

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## BACKGROUND

On April 5, 2024, the Ordinance Committee received a request to review the zoning ordinance as it pertains to agricultural farm stands and farm stores. The zoning ordinance allows farm stand and agricultural products stores affiliated with a commercial agriculture, commercial husbandry or commercial fishing and harvesting uses in the Rural Farming district and as special exception uses in R2 zoning district. Performance Standards also apply.

One performance standard places limitations on the products that can be sold as follows:

If the stand/farm sells products that are ***not*** grown, raised, caught or harvested by the use or made from products grown, raised, caught or harvested by the use, at least ***51% of the dollar amount of gross retail sales per calendar year must be from products associated with the Commercial Agriculture, Commercial Husbandry or Commercial Fishing and Harvesting use.*** In January of each year, the owner shall calculate and report to the Code Enforcement Officer the percentage of gross retail sales attributable to off-premises products for the preceding calendar year and, if requested by the Code Enforcement Officer, shall provide documentation of the calculated percentage.

The 51% can be prohibitive for a farm stand to be viable. Staff reviewed the request and a proposed amendment with the Long Range Planning Committee on June 14<sup>th</sup>. LRPC recommended moving the attached ordinance amendment forward to Ordinance Committee for consideration. The proposal adds a special exception provision for farm stands and agricultural products stores unable to meet the 51% threshold.

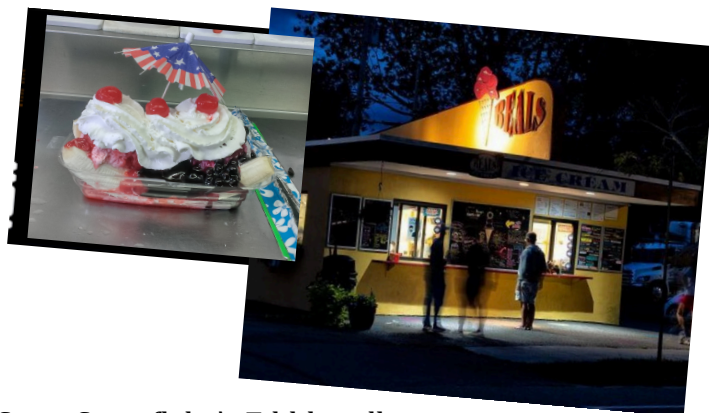
## Planning & Code Enforcement

Special exception requests are heard by the Zoning Board of Appeals and must adhere to specific criteria:

- a.** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.
- b.** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.
- c.** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree in municipal fire or police protection than existing uses in the neighborhood.
- d.** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.
- e.** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, proximity to other structures and density of development.
- f.** If located in a shoreland zone as depicted on the Town of Scarborough Official Shoreland Zoning Map, the proposed use will comply with all of the requirements of the Town of Scarborough Shoreland Zoning Ordinance. (8/5/92)
- g.** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.
- h.** The applicant has the technical and financial ability to meet the standards of this Section and to comply with any conditions imposed by the Board of Appeals pursuant to subsection 5 of this Section.
- i.** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

## **ATTACHMENTS**

1. April 5<sup>th</sup> Letter
2. Chapter 405 Draft Redlines



Suzie Snowflake's Edibles, dba

## Beals Old Fashioned Ice Cream

### OWNER

Suzanne A. Foley-Ferguson

### LOCATION

18 Veranda Street  
Portland, ME 04020

### MAILING ADDRESS

PO Box 7079  
Scarborough, ME 04070-7079

### HOME OFFICE ADDRESS

331 Black Point Road  
Scarborough, ME 04074

### PHONE

207-828-1253 (Veranda St)  
207-883-1162 (home/landline)

### CELL

207-730-1762

### BUSINESS EMAIL

[TheRealScoop@maine.rr.com](mailto:TheRealScoop@maine.rr.com)

April 5, 2024

To Members of the Ordinance Committee,

I am writing as a business owner in Scarborough, who has owned and operated a retail ice cream store on Veranda Street in Portland since 2010. Beals is a well known home grown Scarborough company. Each year I employ 14-18 students ages 14-22 years. This year, I would like to expand my business by leasing a building in Scarborough that is located in the RF (rural farming) zone (located at Spurwink and Black Point Road). The building has been operated as walk up retail ice cream store by the owner/farmer since 2015. It is called Harmon's Farm Market.

This property is being sold to a Conservation LLC that wishes to maintain the working elements of the farm. There is no intent to change the use, however, new farmers may need to be found, and negotiations finalized. Timing is critical, but nothing is final until they close on the property scheduled for May 1, 2024. The details are currently being discussed and organized.

The working farm, which sells corn, strawberries, and other produce, added a farm stand that was permitted in 1974. An additional building (permitted in 2015) was used as a retail ice cream store but was permitted under farm stand rules as an accessory to the farm: Performance Standards for Farm Stands and Agricultural Products Stores. To my chagrin, this building was not permitted as a Special Exception, or a contract zone. It was permitted as an accessory to the agricultural use.

Therefore, its' occupancy does not fall under non-conforming use as it IS a conforming use. It is therefore not grandfathered for use as a retail ice cream store.



I have been denied a license and occupancy.

Recently I met with Autumn Speer, the Planning Director, and Brian Longstaff in the Departments of Planning and Code Enforcement. They had to deny a Food Handler's license to anyone except someone that can work under the current Performance Standards unless those standards are changed. Brian was gracious enough to contact me regarding a 51% clause in the standards.

Herein lies the problem. I am not the farmer. The current owner is selling the property with a closing scheduled for May 1, 2024. Due to the current Ordinances, neither the "new" owner, nor anyone the "new" owner leases the building to will be able to operate the ice cream store except under the Performance Standard that require at least 51% of the dollar amount of gross retail sales per calendar year be from products associated with Commercial Agriculture ON THE PROPERTY. As a lessee, it is not my intent to farm. I have discussed with the owners the possibility of running the actual farm stand as well, but that has yet to be determined. The key is that they are trying to save the farm.

While the store is allowed to use c.) agricultural products including processed products that are not produced by the agricultural use with which the stand is associated (Section IX, R. 4.), the stand must prove that at least 51% of the sales must be from the property use.

I cannot assure those numbers. Milk, however, is an agricultural product in the state of Maine and thus most milk does originate from Maine. It seems to me, the Town of Scarborough would allow for agricultural products grown or produced in Maine. I am not sure how the former owner attained the goal of 51% with corn and strawberries. With local milk, yes.

As you are aware, the Town of Scarborough in the Comprehensive Plan has determined that Scarborough's rural character is being threatened by growth. Rural and family farms, in particular are increasingly being asked to pay higher taxes to continue their ownership of their land while farm incomes have declined due to a variety of reasons. There are only two ways to protect these farms: to purchase them outright and place agricultural easements on them, or to assist them in being able to diversify their activities in order to keep farming the land.

I was hoping to open the store by May 30th, however, in order to do so, changes to the Rural Farming Zone need to be made. I was told by Autumn that the staff in Planning are working on adjusting the RF zone to align to our Comprehensive Plan that wants to encourage farming and maintaining open spaces. They are, however, very busy with a lot of



other activities and estimate that it is a year to get it to where they would want it.

Ice cream is a mostly a 3-5 month business, and waiting for a year will require that the owners miss an entire season of business and income that they are counting on to maintain the farm.

I'm not exactly sure why I could not apply for a Special Exception but it may be due to a "hardship" requirement. Perhaps Autumn can explain it. I also am confused as to whether the Farm Stand was permitted separate from the Ice Cream Store, so whether they are under two sets of standards.

But while I cannot speak for the Planning Director or Code Office, I think they understand and support making changes.

A simple fix is possible waiting for a long term RF changes. Adjusting the following sections of the Ordinance would solve the problem in the near term:

Section IX of the Performance Standards-Farm Stands  
(DELETE) Entire Section R6 (51% clause)  
(ELIMINATE) Section R9 the word "the"

Section IX Performance Standards -Agricultural Products Stores  
(DELETE) Section S7. (51% clause)

In the long term, the RF zone needs work, but I am asking that these changes be made to support working farms in the near term so that Moorebrook Farm doesn't lose a year of income.

I have attached a list of all of the farms that we currently know about in Scarborough. I have also attached the Performance standards discussed above with highlighted portions.

Thank you for your consideration.

Suzanne A. Foley-Ferguson

cc:

Ogden Hunnewell, Autumn Speer, Brian Longstaff

attached:

Performance Standards, Farm Stands and Agricultural Stores  
List of Affected Scarborough Farms

# TOWN OF SCARBOROUGH FARM INVENTORY 2024

Type of Farm	Criteria for Inclusion	# of separate lots	# of owners	Owners
<b>Farmland Current Use Program</b>	\$2000 / year farm income	22	13	Flaherty owns 5/22;
	income from cows, milk, ice cream, and		includes	Smiling Hill Farm
<b>Working Farm Not in Current Use Program WITHOUT agricultural easements</b>	Income from corn and strawberries;	3	2	
				Moorebrook Farm
				Broadturn Farm
				Snell Family Farm (sub lease of Broadturn
<b>Farms Not in Current Use Program WITH agricultural easements</b>	Agricultural Easement (income from farming unknown)		2	Comstock Farm
	MFT Agricultural easement		includes	Frith Farm (Daniel Mays)
				Deering Farm
<b>OTHER</b>	Income from Christmas Trees; cross country skiing		1	Pierson's Christmas Tree Farm
<b>Nursery (is this considered farm?)</b>			2	O'Donals
				Highland Avenue Greenhouses
<b>Orchards</b>		Unknown		
<b>Apiaries</b>		Unknown		
<b>Chicken eggs</b>	income from farmers markets or stands	Unknown		
<b>Raises Bees</b>		Unknown		
<b>Indoor Farming such as cannabis cultivators (is this considered a farm?)</b>		Unknown		
<b>Properties Cut for Hay</b>	Hay is cut from property by owner or lessee	Unknown	At least 1	Fuller Farm (has conservation easement)



## SECTION IX. PERFORMANCE STANDARDS.

3. Large animals (such as horses, cows, hogs, or llamas that typically weigh more than 100 pounds at maturity) may be kept on a lot that has a lot area of at least 80,000 square feet.
4. Any building or structure that is used to house animals other than domestic pets or chickens must meet the setback requirements for the zone in which it is located.
5. The sale of any type of seafood may only be permitted by those who meet all Federal, State and municipal requirements to do so.
6. Accessory agricultural activities that include any type of seafood are not subject to site plan review, but do require a permit from the Zoning Administrator to verify licensing requirements and safe storage practices are in place.
7. The sale of products produced on the property or seafood caught or harvested by the owner in excess of what is consumed by the occupants of the property is permitted. The sales must occur in a designated area not more than twenty (20) square feet in area and may include a display stand or table. The stand or table may only be in place during the season when products are being sold and must be removed during the "off-season".

### Q. PERFORMANCE STANDARDS – COMMERCIAL AGRICULTURE AND COMMERCIAL ANIMAL HUSBANDRY INCLUDING PROCESSING [Adopted 05/05/2010]

Commercial Agriculture and Commercial Animal Husbandry must be carried out in conformance with the following performance standards:

1. A lot must have a lot area of at least one (1) acre to have any permanent agricultural buildings or structures.
2. Commercial Animal Husbandry is allowed only on lots with a lot area of two (2) acres or more.
3. Any building or structure that is used to house animals other than domestic pets and any facilities for the storage or handling of manure or materials that contain manure must conform to the setback requirements of the zone in which it is located. The facilities must be operated and maintained in accordance with the latest edition of the Maine Department of Agriculture's Manual of Best Management Practices for Maine Agriculture.
4. Facilities for the processing of agricultural products must be designed and primarily used to process products raised as part of the Commercial Agriculture and/or Commercial Animal Husbandry use but the processing of other agricultural products not raised as part of the Commercial Agriculture or Animal Husbandry use is allowed provided that the processing facilities are accessory and subordinate to the principal agricultural use of the property.
5. Processing facilities must be operated and maintained in accordance with the latest edition of the Maine Department of Agriculture's 01-001 Chapter 343 Rule, "Food Processing and Manufacturing" requirements.

### R. PERFORMANCE STANDARDS – FARM STANDS [Adopted 05/05/2010] [Amended 10/18/23]

A Farm Stand must conform to the following performance standards:

1. A farm stand must be associated with and accessory to a Commercial Agriculture, Commercial Animal Husbandry or Commercial Fishing and Harvesting use. *Yang farmers*



## SECTION IX. PERFORMANCE STANDARDS.

2. A farm stand must be located on a parcel that is actively used for the Commercial Agriculture or Commercial Animal Husbandry use or in the case of Commercial Fishing and Harvesting, be the primary residence of the owner of the commercial operation.
3. A farm stand may be a free-standing structure or outdoor location or may be part of another building or structure (for example, an area in a barn or house that is used for sales).
4. The total area devoted to retail sales is limited to four hundred (400) square feet. This includes the area of a free-standing building or structure, the area for outside display and/or sales, the outdoor area used for retail sales if there is no building or structure, and the area used for sales in another building.
5. The sale of products is limited to: a) those grown, raised, caught, harvested or produced by the Commercial Agriculture, Commercial Animal Husbandry or Commercial Fishing and Harvesting use with which the farm stand is associated, b) processed products that are made from products grown or raised by the agricultural use (for example, cheese or ice cream made from milk, yarn made from wool, processed foods such as apple butter or salsa made from items grown by the use, or baked goods made using items grown by the agricultural use), c) agriculture products including processed products that are not produced by the agricultural use with which the stand is associated, d) live or fresh fish, shellfish and lobsters, and e) handmade art and craft products.
6. If the stand sells products that are not grown, raised, caught or harvested by the use or made from products grown, raised, caught or harvested by the use, at least 51% of the dollar amount of gross retail sales per calendar year must be from products associated with the Commercial Agriculture, Commercial Husbandry or Commercial Fishing and Harvesting use. In January of each year, the owner shall calculate and report to the Code Enforcement Officer the percentage of gross retail sales attributable to off-premises products for the preceding calendar year and, if requested by the Code Enforcement Officer, shall provide documentation of the calculated percentage.
7. The farm stand must be located on the parcel so that it meets side and rear setback requirements but a free-standing farm stand is not required to meet the front setback requirements.
8. The farm stand must be located so that it provides appropriate parking and access for customers. Customer vehicles must not be required to back out on to a public street.
9. The farm stand may be open for business only when it is selling products that are grown, raised, caught, harvested or produced as part of the Commercial Agriculture or Commercial Animal Husbandry use.
10. A farm stand is not subject to site plan review but does require a permit from the Zoning Administrator.

### S. PERFORMANCE STANDARDS – AGRICULTURAL PRODUCTS STORES [Adopted 05/05/2010] [Amended 10/18/2023]

An Agricultural Products Store must conform to the following performance standards:

1. An agricultural product store must be associated with and accessory to a Commercial Agriculture, Commercial Animal Husbandry, or Commercial Fishing and Harvesting use.
2. A store must be located on a parcel that is actively used for the Commercial Agriculture and/or Commercial Animal Husbandry use or in the case of Commercial Fishing and Harvesting, be the primary residence of the owner of the commercial operation.



## TION IX. PERFORMANCE STANDARDS.

3. The primary vehicle access to the store must be from a street/road that is classified by the Town as an arterial, collector, or minor collector.
4. An agricultural products store may be a free-standing building or may be part of another building or structure (for example, an area in a barn or house that is used for sales)
5. A free-standing building used for retail sales or the area used for sales in another building is limited to one thousand (1,000) square feet of sales area. An additional outside area of not more than five hundred (500) square feet may be used for the display and/or sales of products. These limits shall not apply to greenhouses or areas for the growing and/or display of nursery stock or other plants for sale as part of the agricultural use.
6. The sale of products may include: a) those grown, raised, caught, harvested or produced by the Commercial Agriculture, Commercial Animal Husbandry or Commercial Fishing and Harvesting use with which it is associated, b) processed products that are made from products grown or raised by the use (for example, cheese or ice cream made from milk, yarn made from wool, processed foods such as apple butter or salsa made from items grown by the use, or baked goods made using items grown by the use), c) agriculture products including processed products that are not produced by the Commercial Agriculture or Commercial Animal Husbandry use with which the store is associated, and d) handmade art and craft products.
7. If the store sells products that are not grown, raised, caught or harvested by the use or made from products grown or raised by the use, at least 51% of the dollar amount of gross retail sales per calendar year must be from products associated with the Commercial Agriculture, Commercial Husbandry or Commercial Fishing and Harvesting use. In January of each year, the owner shall calculate and report to the Code Enforcement Officer the percentage of gross retail sales attributable to off-premises products for the preceding calendar year and, if requested by the Code Enforcement Officer, shall provide documentation of the calculated percentage.
8. The building in which the store is located must meet the front, side, and rear setback requirements for the district in which it is located
9. The store must be located so that it provides appropriate parking and access for customers. Parking must be provided in accordance with the requirements of Section XI. for retail uses.
10. The store may be open for business only when it is selling products that are grown, raised, caught, harvested or produced as part of the Commercial Agriculture, Commercial Animal Husbandry or Commercial Fishing and Harvesting use.
11. The construction of a building or the conversion of an existing building for use as an agricultural products store is subject to minor site plan review. **STAFF -**

## T. PERFORMANCE STANDARDS – BED AND BREAKFASTS [Adopted 05/05/2010]

A Bed and Breakfast (B&B) must conform to the following performance standards:

1. A B&B that is located in a rural or residential zone must have its primary vehicle access from a street/road that is classified by the Town as an arterial, collector, or minor collector. This requirement does not apply to a B&B located in mixed-use or nonresidential zone.
2. The parking for a B&B that is located in a rural or residential zone may not be located in the required front yard.



## SECTION IX. PERFORMANCE STANDARDS.

3. A B&B that is located in a rural or residential zone shall maintain a residential character in the design of the building and site improvements including the location of parking.
4. If the lot on which the B&B is located abuts a lot that is in residential use, a vegetated buffer strip at least fifteen (15) feet in width shall be established and maintained between any parking or service areas and the property line. The buffer strip shall screen the parking and/or service areas from view from the abutting property.
5. The provision of food and beverage service is limited to the guests of the B&B during their stay.
6. The owner or manager of the B&B must reside in a dwelling unit within the B&B during times the B&B is open for business.

### U. PERFORMANCE STANDARDS – COMMERCIAL OUTDOOR RECREATION [Adopted 05/05/2010]

A Commercial Outdoor Recreation use must conform to the following performance standards:

1. The primary recreational activity must occur in the outdoors.
2. Structural development must be limited to facilities and buildings that support the primary recreational activity and shall be the minimum necessary to accommodate the use. Buildings or structures may not be or house the primary recreational activity. Examples of allowed buildings and structures include maintenance and storage buildings, an office related to the use, rest rooms, an equipment rental building, a warming hut or club house, and facilities for the sale of refreshments to people using the facility.
3. All buildings, facilities and areas used for recreation activities must conform to the setbacks for the district in which it is located.
4. The use must provide adequate off-street parking that is appropriate for the anticipated use of the facility and that will prevent the parking of vehicles along public roads.
5. If the use will operate on a regular basis, an improved parking lot must be provided.
6. If the use will operate intermittently or will have increased use on an intermittent basis, parking for these times may be provided in unimproved or field type parking areas.
7. The recreational activity must not create any adverse impacts for abutting properties as a result of noise or odors.

### V. PERFORMANCE STANDARDS – HOME OCCUPATIONS [adopted 05/05/2010]

In those zoning districts where home occupation is allowed as a special exception, the Board of Appeals may issue special exception approval for the establishment of a home occupation. In addition to meeting the standards for special exceptions in Section IV.I.4 of this Ordinance, all home occupations must adhere to the following standards:

1. The occupation or profession shall be carried on wholly within the principal building or within a building accessory thereto.
2. The home occupation shall be clearly incidental and secondary to the use of the dwelling unit for residential purposes.
3. No more than one person who is not a resident of the dwelling unit shall be employed in the home occupation.



## **SECTION XIII. RESIDENTIAL ZONING DISTRICTS**

### **RURAL FARMING DISTRICT RF**

To conserve the integrity and natural qualities of rural open space for the betterment and future of the community and encourage the continuation of agriculture and related activities in these areas of the community. To this end, residential development shall not be in excess of 1 dwelling unit per 2 residential acres.

### **RURAL, FARMING AND MANUFACTURED HOUSING DISTRICT RFM**

To conserve the integrity and natural qualities of rural open space for the betterment and future use of the community, to encourage the continuation of agriculture and related activities and to provide for areas within the community where manufactured housing units can be harmoniously situated on individual lots. To this end, residential development shall not be in excess of 1 dwelling unit per 2 residential acres.

### **RESIDENTIAL DISTRICT R2**

To provide residential areas within the Town of Scarborough of low density in a manner which will promote a wholesome living environment. To this end, residential development shall not exceed 2 dwelling units per net residential acre.

### **RESIDENTIAL DISTRICT R3**

To provide residential areas within the Town of Scarborough of higher density to a manner which will promote a wholesome living environment. To this end, residential development shall not exceed 2 dwelling units per net residential acre in unsewered areas or 3 dwelling units per net residential acre in sewerred areas.

### **RESIDENTIAL DISTRICT R4**

To provide residential areas within the Town of Scarborough of higher density to a manner which will promote a wholesome living environment. To this end, residential development shall not exceed 2 dwelling units per net residential acre in unsewered areas or 4 dwelling units per net residential acre in sewerred areas.

### **RESIDENTIAL DISTRICT R4A.**

To provide residential areas within the Town of Scarborough of higher density in a manner which will promote a wholesome living environment. To this end, residential development shall not exceed 4 dwelling units per net residential acre. All developments in R-4A districts shall be serviced by public sewer and public water supply.

## **A. PERMITTED USES – RESIDENTIAL DISTRICTS**

Permitted use table abbreviations are as follows:

- P – Permitted by Right
- SE – Special Exception Required
- C# – Condition Applies
- CZ – Contract Zone Required
- Blank – Not a Permitted Use



AGRICULTURAL USES	PERFORMANCE STANDARDS APPLY	RF	RFM	R2	R3	R4	R4A
Accessory uses including accessory stables on lots of at least two acres	Section IX.P.	P	CZ	P			
Accessory uses including accessory agricultural activities	Section IX.P.	P	CZ	P	P	P	P
Commercial Agriculture	Section IX.Q.	P	CZ	SE			
Commercial Animal Husbandry	Section IX.Q.	P	CZ				
Agricultural Employee Housing in Conjunction with Commercial Agriculture and/or Commercial Animal Husbandry		SE	SE				
Commercial Stables		P	CZ				
Farm Stand	Section IX.R.	P; SE	CZ	SE			
Agricultural Products Store	Section IX.S.	P; SE	CZ	SE			
Agricultural processing facility with a total of not more than one thousand (1,000) square feet of gross floor area in conjunction with commercial agriculture	Section IX.Q.			SE			
Agricultural processing facility with a total of not more than two thousand (2,000) square feet of gross floor area in conjunction with commercial agriculture and/or animal husbandry	Section IX.Q.	P	CZ				
Agricultural processing facility with a total of more than two thousand (2,000) square feet of gross floor area in conjunction with commercial agriculture and/or animal husbandry	Section IX.Q.	SE	SE				
Forestry		P	CZ				
Wetlands Creation on Previously Excavated Property		CZ	CZ				

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2. A farm stand must be located on a parcel that is actively used for the Commercial Agriculture or Commercial Animal Husbandry use or in the case of Commercial Fishing and Harvesting, be the primary residence of the owner of the commercial operation.
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7. The farm stand must be located on the parcel so that it meets side and rear setback requirements but a free-standing farm stand is not required to meet the front setback requirements.
8. The farm stand must be located so that it provides appropriate parking and access for customers. Customer vehicles must not be required to back out on to a public street.
9. The farm stand may be open for business only when it is selling products that are grown, raised, caught, harvested or produced as part of the Commercial Agriculture or Commercial Animal Husbandry use.
10. A farm stand is not subject to site plan review but does require a permit from the Zoning Administrator.

S. PERFORMANCE STANDARDS – AGRICULTURAL PRODUCTS STORES [Adopted 05/05/2010] [Amended 10/18/2023]

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3. The primary vehicle access to the store must be from a street/road that is classified by the Town as an arterial, collector, or minor collector.
4. An agricultural products store may be a free-standing building or may be part of another building or structure (for example, an area in a barn or house that is used for sales)
5. A free-standing building used for retail sales or the area used for sales in another building is limited to one thousand (1,000) square feet of sales area. An additional outside area of not more than five hundred (500) square feet may be used for the display and/or sales of products. These limits shall not apply to greenhouses or areas for the growing and/or display of nursery stock or other plants for sale as part of the agricultural use.
6. The sale of products may include: a) those grown, raised, caught, harvested or produced by the Commercial Agriculture, Commercial Animal Husbandry or Commercial Fishing and Harvesting use with which it is associated, b) processed products that are made from products grown or raised by the use (for example, cheese or ice cream made from milk, yarn made from wool, processed foods such as apple butter or salsa made from items grown by the use, or baked goods made using items grown by the use), c) agriculture products including processed products that are not produced by the Commercial Agriculture or Commercial Animal Husbandry use with which the store is associated, and d) handmade art and craft products.
7. If the store sells products that are not grown, raised, caught or harvested by the use or made from products grown or raised by the use, at least 51% of the dollar amount of gross retail sales per calendar year must be from products associated with the Commercial Agriculture, Commercial Husbandry or Commercial Fishing and Harvesting use. In January of each year, the owner shall calculate and report to the Code Enforcement Officer the percentage of gross retail sales attributable to off-premises products for the preceding calendar year and, if requested by the Code Enforcement Officer, shall provide documentation of the calculated percentage. **If the agricultural products store will not meet the 51% threshold, a special exception is required. This special exception allowance only applies to properties located in the RF district. All other performance standards herein shall be met.**
8. The building in which the store is located must meet the front, side, and rear setback requirements for the district in which it is located
9. The store must be located so that it provides appropriate parking and access for customers. Parking must be provided in accordance with the requirements of Section XI. for retail uses.
10. The store may be open for business only when it is selling products that are grown, raised, caught, harvested or produced as part of the Commercial Agriculture, Commercial Animal Husbandry or Commercial Fishing and Harvesting use.

11. The construction of a building or the conversion of an existing building for use as an agricultural products store is subject to minor site plan review.

# MEMO

**To:** Ordinance Committee  
**From:** Jami Fitch, Sustainability Manager  
**Date:** September 4, 2024  
**Re:** Ch. 610 Piping Plover Ordinance  
**Encl:** Draft revisions to Ch. 610, stakeholder comment

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## Background

Following the Town Council's initial review of the updated Chapter 610, Piping Plover Ordinance, a group of stakeholders was convened to discuss and refine the proposed changes. The stakeholders included residents of Higgins Beach and Pine Point, volunteer beach monitors, and members of the Dog Owners of Greater Scarborough (DOGS). The stakeholders met several times over the spring of 2024 to revise Chapter 610. The updated ordinance was also reviewed by the Conservation Commission and the Community Services Advisory Board, and their feedback was incorporated into the attached draft.

## Purpose

The revisions to the Piping Plover Ordinance are proposed for the following reasons:

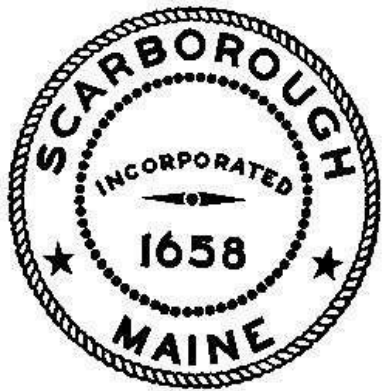
1. Extend protections to endangered least terns, which also nest on Scarborough's beaches.
2. Clarify areas of Scarborough's beaches where these rules apply.
3. Clarify timeframe for when this ordinance is in effect.
4. Update recreational activities prohibited in proximity to shorebird nesting areas to include devices that were not readily used when the ordinance was originally written (e.g., drones, one-wheels, etc.) and to address enforcement gaps noted by volunteer beach monitors.
5. Update penalties for violating the ordinance to be in line with other Scarborough ordinances, including Chapter 604, Animal Control Ordinance.
6. Include addendum for the Higgins Beach Wildlife Management Area at the request of the Maine Department of Inland Fisheries and Wildlife.

**CHAPTER 610**

**TOWN OF SCARBOROUGH**

**PIPING PLOVER AND LEAST**

**TERN ORDINANCE**



Adopted June 6, 2001  
Amended October 2, 2013  
Amended May 7, 2014

## TABLE OF CONTENTS

1. Purpose.....	1
2. Applicability.....	1
3. Definitions.....	1
4. Piping Plover and Least Tern nesting habitat to be identified.....	2
5. Identified Habitat Areas Protected.....	2
6. Relation to State and Federal Laws.....	3
7. Relation to Private Protection Efforts.....	4
8. Enforcement and Penalties.....	4
9. Addendum - Higgins Beach Wildlife Management Area.....	4

**CHAPTER 610**  
**TOWN OF SCARBOROUGH**  
**PIPING PLOVER AND LEAST TERN**  
**PROTECTION ORDINANCE**

**1. Purpose.**

The purpose of this Ordinance is to avoid or minimize adverse effects on Piping Plovers and Least Tern and their young by protecting their nesting, brooding, fledging, roosting and foraging activities on beaches within the Town of Scarborough from April 1<sup>st</sup> through Labor Day, except as specified.

**2. Applicability.**

This ordinance shall apply to Scarborough's public beaches and beaches managed by the Town.

**3. Definitions.**

**Beach:** ~~means a~~ Any area of land covered with sand, pebbles, or small stones at the edge of the ocean beach area within the Town of Scarborough, which is used by the general public.

**Exclosure:** means A structure surrounding and protecting a nest an area from which pedestrians and vehicles animals are excluded by means of symbolic fencing and netting.

**Habitat Areas:**

**Essential and Significant Habitat Area:** Habitat areas currently or historically providing physical or biological features essential to the conservation of an endangered or threatened species and which may require special management considerations.

**Identified Habitat Area:** Habitat areas marked by symbolic or electronic fencing, netting, signs, and/or exclosures.

**Least Tern:** The Atlantic Coast Least Tern (*Sternula antillarum*), identified as an endangered species, as listed under Maine's Endangered Species Act (MESA) of 2003.

**Nesting Activity:** When Piping Plover and Least Tern territorial pairs, nests, or chicks are present.

**Piping Plover:** ~~means the~~ The Atlantic Coast Piping Plover (*Charadrius melodus*), identified as a threatened species pursuant to the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 et seq. and endangered in Maine as listed under MESA of 2003.

**Recreational Activity:**

- a. Any game involving balls, discs, nets in which individuals throw, catch or hit objects (such as volleyball, spike ball, football, frisbee, golf, etc.).
- b. Any individual(s) moving at a pace faster than a walk, such as jogging and running.
- c. Any use of kites, drones, ultralights, parasails, kneeboards or other devices flown manually or remotely powered by wind power, battery, gas or electric motors.

**Commented [JF1]:** Suggested revision from member of the public:  
from April 1<sup>st</sup> through Labor Day when Nesting Activity is occurring. When Nesting Activity is not occurring as verified and determined by the Maine Department of Inland Fisheries and Wildlife (MDIFW), this ordinance is not in effect, except as specified.

Nesting activity varies from year to year and from beach to beach. A set period of time will be easier for the public to follow and easier to enforce. **Town Council should weigh in on this.**

**Commented [JF2]:** Several public comments requesting this be removed. Reason for inclusion: plover chicks are very small and well camouflaged. They move from their nests near the dune to the waterline within hours of hatching. Their only defense mechanism is to freeze if they feel threatened. It's easy to step on a plover chick when moving at a pace faster than a walk.

**Town Council should weigh in on this.**



- d. Any use of wheeled vehicles, such as bicycles, skateboards, sand surfers, or other wheeled recreational devices, excluding non-motorized carts and wagons.

**Owner-Responsible Party of a dog-Pet(or-owner):** ~~means any p~~Person having custody, possession, or control of a ~~dog~~pet.

**Sand surfer-Surfer:** ~~means a r~~Recreational device consisting of a board on wheels attached to a large kite or sail and propelled by wind power.

**Structures:** Large constructions built in or on the sand using marine debris or non-marine materials.

**Symbolic fencingFencing:** ~~means o~~One or two strands of lightweight string, tied between posts to delineate areas where pedestrians, pets, and vehicles should not enter.

**Wrack lineLine:** ~~means t~~The line of dried seaweed, marine vegetation and other debris left on the beach by the action of the tides.

#### **2.4. Piping Plover and Least Tern nesting-Nesting habitat-Habitat to be identifiedIdentified.**

On or before April 1<sup>st</sup> of each year, the Town of Scarborough, in conjunction with the Maine Department of Inland Fisheries and Wildlife (MDIFW), the United States Fish and Wildlife Service (USFWS), and/or the Maine Audubon Society, will identify Piping Plover and Least Tern nesting habitat and will mark or arrange for the marking of such habitat with posts and warning signs.

#### **5. Nests and broodsIdentified Habitat Areas Pprotected.**

When Piping Plover or Least Tern nests are present, the Town of Scarborough, in conjunction with the ~~Maine Department of Inland Fisheries and Wildlife~~MDIFW, the ~~United States Fish and Wildlife Service~~USFWS, and/or the Maine Audubon Society, will create or arrange for the installation of fencing (symbolic or electric) and/or creation of ~~an~~enclosures around such nests in accordance with the guidelines of the ~~United States Fish and Wildlife Service~~USFWS and authorization issued by the ~~Maine Department of Inland Fisheries and Wildlife~~MDIFW. Once such fencing and/or enclosures have been created, the following prohibitions shall apply:

- (1)a. No person shall physically enter into ~~an exelosure~~an Identified Habitat Area, except for wildlife management purposes authorized by the ~~Maine Department of Inland Fisheries and Wildlife~~MDIFW or the ~~United States Fish and Wildlife Service~~USFWS.
- (2)b. No person shall remove or disturb the wrack line located ~~in front of an exelosure~~located within 330 feet of a Piping Plover or Least Tern brooding siteIdentified Habitat Area, unless such activity is approved by the ~~Maine Department of Inland Fisheries~~MDIFW and ~~Wildlife or the United States Fish and Wildlife Service~~USFWS.
- (3)c. No ~~owner-responsible party~~ of a ~~dog-pet~~ shall cause or permit that ~~dog-pet~~ to enter the ~~exelosure~~Identified Habitat Area or shall fail to prevent that ~~dog-pet~~ from entering the ~~exelosure~~Identified Habitat Area. All dogs shall be leashed-managed in accordance with the Animal Control Ordinance, ~~Chapter Ch.~~ 604.

(4)d. No person shall drive or operate a vehicle, including a non-motorized vehicle, on or above the wrack line. (ai) Non-emergency activities such as removal of dead or injured sea mammals shall require at least two responders, one of which will act as the spotter to and from the scene. (bii) All emergency response personnel will account for and avoid nesting sites and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. However, it is the policy of the Town of Scarborough that such essential vehicles will avoid driving on the wrack line where possible and will avoid frequent driving on the beach in a way which would create deep ruts that could impede movement of Piping Plover and Least Tern chicks.

(5)e. No person shall engage in a recreational activity, as specified in Section 3, Definitions, recreational activity, a) and b) within 100 feet of the Identified Habitat Area between April 1<sup>st</sup> through Labor Day, kite flying, kitesurfing or parasailing

f. No person shall engage in a recreational activity, as specified in Section 3, Definitions, recreational activity c) and d) within 650 feet of the Identified Habitat Area between April 1<sup>st</sup> through Labor Day, within 650 feet of nesting or territorial adult or unfledged juvenile Piping Plovers between April 1<sup>st</sup> and August 31<sup>st</sup>.

(6)g. No person shall discharge or cause the discharge of any fireworks on any beach on which Piping Plovers or Least Terns are nesting from April 1<sup>st</sup> until all chicks are fledged. See Ch. 608A, Consumer Fireworks Ordinance, for more information.

h. No person shall discharge or cause the discharge of any fireworks in the Higgins Beach Community and vicinity on the ocean side of Spurwink Road beginning at the intersection of Black Point Road and Spurwink Road to the Cape Elizabeth line, per Ch. 608A, Consumer Fireworks Ordinance.

(7)i. No person shall build or attempt to build any fires on a beach unless authorized to do so in writing by the Scarborough Community Services Department or owner of the beach property, and then only after obtaining any permits required from the Scarborough Fire Department, as per Ch. 612, Ordinance Creating Rules and Regulations for Use of Parks and Recreational Facilities. No person shall utilize a sand surfer within 650 feet of nesting or territorial adult or unfledged juvenile Piping Plovers between April 1<sup>st</sup> and August 31<sup>st</sup>.

j. Holes dug within 330 feet of the Identified Habitat Area must not be left unattended and must be filled in before leaving the beach during the period when unfledged Piping Plover and Least Tern chicks are present.

k. No person shall build any structure, as specified in Section 3, Definitions, within 330 feet of the Piping Plover and Least Tern Identified Habitat Area.

#### **5. Enforcement and penalties.**

Any person who violates any provision of this Ordinance commits a civil violation for which a civil penalty of no less than \$50.00 and no greater than \$250.00 shall be imposed. This Ordinance may be enforced by any officer of the Scarborough Police Department.

#### **6. Relation to state-State and federal-Federal lawsLaws.**

This Ordinance is intended to be consistent with state and federal protections of Piping Plovers, Least Terns, and Piping Plover habitat ~~their habitat~~, including the Endangered Species Act (ESA) of 1973 that provides a framework to conserve and protect endangered and threatened species

and their habitats both domestically and abroad. In the event of any inconsistency between this Ordinance and state or federal laws or regulations, the more stringent provisions shall ~~control~~ prevail.

**7. ~~Relation to private~~ Private ~~protection~~ Protection effortsEfforts.**

This Ordinance is not intended to supersede or displace any efforts or activities of private individuals or organizations or any protections afforded to Piping Plovers and Least Terns and their habitat by deed restrictions, conservation easements, and other types of private covenants. To the extent any such private covenants are more restrictive than the provisions of this Ordinance, this Ordinance does not authorize any departure from the requirements of such covenants.

**8. Enforcement and Penalties.**

Any person who violates any provision of this Ordinance commits a civil violation for which a civil penalty of no less than \$100.00 and no greater than \$500.00 shall be imposed. This Ordinance may be enforced by any officer of the Scarborough Police Department.

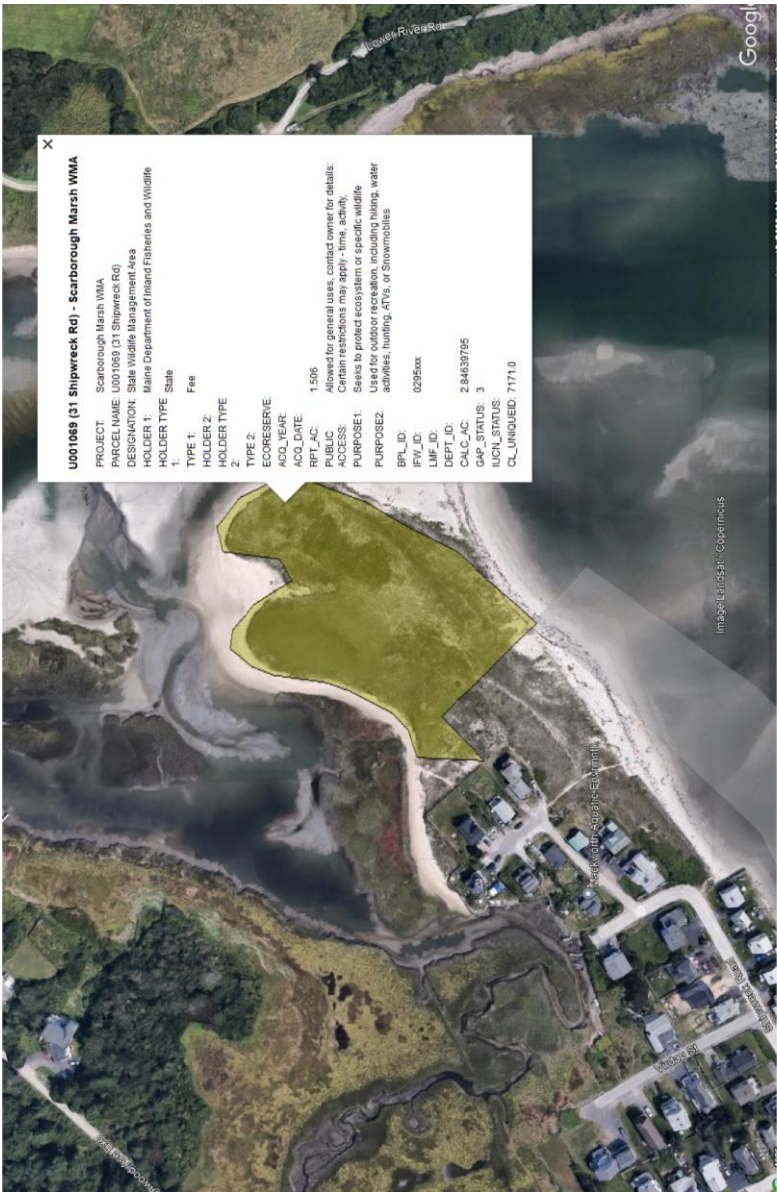
(Note: Federal Endangered Species Act [ESA] violations related to Piping Plovers and Least Terns are specified under ESA Section 9 [Prohibited Acts] and are enforced as per ESA Section 11 [Penalties and Enforcement of the Endangered Species Act]. These violations are enforced by federal officers.)

**9. Addendum - Higgins Beach Wildlife Management Area.**

The Higgins Beach Wildlife Management Area (Map U001069) Figure 1., is owned by the State of Maine and is a subunit of the Scarborough Marsh Wildlife Management Area and extends from the Spurwink River approximately 150 yards to the southwest of the point to the low water mark. This area is designated Essential and Significant Wildlife Habitat and protected under the MESA, which is regulated by MDIFW (L.D. 1246, 2023).

The area outlined, is also protected under the Natural Resources Protection Act and regulated by the Maine Department of Environmental Protection Act with input from MDIFW biologists. Significant Wildlife Habitat has been identified in this area for shorebird nesting, feeding and staging. Symbolic fencing on MDIFW-owned property will remain in place into October to protect migrating shorebirds.

Figure 1. Higgins Beach Wildlife Management Area Map



*Comment from Elaine Richer, Pine Point resident and member of stakeholder group that convened in spring 2024*

I served on the Ordinance sub-committee regarding updating the Piping Plover ordinance. The committee worked very well together. The final draft will work very well for protecting the Piping Plovers at Higgins Beach, which is a small beach within the confines of Scarborough. One of the reasons I wanted to be on this committee was to bring an awareness of Piping Plover Ordinances and Pine Point Beach which is not self-contained and spills into Old Orchard Beach and then into Saco.

There is no line on the beach indicating to beach goers that they have crossed over into another town and another county. Therefore, kite surfers, parasailers, runners, and joggers starting in Old Orchard and moving into Pine Point are also unaware that they may be violating the ordinances regarding the piping plover. I think educating the public and enforcement on the above activities is going to be a problem within the 2.5-mile beach area because of lack of manpower and the size of the beach.

I do not have any suggestions for the ordinance committee or the council. Just note that rules and ordinances don't always follow the adage: "One size fits all".

# MEMO

**To: Ordinance Committee**

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

**Date: September 3, 2024**

**Re: Short Term Rental Registration Ordinance**

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## BACKGROUND

Last summer the Town began to review and discuss short term rental ordinances, neighboring communities and trends in regulations. The ordinance Committee discussed short term rentals at their July 13, 2023, and September 14, 2023, meetings.

On November 2, 2023, Councilors Sither and McGee held a Council Corner live that was attended by over 20 residents and business owners. At that meeting the general feedback included an openness to a registration and inspection process, but concern for placing any limits on short term rentals. On June 26, 2024 Town Council held a workshop and discussed a proposal for a registration process moving forward.

The attached draft is a registration process proposal that includes an initial inspection followed by additional inspections every 3-5 years with a focus on life and safety concerns. The proposal timeline would allow for approval this year and implementation in January to coincide with the rollout of Planning and Codes software. The ordinance would be administered by the Town Clerk's office with the inspections performed by Public Safety and Codes.

## PROPOSED TIMELINE

- Public Outreach Begins: October 2024
- Ordinance Committee Second Review: October 9, 2024
- Town Council First Reading: November 6, 2024
- Town Council Public Hearing: November 20, 2024
- Town Council Second Reading and Adoption: December 4, 2024
- Implementation: January 1, 2025

## Planning & Code Enforcement

## ATTACHMENTS

1. Draft Registration Ordinance
2. STR Workshop Presentation



## DRAFT 9.11.24 ORDINANCE COMMITTEE REVIEW

### REGISTRATION REQUIRED: SHORT-TERM RENTAL ORDINANCE

#### A. Purpose

The purpose of this ordinance is to authorize and require the registration of the use of a legally existing dwelling unit for the accommodation of short-term guests, for compensation, for periods of less than 28 consecutive days. This ordinance is intended to provide a registration program that enables the Town to monitor and track short-term rentals within its borders.

#### B. Applicability and Permitted Short-term Rentals

Effective January 1, 2025, no person shall advertise, operate, or rent a short-term rental without first registering the short-term rental unit(s) with the Town of Scarborough.

Short-term rentals are not permitted in accessory dwelling units, nor in the single-family dwelling on the same lot as an accessory dwelling unit.

Hotels, motels, bed and breakfasts and lodging houses are exempt from the registration and other requirements of this chapter.

#### C. Definitions

Section VI Definitions of the Town of Scarborough Zoning Ordinance shall apply in addition to the following:

**Advertising:** Any form of communication for marketing that is used to encourage, persuade, or manipulate viewers, readers, or listeners into contracting for goods and/or services as may be viewed through various media, including but not limited to newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites, social media or text messages.

**Non-Owner Occupied:** A dwelling unit that is not occupied by its owner when any part of the dwelling unit is rented as a short-term rental.

**Owner-Occupied:** A dwelling unit that is occupied by such owner when any part of the dwelling unit is rented as a short-term rental.

**Primary Residence:** The dwelling unit in which the owner resides as their legal residence for more than one half of the year (183 days) and registers as their address for tax and government identification purposes.

**Short-term Rental:** The use, control, management or operation of a legally existing residential dwelling unit offered for rent for transient occupancy for dwelling, sleeping or lodging purposes by short-term rental guests for a tenancy of less than 28 consecutive days, for compensation, directly or indirectly, excluding motels, hotels, bed-and-breakfasts, inns, seasonal rental accommodation complexes, and residential rental accommodations.



**Short-Term Rental Guest:** Any person who rents, registrations, occupies or has the right to occupy a dwelling unit for less than 28 consecutive days.

#### **D. Registration Process**

Every short-term rental shall be registered with the Town on an annual basis. Legally existing residential dwelling units may be used as short-term rentals upon the issuance of a short-term rental registration for the premises in accordance with the requirements of this ordinance and Chapter 405 Zoning Ordinance.

Short-term rental registration applications shall be submitted to the Town Clerk. Applications for registrations for the upcoming calendar year may be submitted beginning in November of the previous registration year. The Town Clerk, or the Town Clerk's designee, shall review all applications for completeness and accuracy and in the order that they were received.

Short-term rental registrations may not be granted to a renter, lessee, or any other party who is not the owner of the proposed short-term rental unit(s).

Registrations completed under this chapter are not transferable to a new owner. Any change in ownership shall require a new registration.

Registrations are limited to the dwelling unit for which they are issued and shall not be transferable to a different dwelling unit.

Registrations shall include a non-refundable registration fee for each short-term rental as described on a fee schedule established by Town Council. Said fee schedule may be amended by Council order from time to time.

The Town Clerk shall provide a short-term rental application to be completed by the applicant and submitted to the Town Clerk accompanied by the short-term rental registration fee. The short-term rental application shall include a nonexclusive checklist of code requirements that the property owner shall demonstrate compliance with.

A complete registration and /or renewal application shall require the following information from the applicant to be considered:

- The name of all owners of the short-term rental and contact information, including the owners' addresses, telephone numbers, and email addresses;
- The street address and map/lot number of the short-term rental property;
- Type of Short-term Rental/property;
  - Single-family detached dwelling
  - Two-family or multi-family dwelling
- Whether the entire dwelling unit or only a portion of the dwelling unit is being rented as a short-term rental;
- If the short-term rental is in a dwelling unit within a two-family or multi-family dwelling, whether the owner occupies another dwelling unit in the building when any part of the building is rented as a short-term rental;

- Whether the short-term rental is owner-occupied, tenant-occupied, or non-owner-occupied;
- Whether the short-term rental is the owner's primary residence;
- Emergency Contact. At the time of registration, the owner must identify an emergency contact person, who may be the owner. The emergency contact person(s) must be able to respond within sixty minutes to complaints regarding the condition, safety, or operation of the short-term rental, or the conduct of guests; and
- Certificate of Insurance. At the time of registration, the owner must provide a certificate of insurance that expressly acknowledges that said property may be used for short-term rental business activity and evidencing (a) property insurance and (b) general liability insurance appropriate to cover the rental use of said property in the aggregate of not less than \$1 million or proof that the Owner conducts rental transactions for said property through a hosting platform that provides equal or greater coverage. Any such hosting platform-provided insurance carrier shall defend and indemnify the owner, as additional named insured, and any user in the building for any bodily injury and property damage arising from the rental. Once registered, the owner shall maintain the required insurances, or such greater amount as otherwise required by law, throughout the term of the registration.

It is the responsibility of the owner to make sure that the information required under this Ordinance is kept current at all times and to notify the Town of any changes.

#### **E. Approval Authority**

The Town Clerk shall have the authority to issue a short-term rental registration. The Town Clerk, or the Town Clerk's designee, shall determine if the application has been properly completed before any registration is issued.

A registration shall be granted within 10 business days if the property in question complies with all Federal, State and local laws and the applicant demonstrates that the premises will be conducted in a healthful and sanitary manner so as not to jeopardize the public health, safety and welfare and that the applicant is not delinquent in the payment of any taxes or fees owed to the Town of Scarborough.

#### **F. Registration Requirements: General Standards**

The short-term rental registration shall be displayed at all times in a conspicuous place in the interior of the short-term rental that identifies the short-term rental registration number, and the name, address, phone number(s), and email address of the owner of the short-term rental, and/or the owner's local contact person.

The short-term rental owner must a) maintain accurate, up-to-date records of all rental transactions involving the short-term rental, including the number of tenants and the length of their stays, and upcoming reservations; and b) present said information to Town inspection officials upon request. Failure of the short-term rental owner to provide

this information within ten business days of a Town request for the same shall be considered a violation of this section.

#### **G. Registration Requirements: Code Compliance**

An applicant's property, without limitation, shall comply with the following building safety requirements.

Smoke alarms shall be installed in the following locations:

- In each bedroom
- Outside each separate sleeping area in the immediate vicinity of the bedrooms.
- On each additional story of the dwelling, including basements and habitable attics.

If a house has an attached garage or a fuel-fired appliance, a carbon monoxide detector is required.

At least one portable fire extinguisher shall be mounted in a prominent location. One size/type 2/A is required or two size/type 1/A extinguishers.

The applicant shall provide floor plans of the dwelling unit that shows the location of the alarms and fire extinguisher(s).

A building evacuation plan shall be prominently posted in the Short-term Rental property during the rental period.

#### **H. Registration Requirements: Inspections Required**

Anytime that a short-term rental application is submitted for a property, the short-term rental applicant shall certify on the short-term rental application that the proposed short-term rental property complies with the short-term rental standards above, and with Building Code requirements.

The Code Enforcement Officer shall inspect the premises within 12 months of the initial registration and once every three-five years thereafter, to determine compliance with the short-term standards above. If the short-term rental ownership changes, the inspection timing shall start over from the initial timing.

#### **I. Registration Requirements: Occupancy**

The maximum tenant occupancy of a short-term rental shall be limited to no more than two tenants per bedroom, plus two additional tenants total for the entire dwelling unit.

## **J. Registration Requirements: Parking**

The applicant shall include a depiction designating parking spaces that will be provided for tenants and guests on the same lot where the short-term rental is located.

Guest parking at the short-term rental shall occur in parking spaces designated by the applicant, and the number of guest vehicles allowed at the short-term rental shall be limited to the number of on-site parking spaces designated by the applicant.

Garage parking spaces not allowed for tenant use shall not be used to meet the short-term rental parking requirement. Tenants and guests of short-term rentals are prohibited from parking in a manner that impedes access by emergency vehicles to the property or any other dwelling in the neighborhood.

On street parking by Short-term Rental tenants or guests is prohibited per Chapter 601 – the Town of Scarborough Traffic Ordinance.

## **K. Registration Requirements: Refuse and Sanitary Waste**

The applicant shall submit information demonstrating adequate sanitary waste disposal is available in compliance with the Maine Subsurface Wastewater Disposal Rules or that the property is served by public sewer.

All refuse associated with the short-term rental shall be collected, stored, and transported by the short-term rental tenant in such a manner as to protect against odor, infestation of insects and/or rodents and any other nuisance condition or conditions which are inconsistent with the health, safety, and welfare of the patrons and the general public.

## **L. Registration Requirements: Good Neighbor Ordinance**

All short-term rental tenants and owners shall adhere to the Town of Scarborough Good Neighbor Ordinance standards.

## **M. Registration Requirements: Violations and Penalties**

Violations of this chapter include, but are not limited to, the following:

- Providing false or misleading information on an application, or renewal application, for a short-term rental registration;
- Failure to provide the registration records as provided in this chapter within five business days of a Town request for such records;
- Failure to comply with the parking provisions of this chapter;
- Failure to comply with the rental occupancy limits of this chapter;
- Failure to acquire and/or display the required short-term rental registration number;
- Violation of any short-term rental registration certification, condition, or criteria;
- Violation of any statute, ordinance, or regulation applicable to the short-term rental property.

Violations of this chapter may also be subject to fines and penalties as set forth in this section and in a penalty, schedule established by the Town Council. Each day of a violation shall constitute a separate violation.

For the violation of operating and/or advertising the rental of a short-term rental without a valid registration, the violator may be penalized with a per day fine of \$100 for the first offense and an additional per day fine of \$150 for each additional offense, to be recovered upon complaint to Maine District Court or Superior Court, for use of the Town.

For any other violation of this chapter, the violator may be penalized with a fine of \$500 per day for each such violation, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the Town.

In addition to the penalties established in the paragraph above, the Town may institute or cause to be instituted any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this chapter, including but not limited to suspension or revocation or non-renewal of a registration in any court action, the Town may seek injunctive relief in addition to or instead of fines/penalties. The Town shall be entitled to recover its costs of enforcement, including its reasonable attorneys' fees.

All violations shall be reported to and validated by the Code Enforcement Officer .

#### **N. Suspension and Revocation of Permit**

In addition to the provisions above, a permit for a short-term rental may be suspended or revoked if the Code Enforcement Officer determines that three or more substantiated complaints regarding short-term rentals of a property have been made in a three (3)-year period. The Police Department may provide a report of conditions observed in plain sight to the Code Enforcement Officer, but enforcement of the Ordinance shall remain with the Code Enforcement Officer.

**Complaint Process General.** Any individual or town official may file and/or initiate a complaint against a short-term rental permit holder. If the Police Department or the Code Enforcement Officer receives a complaint, they shall visit the property. The Police Department shall generate a report of the facts its officers have observed upon a visit, and statements made to them regarding the short-term rental. The Police Department shall then forward the report to the Code Enforcement Officer.

When the Code Enforcement Officer receives a report from the Police Department, or the Code Enforcement Officer has responded to a complaint or independently investigated, the Code Enforcement Officer shall inspect the property and shall collect information related to the complaint, including notifying the property owner and requesting information regarding the complaint.

Within five days of receiving a Police Report or complaint, the Code Enforcement Officer shall determine if the complaint is substantiated. A complaint is substantiated when the Code Enforcement Officer concludes that one or more violations of the short-term rental provisions occurred.

**First Substantiated Complaint.** Once the Code Enforcement Officer has made a finding of a substantiated complaint, the Code Enforcement Officer shall notify the property owner in writing.

The notification shall require the property owner to meet with the Code Enforcement Officer within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Code Enforcement Officer, to identify ways in which the violation(s) will be corrected.

The owner will agree to take all necessary measures to correct the violation(s), which measures shall be memorialized in a written agreement at the conclusion of the meeting and shall be fully implemented within one (1) week of said meeting unless another date is agreed to by the Code Enforcement Officer.

Failure of the property owner to enter into such an agreement at the conclusion of the meeting will be deemed a second violation of the short-term rental provisions. In addition, the Code Enforcement Officer may suspend the short-term rental permit for a term not to exceed thirty (30) days.

**Second Substantiated Complaint.** Once the Code Enforcement Officer has made a finding of two (2) substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that the short-term rental permit shall be suspended for the remainder of the permit year but not less than six (6) months.

When less than six (6) month remains in the calendar year, no short-term rental permit may be submitted in the next calendar year until six (6) months after the second substantiated complaint.

The notification shall require the property owner to meet with the Code Enforcement Officer within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Code Enforcement Officer, to identify ways in which the violation(s) will be corrected. The owner will agree to take all necessary measures to correct the violation(s), which measures shall be memorialized in a written agreement at the conclusion of the meeting and shall be fully implemented within one (1) week of said meeting unless another date is agreed to by the Code Enforcement Officer. Failure of the property owner to enter into such an agreement at the conclusion of the meeting will be deemed a violation of the Short-term Rental provisions.

**Third Substantiated Complaint.** Once the Code Enforcement Officer has made a finding of three (3) substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that the Short-term Rental permit has been revoked for three (3) years.

**Appeal.** An appeal to the Zoning Board of Appeals as an Administrative Appeal may be taken by any person aggrieved by a determination of the Code Enforcement Officer.



# Short Term Rentals

Town Council Workshop

June 26, 2024



# Discussion Recap

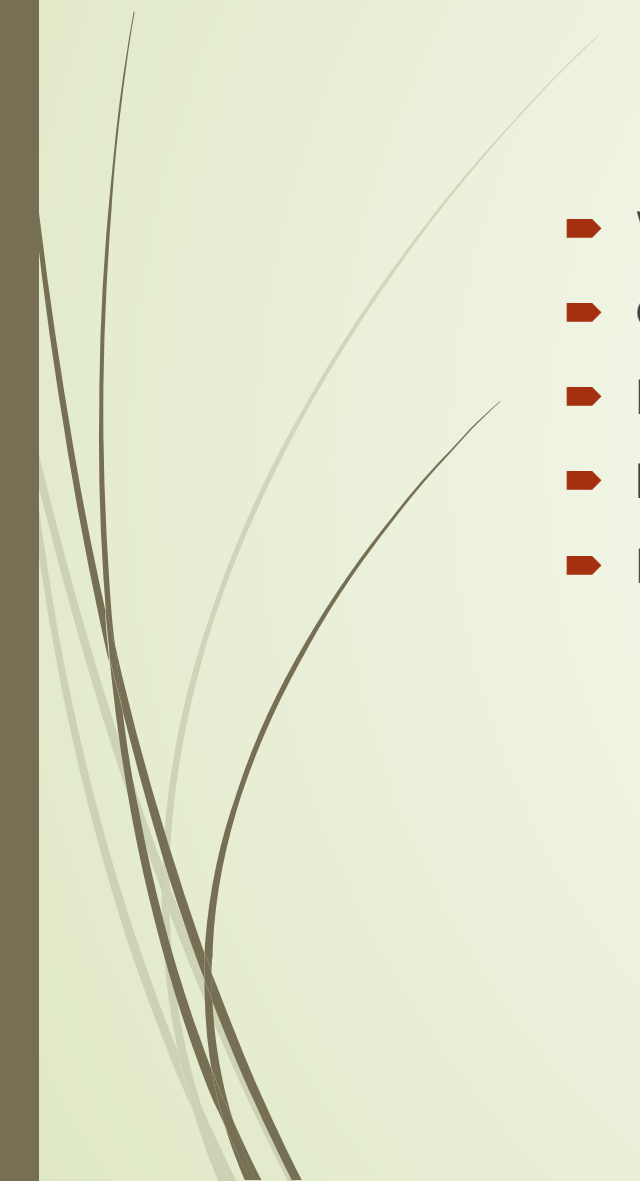


- **July 13, 2023:** Ordinance Committee reviewed short term rentals
- **September 14, 2023:** Ordinance Committee reviewed short term rentals
- **November 2, 2023:** Council Corner Live on short term rentals
  - Feedback included – Open to registration and inspection process, not open to limits on location or caps
- **June 26, 2024:** Short Term Rentals Town Council Workshop





# Short Term Rental Overview

- What are short term rentals (STR's) - Terms & Definitions
  - Goal Discussion – Why Regulate?
  - How to Regulate – Options – Considerations (Neighbor Communities)
  - Impacts – Pros & Cons
  - Next Steps
- 

# What is a Short Term Rental (STR)?

Residential (or accessory) unit rented for less than 30 days/nights

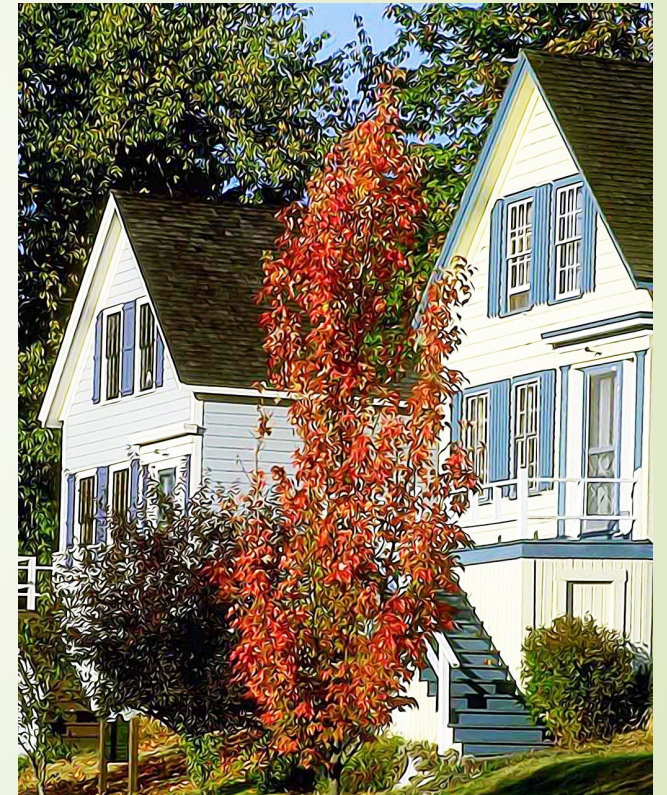
- **Primary Residence Hosted** - a dwelling unit, or portion thereof, that is the primary residence of the property owner or on the owner's primary residence property owner lives on site throughout the hosting period (ADU or extra room)
- **Primary Residence Unhosted** - property owner does not live on site throughout the hosting period
- **Non-primary Residence Rental** - an entire dwelling unit that is not the primary residence of the property owner

\*\*Excludes hotels, bed and breakfast, and recreational lodging facilities



# Step One – Define Goals of the STR Ordinance

- Protect Neighborhoods
  - Noise
  - Traffic
  - Character
  - Safety
- Increase Tourism Opportunities
- Create Accountability – Licensing/Permitting/Registration
- Safety – Inspections
- Prevent Proliferation of Corporate Investment
- Protect Housing Stock
- Create Penalties for Violations





# Regulation Types

- ▶ Registration (Portland) – requires short-term rental units to be registered annually
- ▶ License (Kennebunkport) – issues a specific number of licenses per year and requires annual renewal





# Potential Considerations....

- 
- Zoning Compliance
  - Ownership Verification (only one permitted or many)
  - Tax Compliance
  - Occupancy levels
  - Parking Requirements
  - Fees and how to use revenue
  - Insurance & Liability
  - Advertising – Signage
  - Code Inspections
    - Water and septic
    - Electric
    - Pool Inspections
  - Safety Inspections
    - Pets
    - Carbon monoxide
  - Snow Removal
  - Trash Service
  - Noise
  - Violations and Penalties



# Town Staff Involved

- Town Clerk
  - Assessing
  - Public Safety
  - Code Enforcement
  - GIS
  - Others...
- 



# Associated Costs & Benefits...

- 
- Implementation
  - Initial Inspections and Registration/Licensing
  - On-going Tracking
  - Annual Inspections
  - Annual Registration/Licensing
  - Annual License Fee
  - Protect Neighborhoods



# Existing Regulations

- **Accessory Unit – All zones allowing residential**
  - Does not allow SHORT term rentals:
  - Seasonal (3 months) ok – but must be longer than 28 continuous days
- **Bed and Breakfast – RF, Higgins, B1, TVC2 and TVC3**
  - No more than 6 guest rooms with lodging, food and beverage service
  - Contains a dwelling unit that is occupied by the owner or manager
  - No more than 28 days
- **Lodging House – B2 and B3**
  - 3 or more rooms are rented for living accommodations and no board
- **Hotel/Motel – Higgins, TVC, TVC2, TVC3, HP, CPD, B2, B3, BOR**
  - Six or more guest rooms
  - No more than 186 days





# Communities Reviewed



- Bar Harbor - 11/1/2021
- Cape Elizabeth – 7/1/2021
- Falmouth – 1/1/2022
- Freeport – 7/1/2021
- Kennebunkport
- Kittery – 8/6/2020
- Saco - NA
- South Portland – 1/1/2019



# Decisions – Who Can Rent

- Primary Residence Only
- On-Site Owner or Operator - All
- Owner Occupied or Corporate – All



# Decisions - Timeframes

- Minimum nights (greater than 1) – Bar Harbor, Saco, South Portland (non-hosted)
- 1 rental per 7 days, or 2 per seven days – Cape Elizabeth
- No minimum nights – All others
- Upper limits – 28-30 days for all, except Saco – 4 months



# Decisions – Where & When

- Town wide – Falmouth, Freeport, Kittery, South Portland
- Location Based
  - Specific Zoning Districts – Bar Harbor, Cape Elizabeth,
  - Specify Areas – Saco, Kennebunkport (exempts Goose Rocks)
- No Limit – Falmouth, Cape Elizabeth, South Portland, Saco
- Cap - max number per year – Bar Harbor, Kittery, Freeport, Kittery
- Time – Seasonal only or all year - NA
- Allow/prohibit non-permanent structures such as tents and recreational vehicles - NONE



# Decisions - Inspections Required

- None – Falmouth, Kittery
- Self Inspection Only – Freeport, South Portland (hosted)
- Required at Initial – Bar Harbor, Cape Elizabeth, Kennebunkport, Saco, South Portland (non-hosted)
- Every 3 years – Bar Harbor
- Every 5 years – Cape Elizabeth, Kennebunkport, Saco



# Decisions – Fees and Violations

- Fees Ranges - \$50 - \$500
- Bar Harbor - \$275
- Cape Elizabeth - \$250 existing, \$500 new
- Falmouth - \$300
- Freeport - \$100
- Kennebunkport – NA
- Kittery - \$50 owner occupied, \$100 non-owner occupied
- Saco - Varies, \$100 renewals
- South Portland - \$200 hosted, \$400 non-hosted
- Violations - \$100 - \$1,500



# Decisions – Administration

- Annual Renewal with Deadlines – Bar Harbor, Cape Elizabeth, Falmouth, Freeport, Kennebunkport, Kittery, Saco
- Annual Rolling Renewal – South Portland
- Town Clerk – Falmouth, Freeport, Kennebunkport, South Portland
- Code Enforcement – Bar Harbor, Cape Elizabeth, Kittery, Saco
- Approval Authority, Staff – All





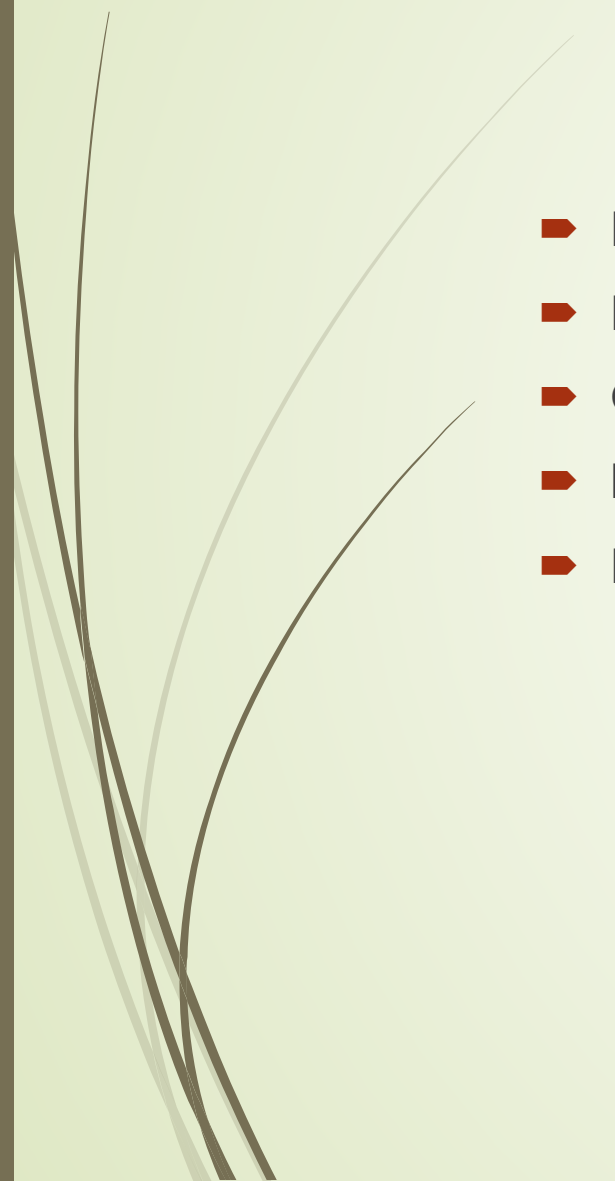
# Staff Recommendations

- Annual Registration Process – Utilizing the new Code software (January 1, 2025)
- Initial inspections required –
  - Allow 6-12 months to complete after registering (life and safety)
- Generally allow where residential uses are permitted with no caps
- Define short term as under 30 days
- Ongoing Inspections – every 3-5 years or when property changes hands
- Annual fees - \$100 - \$200





# Next Steps

- Define Council Goals for a Short Term Rental Ordinance
  - Draft Ordinance
  - Committee Review and/or Public Process
  - Implementation Plan
  - Public Outreach
- 



# Questions and Discussion