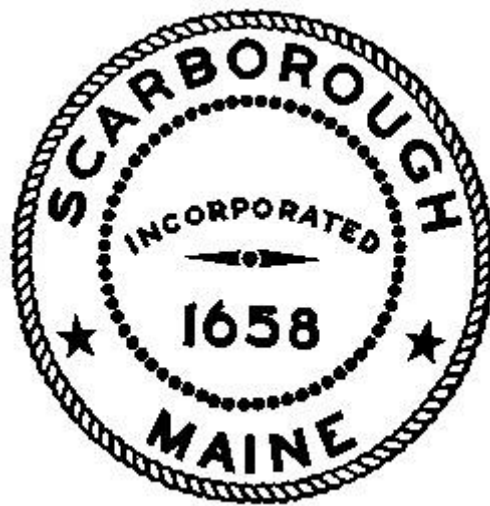


**CHAPTER 610**

**TOWN OF SCARBOROUGH**

**PIPING PLOVER AND LEAST TERN**

**ORDINANCE**



Adopted June 6, 2001  
Amended October 2, 2013  
Amended May 7, 2014  
Amended November 6, 2024

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**CHAPTER 610  
TOWN OF SCARBOROUGH  
PIPING PLOVER AND LEST 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 1st through Labor Day when nesting activity is occurring, except as specified. [Amended 11-06-2024]

**2. Applicability.**

This ordinance shall apply to Scarborough’s public beaches and beaches managed by the Town. [Adopted 11-06-2024]

**3. Definitions.**

**Beach:** Any area of land covered with sand, pebbles, or small stones at the edge of the ocean within the Town of Scarborough, which is used by the general public. [Amended 11-06-2024]

**Exclosure:** A structure surrounding and protecting a nest from pedestrians and animals by means of fencing and netting. [Amended 11-06-2024]

**Habitat Areas:** [Adopted 11-06-2024]

**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. [Adopted 11-06-2024]

**Nesting Activity:** When Piping Plover and Least Tern territorial pairs, nests, or chicks are present. [Adopted 11-06-2024]

**Piping Plover:** 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. [Amended 11-06-2024]

**Recreational Activity:** [Adopted 11-06-2024]

- 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 use of kites, drones, ultralights, parasails, kneeboards or other devices flown manually or remotely powered by wind power, battery, gas or electric motors.
- c. Any use of wheeled vehicles, such as bicycles, skateboards, sand surfers, or other wheeled recreational devices, excluding non-motorized carts and wagons.

**Responsible Party of a Pet:** Person having custody, possession, or control of a pet. [Amended 11-06-2024]

**Sand Surfer:** Recreational device consisting of a board on wheels attached to a large kite or sail and propelled by wind power. [Amended 11-06-2024]

**Symbolic Fencing:** One or two strands of lightweight string, tied between posts to delineate areas where pedestrians, pets, and vehicles should not enter. [Amended 11-06-2024]

**Wrack Line:** The line of dried seaweed, marine vegetation and other debris left on the beach by the action of the tides. [Amended 11-06-2024]

**4. Piping Plover and Least Tern Nesting Habitat to be Identified.** [Amended 11-06-2024]

On or before April 1st 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. Identified Habitat Areas Protected.** [Amended 11-06-2024]

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

- a. No person shall physically enter into an Identified Habitat Area, except for wildlife management purposes authorized by the MDIFW or the USFWS.
- b. No person shall remove or disturb the wrack line located within 330 feet of a Piping Plover or Least Tern Identified Habitat Area, unless such activity is approved by the MDIFW and USFWS.
- c. No responsible party of a pet shall cause or permit that pet to enter the Identified Habitat Area or shall fail to prevent that pet from entering the Identified Habitat Area. All dogs shall be managed in accordance with the Animal Control Ordinance, Ch. 604.
- d. No person shall drive or operate a vehicle, including a non-motorized vehicle, on or above the wrack line. (i) 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. (ii) 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.
- e. No person shall engage in a recreational activity, as specified in Section 3, Definitions, recreational activity, a) within 100 feet of the Identified Habitat
- f. No person shall engage in a recreational activity, as specified in Section 3, Definitions, recreational activity b) and c) within 650 feet of the Identified Habitat Area,
- 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 1st 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.

- 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.
- 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.

**6. Relation to State and Federal Laws. [Amended 11-06-2024]**

This Ordinance is intended to be consistent with state and federal protections of Piping Plovers, Least Terns, and 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 prevail.

**7. Relation to Private Protection Efforts. [Amended 11-06-2024]**

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. [Adopted 11-06-2024]**

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. [Adopted 11-06-2024]**

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: [Adopted 11-06-2024]

