

**MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 22, 2025
HYBRID REGULAR MEETING – 7:00 P.M.**

Item 1. Call to Order. Council Chair Sither called the regular meeting of the Scarborough Town Council to order at 7:01 p.m.

Item 2. Pledge of Allegiance.

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

Councilor Scott W. Doherty	Councilor Cory R. Fellows
Councilor Donald W. Cushing, Jr.	Councilor William J. Donovan
Councilor Karin B. Shupe	Councilor Jonathan E. Anderson - Vice Chair
Council Chair April V. Sither	

Item 4. General Public Comments. The following public comment was made:

- Nina McKee of Black Point Road spoke in regards to spoking local government and thank everyone for being here.

Item 5. Minutes: January 8, 2025 - Town Council Meeting. Motion by Councilor Anderson, seconded by Councilor Fellows, to move approval of the minutes from the January 8, 2025, Town Council meeting, as written.

Vote: 7 Yeas. Motion Passes.

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.

- **Presentation from the Maine Law Enforcement Accreditation Program to formally recognize the Scarborough Police Department upon earning their accreditation.** John Kilbride, Falmouth Police Chief and the Treasurer of the Maine Chiefs if Police Association, gave a summary of this recognition then presented the Scarborough Police Department with its Accreditation Certification. Police Chief, Mark Holmquist, gave a summary on the process that lead to this recognition and thanked everyone involved in making this accreditation happen.

Thomas J. Hall, Town Manager, gave the following updates:

- **Eastern Trail- Close The Gap** -
 - DEP/ACOE Permits forthcoming
 - Bid Document Complete
 - Construction Services Contract executed
- **Black Point Road Repair** -
 - Finalizing Design
 - Cost Estimate of \$2,922,835 - within original estimate to FEMA
 - Coordinating logistics with abutters
 - Local Match of 10%- can be satisfied with in-kind

- **Transportation Grants** -
 - Route One Resiliency Project
 - USDOT “Protect” Grant - February 20th deadline
 - Town Council to authorize submission of grant - February 5th
 - 5% Local match will be required - \$880K
 - Payne Road Corridor
 - USDOT “Raise” Grant - January 31st deadline
 - Collaboration with The Downs
 - 20% Local match will be required - \$4M
- **GPCOG- Chairs in a Circle** - January 30th from 5-7 PM
 - Property Tax Theme
 - Supporting the conversation
- **Council Goals** -
 - January 25th - GPCOG to facilitate
 - Senior Staff/Town Council Workshop January 23rd
- **Transit** -
 - Meeting with METRO to discuss possible partnership
- **Quarterly Financial Report - Norman Kildow, Finance Director.** Norman Kildow, Finance Director, gave a overview of the quarterly financials for the Town of Scarborough and responded to questions from the Council.

Resolution 25-002. Act on the request to approve Resolution 25-002, Authorizing the Submission of a USDOT “RAISE” Grant for the Improvement of the Payne Road Corridor. [Town Manager] Thomas J. Hall, Town Manager gave a brief overview on this Resolve. The following public comments were made:

- Peter Michaud of Fogg Road and Crossroads Holding, spoke in regards to other communities also doing this, the benefits, and letters of the letters of support received.
- Denise Hamilton of Two Rod Road, spoke in regards to improvements that needs to be made and how this should have been done sooner.
- Ben Flanders of Clearview Drive and Planning Board member, spoke in regards to the benefits of this.
- Kenneth Capron of Portland, spoke in regards a raise grant that he is looking to receive.

Motion by Councilor Cushing, seconded by Councilor Anderson, to move approve of Resolution 25-002, Authorizing the Submission of a USDOT “RAISE” Grant for the Improvement of the Payne Road Corridor, as follows:

RESOLUTION 25-002

**Authorizing the Submission of a USDOT “RAISE” Grant
for the Improvement of the Payne Road Corridor**

WHEREAS, The Town of Scarborough has identified the Payne Road Corridor, from Turnpike Exit 42 to Gorham Road as a priority for improvement. This road section is a two-lane, congested, overburdened roadway with no bike or pedestrian accommodations and an undersized bridge over the Nonesuch River. In recognizing these deficiencies, the Town has created a Traffic Impact Fee to address these concerns. It is recognized that impact fee will likely not generate sufficient revenue to cover project costs before the improvement is necessary; and,

WHEREAS, the Downs Project is in a Designated Growth Zone and is expected to continue to build out as originally contemplated. The proximity of the project relies on the Payne Road Corridor to support ongoing development at The Downs and other projects along the corridor and the Town desires to support the ongoing development in the Town and region; and,

WHEREAS, The Town of Scarborough and M&R Holdings, the developer of the Downs, (hereinafter referred to as “the Parties”) share mutual interests in addressing the Payne Road Corridor sooner than later and have partnered to apply for federal funding to make necessary roadway and intersection improvements; and,

WHEREAS, the grant funding will serve to provide corridor improvement to transform it to a modern, four-lane multi-modal street with bike lanes, a multi-use path for pedestrians, accommodations for transit expansion, and a new bridge with a surface width to safely accommodate these modes of travel and design that is resilient to current and future flooding of the Nonesuch River, and is conducive to wildlife passage, connectivity as well as public recreation.

WHEREAS, in addition to advancing multi-modal transportation, this \$22.5M grant is critical to substantial new economic development and housing creation.

WHEREAS, the Parties intend to submit an application for \$22.5M in federal funding under the USDOT “RAISE” Grant Program to cover 80% of the project costs. The RAISE Grant requires a 20% local match of approximately \$4M, the direct source of such local match has not been determined by the Parties.

NOW THEREFORE BE IT RESOLVED, in the interest of submitting a grant application in this funding round, with a due date of January 31, 2025, that the Town Manager is authorized to submit the grant application with the understanding that upon successful award of the grant, the Town Council must take subsequent action to accept the grant which will require all financial commitments to be understood and agreed on.

Signed and sealed this the 22nd day of January, 2025, on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine. Signed by the Council Chair and attested by the Clerk to the Council.

Vote: 7 Yeas. Motion Passes.

OLD BUSINESS:

Order No. 24-114. Second reading on the proposed amendments to Chapter 405 Zoning Ordinance to add Section X.A Wetland Setbacks and Vegetated Buffers. [*Planning Director, Town Engineer*] Autumn Speer, Planning Director, gave a brief overview on this Order. The following individuals spoke on this Order:

- Nina McKee of Black Point Road, spoke in support of this but wished there was a larger setback.
- Denise Hamilton of Two Rod Road, spoke in support of this but would like to see this take effect upon the vote not May 1.
- Rick Meinking of Hearn Road and Chair of the Sustainability Committee, spoke of the steps it took for this order before being presented to the Town Council and the extensive vetting it took to get to where it is today.
- Kathleen Miller of Broadturn Road and the Conservation Commission, spoke in regards to the change this will affect on developers but the importance of the setback.
- Crescencia Maurer of Meeting House Road, spoke in support of this but is worried about the flexibility the amendments given to the developers.

- Eddie Wood of Clearwater Drive, spoke in sport of this setback and run off that goes into the wetlands.
- Aubrey Strouse of Beech Ridge Road and a stormwater engineer, spoke in support of this setback and unintended impacts to natural resources from development.
- Ben Flanders of Clearview Drive and Planning Board member, Conservation Commission member, and Environmental Scientist, spoke in support of the setback but worries about waivers being allowed.
- Jessica Sargent of Beech Ridge Road, spoke in support of the setback.
- Suzanne Foley-Ferguson of Black Point Road, spoke into regards why individual houses were not included, why the setback is not larger, and why the amendments are being suggested.
- Abel Plaud of Second Avenue and member of the Conservation Commission, spoke in support of the setback in its original state.
- Pete Slovinsky of Ironclad Road, spoke in regards to the benefits of wetlands and support of the original proposal before amendments.
- Randi Hogan, Chair of the Conservation Commission, spoke in regards to protecting the wetlands that safeguard homes and business that is fair and not open to negotiation. Without safeguards, growth can cause irreversible damage.
- Peggy Pennoyer of High Point Road, spoke in support of the 25 foot setback, not the proposed amendments or waivers.
- Brian Rayback, an Environmental Attorney who works for businesses in the Community and the Downs, spoke in regards to the work that went into this, but does not believe that this setback is right yet. He is requesting a workshop to have a back and forth discussion and to clean up the ordinance wording.
- Peter Michaud of the Downs and 35-year Scarborough resident, spoke in regards to being a local developer with the marsh in mind and how this would effect development.
- Robyn Saunders of Highland Avenue, spoke in regards to increasing the setback and not adopting the amendments.
- Nina McKee of Black Point Road, spoke in regards to the exceptions given to the Downs for the Growth Management Ordinance and she hopes there will be no amendments to this ordinance since it opens the door to real issues. She lives on the marsh and there should be a larger setback.

Motion by Councilor Fellows, seconded by Councilor Anderson, to move approval of the second reading on the proposed amendments to Chapter 405 Zoning Ordinance to add Section X.A Wetland Setbacks and Vegetated Buffers.

Motion by Councilor Fellows, seconded by Councilor Doherty to table Order No. 24-114, to the February 5, 2024 Town Council Meeting.

Vote: 2 Yeas and 5 Nays (Chair Sither, Councilor Shupe, Councilor Fellows, Councilor Donovan, and Councilor Anderson). Motion Fails.

Motion by Councilor Anderson, seconded by Councilor Donovan to amended the main motion as recommended by Town Staff as noted below:

- 1) **Provide flexibility within the Ordinance: Staff proposes to add language that allows the Planning Board to waive the 25-foot setback for projects with permitted State and Federal wetland fill, however these projects would be required to re-establish a 15-foot vegetated buffer. This waiver allows disturbance and grading within the 25-foot wetland setback. Planting native species to recreate a buffer and provide some protections of the remaining wetland areas would then be**

required. At the discretion of the Planning Board, this waiver would also be available for the small wetland fills of up to 4,300 sq. ft., which are currently exempt from State and Federal permitting.

- 2) Provide an Exemption for Required Conservation Subdivisions: Staff proposes to exempt required conservation subdivisions from the proposed Wetland Setbacks Ordinance. Required conservation subdivisions require at least 50% of total land area to be open space and include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary. Required conservation subdivisions also prohibit wetland fill in most instances. Through additional conversations with developers, staff concluded that the current Conservation Subdivision Ordinance is sufficient for addressing wetland protections.
- 3) Provide a delay between Ordinance adoption and when it takes effect: As requested during the January 8, 2025 Council meeting, staff considered delaying the effective date of this Ordinance to provide developers an opportunity to submit projects to the Planning Board under the current rules/ordinances. Staff suggests the effective date for this ordinance be May 1, 2025.

Motion by Councilor Cushing, seconded by Councilor Anderson to divide the question to take up amendments two and three then amendment one, as noted above.

Vote: 7 Yeas. Motion Passes.

Motion by Councilor Donovan, seconded by Cushing to divide the question to take up amendments one, two, and three separately.

Vote: 7 Yeas. Motion Passes.

Councilor Chair Sither asked if there was further discussion to amended the main motion with the language presented by the amendment offered number two, as follows:

- 2) Provide an Exemption for Required Conservation Subdivisions: Staff proposes to exempt required conservation subdivisions from the proposed Wetland Setbacks Ordinance. Required conservation subdivisions require at least 50% of total land area to be open space and include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary. Required conservation subdivisions also prohibit wetland fill in most instances. Through additional conversations with developers, staff concluded that the current Conservation Subdivision Ordinance is sufficient for addressing wetland protections.

Vote: 7 Yeas

Councilor Chair Sither asked if there was further discussion to amended the main motion as amended with the language presented by the amendment offered number three, as follows:

- 3) Provide a delay between Ordinance adoption and when it takes effect: As requested during the January 8, 2025 Council meeting, staff considered delaying the effective date of this Ordinance to provide developers an opportunity to submit projects to the Planning Board under the current rules/ordinances. Staff suggests the effective date for this ordinance be May 1, 2025.

Vote: 2 Yeas, 5 Nays (Council Chair Sither, Councilor Shupe, Councilor Fellows, Councilor Donovan, and Councilor Anderson). Motion Fails.

Councilor Chair Sither asked if there was further discussion to amended the main motion as amended with the language presented by the amendment offered number one, as follows:

- 1) Provide flexibility within the Ordinance: Staff proposes to add language that allows the Planning Board to waive the 25-foot setback for projects with permitted State and Federal wetland fill, however these projects would be required to re-establish a 15-foot vegetated buffer. This waiver allows disturbance and grading within the 25-foot wetland setback. Planting native species to recreate a buffer and provide some protections of the remaining wetland areas would then be required. At the discretion of the Planning Board, this waiver would also be available for the small wetland fills of up to 4,300 sq. ft., which are currently exempt from State and Federal permitting.

Motion by Councilor Cushing, seconded by Councilor Anderson to amended the main motion as amend, to replace staff recommendation number 1 as noted above to the following recommendation:

The Planning Board may consider a reduction, including a complete waiver, to the required wetland setback and vegetated buffer through the subdivision and site plan approval process if the Planning Board finds the project meets or exceeds Low Impact Development Standards.

Vote: 3 Yeas, 4 Nays (Council Chair Sither, Councilor Shupe, Councilor Fellows, and Councilor Donovan. Motion Fails.

Vote on proposed amendment to division one as noted above in red: 2 Yeas and 5 Nays. (Council Chair Sither, Councilor Shupe, Councilor Fellows, Councilor Donovan, and Councilor Anderson). Motion Fails.

Main motion as amended with staff recommendation number two, as follows:

CHAPTER 405 TOWN OF SCARBOROUGH ZONING ORDINANCE

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405 Zoning Ordinance of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are in underlined

in red; deletions are struck through):

SECTION X.A WETLAND SETBACKS AND VEGETATED BUFFERS [Adopted 01/22/2025]

•A. Applicability

Wetland setback requirements shall apply to all new development requiring site plan or subdivision approval. Redevelopment projects shall maintain the minimum wetland setbacks under this Ordinance or that which was previously permitted at the property.

This ordinance shall not apply to wetlands addressed in Chapter 405C Town of Scarborough Shoreland Zoning Ordinance.

This ordinance shall not apply to required conservation subdivisions per Section VII.A. Conservation Subdivision Design.

This ordinance does not preclude wetland fill permitting at the State and Federal level. If a wetland is approved to be filled in its entirety, no wetland setback or buffer is required. If a wetland is approved for partial impact, the wetland setback and buffer requirements will be based on the new wetland boundary.

This ordinance shall not apply to properties in receipt of or in process of receipt of approval for wetland fill as of January 22, 2025.

A.B. Definitions

Coastal Wetlands: Coastal wetland means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest astronomical in which an activity is proposed. Coastal wetlands may include portions of coastal sand dunes.

Forested Wetland: Forested wetland means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

Fresh Water Wetland: Freshwater wetland means freshwater swamps, marshes, bogs, and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and not considered part of a great pond, coastal wetland, river, stream, or brook.

Vegetated Buffer: A vegetated buffer is part of the wetland setback area that maintains or enhances the natural vegetation cover from the natural resource for a specified distance. Limited activity may take place in the vegetated buffer.

Wetland Setback: A wetland setback is a defined distance between a coastal wetland, freshwater wetland or forested wetland, and any upland development. The wetland setback also includes a vegetated buffer.

B.C. Wetland Setback and Vegetated Buffer Required

The following setback and minimum vegetated buffer width standards apply:

<u>Environmental Resource Type</u>	<u>Vegetated Buffer</u>	<u>Wetland Setback (includes vegetated buffer)</u>
<u>All other Wetlands</u>	<u>15'</u>	<u>25'</u>

*Where any provision of this Section conflicts with a State or Federal law or regulation, another section of this Site Plan Ordinance, Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.

The required minimum vegetated buffer is a portion of the wetland setback area directly adjacent to the wetland and maintains or enhances the natural vegetation cover from the wetland for a specified distance.

All wetland setbacks and vegetated buffers shall be marked with permanent pins every 50-100' and signage along the 15 foot buffer line as determined by the Planning Board. All required boundary markers shall be installed by a qualified professional before project construction commences.

Wetland Setbacks are not subject to variance procedures.

C.D. Permitted Activities

Activities that do not involve the erection or construction of any structure or impervious surface, will not alter the natural surface configuration by the addition of fill or by excavation, will not result in site alterations, and is otherwise permitted by the Zoning Ordinance are permitted as shown in the following table. Uses not specifically identified shall be prohibited.

Standards and Permitted Activity use table abbreviations are as follows:

P – Permitted by Right
NO – Not a Permitted Activity

<u>Permitted Activity</u>	<u>Setback Area – Inside of Vegetated Buffer</u>	<u>Setback Area - Outside of Vegetated Buffer</u>
<u>Pesticides Permitted</u>	<u>NO</u>	<u>NO</u>
<u>Fertilizer Permitted^A</u>	<u>NO</u>	<u>P</u>
<u>Tree Cutting or Vegetation Removal</u>	<u>NO</u>	<u>P</u>
<u>Invasive Species Control^B</u>	<u>P</u>	<u>P</u>
<u>Planting/establishment of Non-invasive species^C</u>	<u>P</u>	<u>P</u>
<u>Lawns</u>	<u>NO</u>	<u>P</u>
<u>Forest Management Activities^D</u>	<u>NO</u>	<u>P</u>
<u>Outdoor Lighting</u>	<u>NO</u>	<u>P</u>
<u>Fences^F</u>	<u>NO</u>	<u>P</u>
<u>Stormwater Retention or Detention Basin</u>	<u>NO</u>	<u>NO</u>
<u>Stormwater Conveyance Structures</u>	<u>NO</u>	<u>P</u>
<u>Sewage Disposal Facilities</u>	<u>NO</u>	<u>NO</u>
<u>Soil Erosion and Sediment Control Measures^G</u>	<u>NO</u>	<u>P</u>
<u>Shoreline Stabilization</u>	<u>NO</u>	<u>NO</u>
<u>Living Shorelines</u>	<u>P</u>	<u>P</u>
<u>Maintenance to existing structures and improvements within existing footprint^E</u>	<u>P</u>	<u>P</u>
<u>Repair, maintenance and improvements of existing roadways, utilities and sidewalks</u>	<u>P</u>	<u>P</u>
<u>Installation of piers or docks, provided that all required local, state, and federal approvals have been granted</u>	<u>P</u>	<u>P</u>
<u>Wildlife refuges, passive recreation, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations</u>	<u>P</u>	<u>P</u>
<u>Trailhead Parking</u>	<u>NO</u>	<u>NO</u>
<u>Grading, Fill or Excavation Activities</u>	<u>NO</u>	<u>Only for permitted activities listed above</u>

^APermitted fertilizers must be low phosphate slow release in areas of fresh water impact and slow release nitrogen in areas of coastal water impacts, both at a rate recommended from a soil test.

^BInvasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.

^CDepending on the buffer type, revegetation of buffers must use appropriate native plants.

^DWhen forest management activities are permitted, harvesting up to 20% of the total volume of each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed.

^EReconstruction and modifications of existing structures is permitted; however, footprint expansion must move landward to the greatest extent practical.

Vote: 5 Yeas and 2 Nays (Councilor Cushing and Councilor Doherty). Motion Passes.

Order No. 24-115. Second reading on the proposed amendments to Chapter 405B Site Plan Review Ordinance Section V. Site Conditions and Environmental Considerations to add reference to wetland setbacks. [Planning Director, Town Engineer] There were no public comments for or against this order.

Motion by Councilor Fellows, seconded by Councilor Anderson, to move approval of the second reading on the proposed amendments to Chapter 405B Site Plan Review Ordinance Section V. Site Conditions and Environmental Considerations to add reference to wetland setbacks, as follows:

CHAPTER 405B TOWN OF SCARBOROUGH SITE PLAN REVIEW

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405B Town of Scarborough Site Plan Review, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are in underlined in red; deletions are struck through):

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. Wetland Setbacks and Vegetated Buffers

All required wetland setbacks and vegetated buffers shall be shown on the proposed subdivision as required by Chapter 405 Zoning Ordinance Section X.A Wetland Setbacks and Vegetated Buffers.

BA. 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.

CB. Site Conditions

- ~~A.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.
- ~~B.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.
- ~~C.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.
- 1.4. 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.

Vote: 7 Yeas. Motion Passes.

Order No. 24-116. Second reading on the proposed amendments to Chapter 406 Subdivision Ordinance Section 4. Purpose, Interpretation, and Review Criteria [Planning Director, Town Engineer] There were no public comments for or against this order.

Motion by Councilor Fellows, seconded by Councilor Anderson, to move approval of the second reading on the proposed amendments to Chapter 406 Subdivision Ordinance Section 4. Purpose, Interpretation, and Review Criteria, as follows:

**CHAPTER 406
SUBDIVISION ORDINANCE
TOWN OF SCARBOROUGH, MAINE**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 406 Subdivision Ordinance, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are in underlined in red; deletions are struck through):

SECTION 4. PURPOSE, AND INTERPRETATION, AND REVIEW CRITERIA

The purposes of this ordinance are to promote the development of an economically stable and sound community; to provide safe and adequate streets, utilities and other services to new land development; to provide convenient and safe traffic circulation and access; to assure generally the development of areas in a manner consistent with any comprehensive plan for the Town of Scarborough; to clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A. § 4404, to protect the environment and conserve the natural and cultural resources identified in the Scarborough Comprehensive Plan as important to the community; to minimize the potential impacts from new subdivisions on neighboring properties and on the town; and to provide uniform procedures and standards for observance by the Planning Board and Subdividers. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements for the protection of public health, safety and welfare. To this end, in evaluating any proposed subdivision of land within the Town of Scarborough, Maine the Planning Board shall determine that such subdivision will meet the design standards set forth in this Ordinance, will comply with all other pertinent State and Local codes and ordinances, and will comply with the following review criteria:

- A. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;
- B. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
- C. The proposed subdivision will not cause an unreasonable burden on an existing water supply if one is to be utilized;
- D. The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- E. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed

and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;

- F. The proposed subdivision will provide for adequate sewage waste disposal;
- G. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;
- H. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- I. The proposed subdivision is in conformance with this Subdivision Ordinance, the Scarborough Comprehensive Plan, the Scarborough Zoning Ordinance, the Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance, the Scarborough Shoreland Zoning Ordinance (if applicable), the Scarborough Site Plan Review Ordinance (if applicable) the Scarborough Post-Construction Stormwater Infrastructure Management Ordinance (if applicable) and all applicable State and Local codes and regulations; in making this determination, the Planning Board may interpret the Comprehensive Plan and applicable local ordinances, codes and regulations;
- J. The subdivider has adequate financial and technical capacity to meet the standards of this Ordinance;
- K. Whenever situated in whole or in part, within 250 feet of any pond, lake, stream, river, wetland or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or wetland or unreasonably affect the shoreline of such body of water or wetland;
- L. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
- M. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;
- N. All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district. Boundary locations of wetlands must be permanently marked;
- O. All required wetland setbacks and vegetated buffers shall be shown on the proposed subdivision as required by Chapter 405 Zoning Ordinance Section X.A Wetland Setbacks and vegetated Buffers.
- Ø.P. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 M.R.S.A., section 480-B, subsection 9;
- P.Q. The proposed subdivision will provide for adequate storm water management including green infrastructure and low impact development practices. Post-development stormwater flow rates must be equal to or less than pre-development stormwater flow rates;

Q-R. If any lots in the proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Title 38 M.R.S.A., section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

R-S. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

Vote: 7 Yeas. Motion Passes.

Council Chair Sither adjourned for recess at 9:36 p.m. and reconvened at 9:45 p.m.

NEW BUSINESS:

Order No. 25-004. First reading and schedule a public hearing and second reading on the proposed amendments to Chapter 1401 – the Town of Scarborough Coastal Waters & Harbor Ordinance. [Coastal Water & Harbor Committee/Marine Resource Officer] Daryen Granata, Marine Resource Officer, gave a brief overview on this Order and answered Town Council questions.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading on the proposed amendments to Chapter 1401 – the Town of Scarborough Coastal Waters & Harbor Ordinance and schedule a public hearing and second reading for Wednesday, February 5, 2025, as follows:

CHAPTER 1401 COASTAL WATERS AND HARBOR ORDINANCE FOR THE TOWN OF SCARBOROUGH, MAINE

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 1401 - the Coastal Waters and Harbor Ordinance, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

1. *Proposed recommendation to Article II. Definitions:*

13. Mooring:

Shall mean any appliance, tackle, mooring used by a watercraft and which appliance, tackle, mooring and / or associated equipment is not carried aboard such watercraft when underway as regular equipment.

2. *Proposed recommendation to Article IV - General Regulations:*

Section 12. Unclaimed Mooring Tackle

The owner will be responsible to pay all removal and storage fees of mooring tackle caused to be removed by the Harbor Master prior to reclaiming the tackle. If the owner fails to claim the tackle the Harbor Master will dispose of it in accordance with Title 25 MRS. Nothing in this section prevents the Harbor Master from retaining and reusing the unclaimed mooring tackle in lieu of selling it.

3. *Proposed recommendations to Article V - Regulations Concerning Anchoring, Mooring and Security of Vessels:*

Section 1b. Minimum Mooring Requirements. [Amended 02/20/13; 12/19/18]

Riparian Rights Mooring Sites

The Town may permit and assign mooring sites to waterfront property owners demonstrating and claiming such right under the requirements of Title 38 MRS §3, Mooring Sites, under the following conditions:

1. The applicant must show legal interest in the property and in the case of joint ownership of property, that the person has legal authority to act for all owners before the application is accepted by the Town.
2. A Riparian mooring site may be located only in waters immediately in front of the intertidal land associated with the property as defined in Title 16, Chapter 2, Figure 1. Once a Riparian Mooring has been assigned to a property, it stays with the property. A Riparian mooring site may be used solely by the owner of the property for personal use. Such mooring site cannot be used by a third party, either temporarily or permanently.
3. A Riparian mooring site may be assigned only if the proposed location of said mooring site has been determined by the Harbor Master to be practicable and safe and not impede free navigation or infringe on the rights of others.
4. Number of moorings. Only one Riparian mooring site per qualifying waterfront lot may be granted, regardless of the amount of shorefront in excess of the 100-foot minimum requirement and 20,000 sq. ft. minimum lot size, except persons owning shore rights prior to January 1, 1987, are required only to have a 100-foot minimum shore frontage as established by state law. Riparian owners may also have an additional mooring in the coastal waters of the town as governed and allowed by the ordinance
5. Riparian mooring site permits are subject to annual user fees. Should the riparian user opt not to utilize the mooring for the mooring year they must notify the Harbor Master and not be subject to the annual user fee. If through the season they opt to use the mooring, annual user fees must be paid to the Town and Harbor Master notified of the change in use.
6. Exceptions
 - A. An exception to the mooring site location may be granted by the Harbor Master if the waterfront property is adjacent to an established mooring field or area and an additional mooring site would result in an unsafe condition. In such cases, the Harbor Master may either reassign existing mooring site locations, or, at its discretion, assign the riparian right mooring site to another location. The simple unsuitability of the property location for mooring a particular type of vessel does not justify this exception.
 - B. For the purpose of these regulations, in the case where a property owner's existing mooring fronts their qualifying waterfront lot, it is considered that property owner's riparian mooring site for as long as the person owns the property.
 - C. In the case where a non-qualifying lot has been legally assigned a riparian mooring prior to the adoption of these Regulations, that mooring may continue as a riparian mooring associated with that lot until such time the mooring has either been revoked or abandoned. Should a transfer of ownership of the non-qualifying lot occur, the new owner may continue

the use of the riparian mooring subject to the provisions of these Ordinance, providing the mooring had not been revoked or abandoned by any previous owner.

Waitlist fee will be collected on a rolling basis and annual renewals will be due on April 1st which is in line with moorings. If the annual waitlist fee is not paid by April 1st each year, the waitlist applicant will be removed from the waitlist and will need to reapply. If the waitlist applicant reapplies, they will be added to the bottom of the waitlist. Annual fee will be allied over the course of time on waiting list. Once the mooring is issued and what monies have been paid while on the wait list will be credited, not to exceed the annual mooring fee, for the first year only.

Section 1c. Creation and Maintenance of a Mooring Waitlist.

Two mooring waitlists shall be maintained by the Town Clerk and available for inspection in the Town Clerk's office. The first shall be for commercial applicants and the second for recreational applicants. Commercial applicants will be verified by the Harbor Master and shall provide proof of a commercial State license or a Federal permit. Commercial applicants will, if requested by the Harbor Master, provide proof of commercial waterfront activity equaling 20% of their annual household income. Applicants seeking a mooring shall be placed on the waitlist in order of date and time of application. No one household shall be allowed to hold more than two (2) spots on the waitlist at any one time. When a mooring becomes available the Town Clerk will first consult the commercial waitlist which will be given priority. If the next name on either waitlist is unable to accept the mooring they may request to stay on their respective waitlist until the next mooring becomes available. If, at the time of the second mooring becoming available, the applicant again is unable to accept the mooring their name shall be removed from the waitlist and the applicant would need to reapply if they wished to again be listed. If an applicant on the waitlist has died their spot may be reassigned to a legal heir providing the Town of Scarborough has been notified within six (6) months of the applicant's death. [Adopted 12/19/18]

Waitlist fee will be collected on a rolling basis and annual renewals will be due on April 1st which is in line with moorings. If the annual waitlist fee is not paid by April 1st each year, the waitlist applicant will be removed from the waitlist and will need to reapply. If the waitlist applicant reapplies, they will be added to the bottom of the waitlist. Annual fee will be applied over the course of time on waiting list. Once the mooring is issued and what monies have been paid while on the wait list will be credited, not to exceed the annual mooring fee, for the first year only.

Section 1d. Allotment of Special Anchorage to Prouts Neck Yacht Club.

Pursuant to an agreement with the Coastal Waters and Harbor Advisory Committee, the Prouts Neck Yacht Club has been given a special anchorage of moorings in Saco Bay for the use of its members. Prouts Neck Yacht Club shall administer those moorings, including but not limited to:

- (1) maintaining and managing moorings in the designated area,
- (2) providing oversight of member mooring use, including inspecting moorings in accordance with the rules and regulations of the Coastal Waters Harbor Advisory Committee,
- (3) providing the harbor master with completed mooring applications and mooring holder rosters,
tendering the appropriate fees, and submitting a map showing the location of each mooring yearly.

If members of the Yacht Club should leave it for any reason, mooring spaces which have been assigned to them will revert back to the Prouts Neck Yacht Club and may not be assigned by the person who formerly used them.

The harbor master shall consult with the Prouts Neck Yacht Club and will, insofar as permissible and not otherwise inconsistent with this Ordinance, delegate to the Yacht Club the authority to establish and enforce mooring plans in those areas traditionally regulated by the Yacht Club, and shall provide support enforcement services to the Yacht Club in the administration of the mooring plans.

Mooring areas controlled by the Yacht Club shall be subject to the following requirements:

- (1) The Yacht Club maintains a controlled mooring field.
- (2) The Yacht Club provides oversight of member mooring use, including inspections.
- (3) The Yacht Club is registered with the Harbor master and provides member/mooring holder rosters and mooring location plants to the Harbor Master.

4. *Proposed recommendations to Article IX – Pier:*

Section 3. Regulations Relating to Use.

- a) No vessel other than a permitted skiff shall be made fast to the town wharf except for twenty (20) minutes as required for loading or unloading. There shall be no overnight tie-ups. Exceptions may be made in emergencies only by permission of the Harbor Master. No vessel other than the Harbor Master's patrol boat shall tie up to the town wharf in the space marked for use by the Harbor Master.
- b) No person shall store traps, bait, barrels, fishing gear, boats or waste materials on the pier or floats at Pine Point at any time. Traps, gear, etc., may be loaded and unloaded only.
- c) No person shall store any traps, bait, barrels, fishing gear, or waste material on the pier or floats for more than 24 hours for loading and unloading purposes throughout the year.
- d) The Town Council may make any and all other reasonable rules for the proper maintenance and use of any floats or wharves, which rule or regulation shall be in writing and shall be posted on the wharf and filed in the office of the Town Clerk.
- e) Rules and Regulations pertaining to all piers, floats and wharves controlled by said Town of Scarborough shall be posted in a conspicuous place on or adjacent to said piers, floats and wharves.
- f) Skiff's or Dinghy's may be left tied in designated areas of the float's provided they are used more than twice a week for the purpose of getting back and forth from their mooring.
- g) No boat or vessels at any time are to be left unattended in the area of the cranes on the front of the pier, dock, or on the floats without permission from the Harbor Master
- h) No person shall store any traps, bait, barrels, fishing gear or waste items in front of / or obstruct pier ladders, crane swing areas, and gangways.

Section 4. Violations Relating to Pier Use.

Any person violating any sections of this Article IX shall be subject to a fine of not less than \$100.00 nor more than \$500.00 plus costs, which fine shall be recovered on complaint to the use of the Town of Scarborough. Repeat violations can be subject to suspension or revocation of the members pier use permit at the discretion of the Harbor Master. Additional costs shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council. [Adopted 11/09/2022]

5. *Proposed recommendations to Article XI – Enforcement**/Violation/Penalties*

This Ordinance may be enforced by the Harbor Master, Assistant Harbor Master or any law enforcement officer vested with the authority to carry a weapon and make arrests. Violations shall be prosecuted as provided in 38 M.R.S.A. §12 (which incorporates the enforcement mechanism of 30-A M.R.S.A. §4452) and, where applicable, 38 M.R.S.A. §13. Any person violating any sections of this Ordinance shall be subject to fines for each violation as follows:

First violation: not less than \$100.00 and not more than \$500.00, for each violation plus costs.

Second violation: not less than \$500.00 and not more than \$1,000.00, for each violation plus costs.

Third and subsequent violations: not less than \$1,000.00 and not more than \$1,500.00, for each violation plus costs.

Vote: 7 Yeas. Motion Passes

Order No. 25-005. First reading and schedule a public hearing and second reading on the proposed amendments to Chapter 1002 the Town of Scarborough Shellfish Conservation Ordinance. [Shellfish Conservation Commission/Marine Resource Officer] Daryen Granata, Marine Resource Officer, gave a brief overview on this Order.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading on the proposed amendments to Chapter 1002 the Town of Scarborough Shellfish Conservation Ordinance and schedule a public hearing and second reading for Wednesday, February 5, 2025, as follows:

**CHAPTER 1002
TOWN OF SCARBOROUGH
SHELLFISH CONSERVATION ORDINANCE**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 1002 - the Shellfish Conservation Ordinance, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

1. Authority:

This Ordinance is enacted in accordance with 12 M.R.S.A., Section 6671.

2. Purpose:

To establish a shellfish conservation program for the Town of Scarborough which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- a. Licensing
- b. Limiting the number of shellfish harvesters
- c. Restricting the time and area where digging is permitted
- d. Limiting the minimum size of clams taken

- e. Limiting the amount of clams taken daily by a harvester
- f. Engaging in activities intended to protect and enhance the resource such as transplanting or seeding of shellfish. [Adopted 06/03/15]

3. Shellfish Conservation Committee Commission:

The Shellfish Conservation Program for the Town of Scarborough will be administered by the Shellfish Conservation **Committee Commission** consisting of 7 members to be appointed by the Town Council for terms of 3 years. The **Committee's Commission's** responsibilities include:

- a. Establishing annually in conjunction with the Dept. of Marine Resources, the number of shellfish digging licenses to be issued.
- b. Surveying the clam flats to maintain current information on shellfish resources.
- c. Submitting to the Town Council, proposals for the expenditures of funds for the purpose of shellfish conservation.
- d. Keeping this Ordinance under review and making recommendations for its amendments.
- e. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the D.M.R.
- f. Approving conservation closures and openings in conjunction with the Area Biologists of the D.M.R. [Amended 01/03/01].
- g. Submitting an annual report to the Municipality and the D.M.R. covering the above topics and all other **Committee Commission** activities.

4. Definitions:

a. Resident

The term "resident" refers to a person who has physically resided at a fixed, permanent and principal home in the town for at least twelve months next prior to the date of application for a license under this Ordinance or, in the case of student, to a student living temporarily outside of Scarborough while enrolled in a college, university or post-secondary school, provided such student maintains his or her fixed permanent principal home in Scarborough. [Amended 07/17/02; 01/17/24]

b. Non-resident

The term "non-resident" means anyone not qualified as a resident under this Ordinance.

c. Shellfish, Clams

When used in the context of this Ordinance, the words "shellfish and clams" mean soft-shell clams **MYA ARENARIA**.

d. Municipality

Refers to the Town of Scarborough, Maine.

e. Conservation Projects

Conservation Projects may include seeding projects, crab projects, school projects, surveys or any other project accepted by the Shellfish Conservation Commission **and/or the Marine Resource Officer**. [Adopted 06/03/15]

5. Licensing - Municipal Shellfish Digging is required:

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this Ordinance.

A Commercial Digger must also have a valid **STATE OF MAINE COMMERCIAL SHELLFISH LICENSE** issued by the Department of Marine Resources, if state law makes possession of the state license a prerequisite to issuance of a municipal license.

A. Designation, Scope and Qualifications:

1. Resident Commercial Shellfish License:

The license is available to residents of the Town of Scarborough who are 18 years or older and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.[Amended 03/21/13]

2. Non-resident Non-reciprocating Commercial Shellfish License:

The license is available to non-residents of this municipality who are 18 years or older and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.[Amended 03/21/13]

3. Resident Student Commercial License:

The license is available to residents of the Town of Scarborough who are full time students between the minimum age of twelve (12) years old and the maximum age of twenty-two (22) years old on May 1 of the year in which the application is made. Applicants must show proof of age and proof of school attendance and students attending college must also show proof of a minimum of twelve (12) college credit hours per semester to be considered full-time students. Applicants under the age of 18 must also have the signature of a parent or guardian on the application for the license to be valid. This license entitles the holder to dig or take any amount of shellfish from the shores and flats of this municipality. [Amended 01/03/01; 07/17/02; 06/03/15]

4. Non-resident Student Commercial License:

The license is available to non-residents of the Town of Scarborough who are full time students between the minimum age of twelve (12) years old and the maximum age of twenty-two (22) years old on May 1 of the year in which the application is made. Applicants must show proof of age and proof of school attendance and students attending college must also show proof of a minimum of twelve (12) college credit hours per semester to be considered full-time students. Applicants under the age of 18 must also have the signature of a parent or guardian on the application for the license to be valid. This license entitles the holder to dig or take any amount of shellfish from the shores and flats of this municipality. [Amended 01/03/01; 07/17/02]

5. Over 60 Resident Commercial Bushel License:

The license is available to residents of the Town of Scarborough who are 60 years old and over. Applicants must show proof of age and residence. This license entitles the holder to dig or take one (1) bushel of shellfish from the shores and flats of this municipality at each tide. [Amended 02/18/98; 01/20/99]

6. Residential Recreational Shellfish License:

The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for ~~the use the holder and his or her family~~ for personal use. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a residential recreational shellfish license. Any holder of a recreational license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(H)(3). [Amended 06/03/15]

6.a. Non-resident Recreational Shellfish License:

The license is available to non-residents of the Town of Scarborough and entitles the holder to dig and take no more than one peck of shellfish in any one day for ~~the use the holder and his or her family~~ for personal use. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a non-resident recreational shellfish license. Any holder of a non-resident recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(H). [Amended 03/19/03; 06/03/15]

7. 65 and Over Resident Complimentary Shellfish License:

The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for ~~the use the holder and his or her family~~ for personal use. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a 65 and over residential complimentary recreational shellfish license. Any holder of a 65 and over resident complimentary recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(J). [Adopted 01/17/24]

7.a. 65 and Over Non-Resident Complimentary Shellfish License:

The license is available to non-residents of the Town of Scarborough and entitles the holder to dig and take no more than one peck of shellfish in any one day for ~~the use the holder and his or her family~~ for personal use. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a 65 and over non-resident complimentary recreational shellfish license. Any holder of a 65 and older non-resident complimentary recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish

harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(J). [Adopted 01/17/24]

8. Resident Recreational Day Licenses.

This license entitles residents and real estate taxpayers of the Town of Scarborough to dig or take up to one peck of shellfish for personal use from the shores and flats or this municipality during a single calendar day specified in the license. The duration of this license is one calendar day only. [Adopted 02/18/98]

9. Non-resident Recreational Day Licenses.

This license entitles non-residents of the Town of Scarborough to dig or take up to one peck of shellfish for personal use. from the shores and flats or this municipality during a single calendar day specified in the license. The duration of this license is one calendar day only. [Adopted 02/18/98]

10. License must be signed.

The licensee must sign the license to make it valid.

11. Commercial and Recreational License Applicant. A commercial and recreational license applicant may apply for those licenses that they qualify for; however, an applicant can only hold no more than one license. [Amended 01/17/24]

B. Contents of Application:

Any person may apply to the Town Clerk for the license required by this ordinance on forms provided by the municipality.

1. Contents of the Application:

The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever other information the Town Clerk may require.

2. False Statements.

Any person who provides information in support of an application under this ordinance must do so in the form of an affidavit. If the applicant provides false information, the applicant forfeits the right to a license and a license previously issued to that applicant shall become void. Any other person who gives false information in support of an application under this ordinance commits a violation of this ordinance punishable under section 5(K). [Adopted 02/18/98].

C. Fees:

The fees for the licenses are as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, and must accompany in full the application for the respective license. License fees for residents and non-residents will be established in accordance to M.R.S.A. Title 12, Section 6671.3-A.(b). The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licenses shall be used by the Town for shellfish

management, conservation and enforcement. Fees are non-refundable, except that the holder of a student commercial license who surrenders the license within seventy-five (75) days after the date of issuance shall receive a refund of one-half the license fee. [Amended 01/05/00; 01/17/24; 01/17/24]

D. Conservation Activities: [Adopted 06-03-15]

The Town encourages all shellfish diggers to protect and enhance the resource by participating in conservation activities such as seeding clam beds, participating in shellfish surveys, and participating in other approved resource management activities. All Commercial License holders 18 years of age or older are required to participate in shellfish conservation projects as deemed necessary by the Shellfish Conservation ~~Committee~~ Commission and/or the Marine Resource Officer. Seeding or other approved conservation activities also may be undertaken on a volunteer basis. Commercial License Holders who complete the specified number of hours of conservation activities which may include required shellfish seeding hours and volunteer hours for a total of twelve (12), will be eligible for license renewal pursuant to Section 5.E.4.(a) of this Ordinance. [Amended 01/07/24]

The Shellfish Conservation ~~Committee~~ Commission will approve all accepted conservation activities by a majority vote. The names and number of hours completed on an accepted conservation activity will be recorded in writing by the ~~Shellfish Conservation Officer~~ the Marine Resource Officer and submitted to the Shellfish ~~Committee~~ Commission or the Town Clerk on a monthly basis for their records. All conservation time must be submitted by January 15th by close of business, unless the 15th falls on a weekend, then must be submitted the following Monday. [Amended 01/07/24]

It shall be the sole responsibility of the Commercial License holder to contact the Shellfish ~~Committee~~ Commission Members or the ~~Shellfish Officer~~ Marine Resource Officer to determine the conservation available to participate in. The Shellfish Committee Chair, with consent of the majority membership of the Committee, may designate special conservation work during any period of State closure of the Town of Scarborough shellfish beds. The Chair may poll the Committee by telephone, email, fax or in person for the purposes of this section. Each Commercial License holder is encouraged to contribute at least half of their voluntary conservation activity in the form of low tide work. All crab trapping is considered low tide work. The conservation year will run from May 1st to November 30th. Surveys of the shellfish resource shall be conducted annually as a conservation activity, with the date and location to be determined by the Shellfish Commission or the Marine Resource Officer. [Amended 01/07/24]

The Shellfish Conservation Committee may waive all or part of the requirement for shellfish seeding for an applicant who provides the Committee with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled shellfish seeding due to incapacitation by illness or injury. The Committee may also allow the following alternative conservation work, on an hour for hour basis, upon the request of an applicant made at a regular monthly meeting of the Committee. Such alternative work may be used to meet the shellfish seeding requirement or may be used to qualify as additional volunteer conservation activity:

- i. Another time to complete conservation time for an applicant who demonstrates to the Committee that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled conservation time; or,

- ii. Alternate, less strenuous work for an applicant who provides the Committee with a written statement from a physician indicating that the applicant is not physically able to participate in regular conservation work.
- iii. At the discretion of the Project Leader, any scheduled conservation project may be canceled and/or terminated due to severe weather or safety concerns for those involved. Any participant present or arriving within ten minutes at the designated meeting area and start time must still sign in and sign out. These participants will receive the allotted hours of conservation time for that particular project regardless of performing the activity.

E. Issuance of Shellfish Licenses: [Amended 06-03-15]

Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the Town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's clam resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee, in consultation with the D.M.R. area biologist, will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- 1) Prior to February 1 of 1998 and each succeeding year, the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license-year to the Commissioner of Marine Resources for concurrence.
- 2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to February 1 of 1998 and each succeeding year, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- 3) Notice of the number of licenses and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
- 4) The Town Clerk shall accept applications for shellfish licenses annually commencing on the first day of March through to the first Monday and Tuesday in April. [Amended 03/19/03; 01/17/24]

(a) Commercial Renewal Licenses.

(i): The Clerk shall issue licenses only to holders of resident and non-resident commercial shellfish licenses who seek renewal and who have completed at least 12 hours of approved conservation activities which may include mandatory shellfish seeding as well as voluntary conservation work approved under this Ordinance during the term of their current licenses or at least 4 hours of such work if the holder is 70 years of age or older. Such applicants may apply by mail or must appear in person at the office of the Town Clerk during that two day period and pay the application fee at the time of issuance of the license. The Clerk shall issue commercial licenses to such qualified applicants on a first come, first served basis during those two business days. Any holder of a commercial license whose status as a resident or non-resident

has changed at the time of application or who did not complete the requisite hours of approve conservation activities shall not be entitled to apply for renewal under this subsection (a) but may apply for a new license under subparagraph (b) below. [Amended 03/16/05; 06/03/1; 01/17/24]

(ii): Effective March 1, 1998 in lieu of applying in person pursuant to subparagraph (I) above, Applicants for a renewal resident or non-resident commercial license may apply by mail. Applications by mail must be received at the Town Clerk's office on a day that office is open for business no earlier than March 1 and no later than the Tuesday following the first Monday in April. The application must be accompanied by the required license fee, a copy of the applicant's driver's license, a copy of the applicant's motor vehicle registration certificate, and any other information upon which the applicant relies to document residency. The Clerk shall mark all applications with the date and time of receipt. If more than one application is received at the same time, the Clerk shall determine their order or receipt of random drawing and mark them accordingly. The Clerk's marks concerning order of receipt shall be conclusive for purposes of applying the first-come first-served provisions of paragraph (i) above. [Amended 01/17/24]

(b) Non-Renewal Resident Commercial and Non-Resident Non-Reciprocating Commercial Licenses.

(i) On the third and fourth subsequent business days following the renewal process as noted in paragraphs 4.a (i)(ii) above, the Clerk shall accept applications for any remaining resident commercial shellfish licenses and non-resident non-reciprocating commercial shellfish licenses. Applicants must apply in person and be 18 years of age at the time of application, at the office of the Town Clerk. The Clerk shall not issue any licenses during the third and fourth business days, but shall inform each applicant that licenses will be awarded on the basis of a lottery and advise each applicant of the time and place where the lottery will be held. On the fifth subsequent business day, the Clerk shall conduct a lottery for the issuance of the remaining resident commercial shellfish licenses and a lottery for the issuance of non-resident non-reciprocating commercial shellfish licenses. In order to be entered into the lottery, an applicant must be present and must tender the application fee at the time of the lottery drawing. The Clerk shall award the remaining resident commercial shellfish licenses by drawing the names of qualified applicants at random and then shall award the non-resident non-reciprocating commercial shellfish licenses by drawing the names of qualified applicants at random. [Amended 01/17/24]

(ii) If, after June 1 annually, any allocated licenses remain unissued, on the first *consecutive* Monday, Tuesday and Wednesday in June applications shall be taken and placed in a lottery pool. Applicants must apply in person and be 18 years of age at the time of application. On the following **Friday Monday**, applicants' names shall be drawn at random by the Town Clerk. Physical presence and full payment are required at the time of drawing, and all applicants must meet eligibility requirements for the license category that they apply for. The lottery shall be conducted in the same fashion as the lottery under section 5(E)(4)(b)(i).

(iii) Lottery Bonus Points shall be awarded to applicants who have successfully applied in previous years, as follows:

Applicants who apply to multiple lotteries in a row without winning a permit can earn bonus points (extra chances in drawing). Points are non-transferrable and are accumulated, as follows:

- 0-5 Lotteries: 1 Points/Lottery
- 6-10 Lotteries: 2 Points/Lottery
- 11-15 Lotteries: 3 Points/Lottery
- 16+ Lotteries: 10 Points/Lottery

Bonus points are tracked by the Town Clerk using your name and date of birth. To receive bonus points, an applicant must enter the correct name and date of birth on the application. The applicant will also need to indicate that they applied for the lottery the last year that it was held. The Town Clerk upon receiving an application will review the applicant’s record and provide applicants with a number of bonus points which will be entered in the lottery.

An applicant will forfeit bonus points if the applicant:

- Fails to apply for bonus point in any one (1) Lottery; or,
- Obtains a Municipal Residential and/or non-residential Commercial Shellfish License through the Lottery; or,
- Is selected for a Municipal Residential and/or non-residential Commercial Shellfish License, but declines it, and/or fails to meet the criteria for legally possessing it; or,
- Is found to have not legally applied in the current year; or,
- Enters the incorrect name or date of birth on the application or fails to indicate that the applicant applied for a permit in the previous year.

[Adopted 01/17/24]

(c) Resident Student Commercial Renewal Licenses, Non-Resident Student Commercial Renewal Licenses and Over 60 Resident Commercial Bushel Renewal Licenses.

Shall be renewable in the same manner as Resident and Non-Resident Commercial Licenses under Section 5.E.4(a), except that required shellfish seeding hours and additional voluntary conservation hours shall be:

Resident & Non-Resident Student Commercial Licenses under the age of 18. [Amended 06/03/15]	No conservation time required. [Voluntary participation is encouraged.] [Amended 06/03/15]
Resident & Non-Resident Student Commercial Licenses 18 years of age or older at time the license is issued. [adopted 06-03-15]	Twelve (12) hours of approved conservation activities. [Adopted 06-03-15]
Over 60 Resident Commercial Bushel Licenses	Eight (8) Hours of approved conservation activities. [Amended 03/16/05; 11/02/05; 06/03/15]
All Commercial License Holders 70 or Older	Four (4) hours of approved conservation activities. [Amended 03/16/05; 11/02/2005; 06/03/15]

Any holder of a student commercial license or over 60 license whose status as a resident or non-resident has changed at the time of application or who did not complete the requisite hours of approved conservation activities shall not be entitled to apply for renewal under this subsection (a) but may apply for a new license under subparagraph (d) below.

(d) Non-Renewal Resident Student Commercial Licenses, Non-Resident Student Commercial Licenses and Over 60 Resident Commercial Bushel Licenses.

Applications for new (non-renewal) Resident Student Commercial Licenses, Non-Resident Student Commercial Licenses and Over 60 Resident Commercial Bushel License shall be processed in the same manner as applications for non-renewal Resident Commercial and Non-Resident Non-Reciprocating Commercial Licenses under Section 5.E.4(b), except that for Resident Student Commercial Licenses and Non-Resident Student Commercial Licenses the clerk shall continue drawing names after all licenses have been awarded and until all applicants have been placed on a list in the order their names have been drawn. Any Student Commercial License which is surrendered after issuance shall be made available to the remaining applicants on that list in the order their names were drawn, and then to other applicants on a first-come, first-served basis.

(e) Resident Recreational Licenses.

Commencing on the second Monday in April annually the Town Clerk shall accept applications for resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis.

(f) 65 and Over Complimentary Resident Recreation Licenses.

Commencing on the second Monday in April annually, the Town Clerk shall accept application for 65 and over resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis. [Adopted 01/17/24]

(g) Non-resident Recreational Licenses.

Commencing on the second Monday in April annually, the Town Clerk shall accept applications for non-resident recreational licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first serve basis. [Amended 01/17/24]

(h) 65 and Over Complimentary Non-resident Recreational Licenses.

Commencing on the second Monday-in April annually, the Town Clerk shall accept application for the 65 and over non-resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis. [Amended 01/17/24]

(i) Remaining Licenses.

If, after August 1 annually, any allocated licenses remain unissued, the clerk shall issue such licenses on a first-come, first served basis, without regard to the residency of the applicant or the allocation between resident and non-resident licenses. [Amended 03/16/05; 11/02/05]

(j) Day Licenses.

After all available resident and non-resident recreational licenses have been issued under Section 5(E)(4)(d) and 5(E)(4)(e) above, the clerk may receive applications for and issue resident recreational day licenses and non-resident recreational day licenses, on a first-come, first-served basis. Applicants must appear in person at the office of the Town Clerk no earlier than five (5) calendar days before the day for which the license is requested. The five (5) calendar days starts the day the initial visit to obtain the permit is made. An applicant may obtain only a day license for up to three (3) ~~consecutive~~ days [within the five (5) calendar days noted above], and must appear in person for each license requested. Each license issued under this section shall specify the calendar day for which it is issued and shall be valid for that day only. If multiple licenses are requested, a license for each day shall be issued. [Amended 03/16/2005; 11/02/2005; 01/17/24]

(i) One – Peck Day License must be used on the date listed on the license. In the event of flat closures, per the State, please contact the Town Clerk’s Office at 207-730-4020 the day of the closure to inform staff your license was not used. If the office is closed, you must leave a voicemail stating your name, contact information and date of the closure. In some cases, a credit for the unused licenses may be issued at the discretion of the Town Clerk. All credits must be used within 30 days of the original license date or the credit will be forfeited. [Adopted 01/17/24]

F. License expiration date:

Each license issued under authority of this Ordinance expires at midnight the 30th of April next following the date of issue. Day licenses shall expire at midnight on the day they are issued for. [Amended 01/17/24]

G. Reciprocal Harvesting Privilege:

Licenses from any other municipality co-operating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their management program, may harvest shellfish according to the terms of their licenses.

H. Children 16 years or younger may accompany a recreational license holder:

The recreational license holder and accompanying children are entitled to dig no more than the previously stated amount, “one peck of shellfish in any one day for ~~the use of the holder and his or her family personal use.~~” [Amended 07/17/02; 06/03/15]

I. Suspension:

1. Any shellfish licensee having one conviction for a violation of this Ordinance or for a violation occurring within the Town of Scarborough of any state statute regulating the digging or taking of shellfish shall have his or her shellfish license automatically suspended for a period of 14 days. Subsequent convictions during the same license year (May 1 - April 30) shall result in an automatic suspension of sixty (60) days. A licensee shall have his or her record cleared if there are no convictions within one year from the time of a conviction. As used in this paragraph, the term “digging” means using a shovel, spade, rake, tool or hands to uncover shellfish from the ground and the term “taking” means removing a marine organism from its natural habitat. [Amended 04/18/01; 06/03/15]

2. Any shellfish licensee having one conviction for a violation occurring within the Town of Scarborough of 12 M.R.S.A. § 6625 (governing identification and tagging of shellfish) shall have his or her shellfish license automatically suspended for a period of seven (7) days. Subsequent convictions during the same license year (May 1 - April 30) shall result in an automatic suspension of fourteen (14) days. A licensee shall have his or her record cleared if there are no convictions within one year from the time of a conviction. [Amended 04/18/01; 06/03/15]
3. A licensee whose shellfish license has been suspended pursuant to this section shall automatically have his or her license reinstated after the period of suspension has been served. [amended 04/18/01; 06/03/15]
4. The suspension shall be effective from the third business day after the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee or upon presentation of a Notice of Suspension by the Town Marine Resource Officer, whichever is earlier. [amended 02/18/98].
5. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon filing of a written Request for Hearing with the Town Clerk within 30 days following the effective date of suspension. Filing of the request for hearing with the Town Clerk stays the suspension until the end of the seventh day following the decision of the Shellfish Conservation Committee. The licensee may appeal the decision of the Shellfish Conservation Committee before the Town Council by filing a written Request for Appeal with the Town Clerk within 7 days of the decision of the Shellfish Conservation Committee. Filing of the Request for Appeal with the Town Clerk stays the suspension until the Town Council has rendered its decision. [Amended 04/18/01; 03/01/06;`]
6. No holder of a commercial license under this Ordinance shall dig or take shellfish during any time that holder's State of Maine Shellfish License is suspended. During any such period of suspension, the holder's license under this Ordinance is automatically suspended. [Amended 02/18/09]

J. Opening and Closing of Flats:

The Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, may open and close the areas for shellfish harvest (the "Conservation Areas"). Except in the case of emergencies, the Shellfish Conservation Committee shall follow the following procedure prior to opening or closing a Conservation Area:

1. Upon determination by the Shellfish Conservation Committee or by the Chair of the Committee that the opening or closing of a Conservation Area should be considered, the Chair shall place the proposed opening or closing on an agenda for a public hearing.
2. No less than 7 days prior to the hearing, a notice of the hearing describing the location of the Conservation Area proposed to be opened or closed shall be: (a) posted at the Town Office; (b) published in a newspaper of general circulation in the Town of Scarborough; and, (c) communicated to the Department of Marine Resources. The notice may also be placed on the Scarborough Shellfish Conservation Officer's telephone recording.
3. At the public hearing, the Shellfish Conservation Committee shall present and entertain evidence obtained from shellfish surveys and other sources. Members of the public may then comment on such evidence and may present additional evidence relevant to the proposed opening or closing.

4. At the conclusion of the evidence, the Shellfish Conservation Committee shall make findings of fact based on the evidence presented, shall reach conclusions based on those findings of fact, shall order whether the Conservation Area in question shall be opened or closed, and may set such time limitations and other harvesting conditions as are consistent with good conservation practices.

5. The order of the Shellfish Conservation Committee shall be forwarded to the Commissioner of Marine Resources and shall not take effect until approved by the Department of Marine Resources and notification by the Municipality to the public for five (5) days prior to the initial opening and closing dates.

In the event the Shellfish Conservation Committee determines that an emergency closing of a Conservation Area is necessary, the Committee may take action without following the procedures described above, provided that the Committee makes a reasonable effort to give adequate public notice and allow for public participation. [Amended 01/03/01]

K. Hours Prohibited:

It shall be unlawful to dig any shellfish anywhere in the Town of Scarborough between the hours of one half hour after sundown and one half hour before sunrise. [Amended 10/17/07; 03/21/13]

L. Penalty:

Any person who violates any provision of this ordinance commits a crime, not a civil violation, punishable by a fine of up to \$1,500 per offense, as provided in 12 M.R.S.A. §6671(10). Any person holding a commercial license under this Ordinance who aids or abets the harvest of shellfish in violation of this Ordinance also commits a violation of this Ordinance and shall be subject to the same fines as the person he or she assisted. [Amended 04/04/07]

M. Administrative Suspension of Recreational License:

If the Shellfish Conservation Officer determines that the holder of a recreational license has sold or otherwise received remuneration for shellfish harvested pursuant to the recreational license, or that the holder of a license has violated Section 5(N) of this ordinance the Shellfish Conservation Officer may impose an administrative suspension of the License and of eligibility for a license in the next licensing year. The Shellfish Conservation Officer shall give written notice to the license holder of the administrative suspension, which shall be effective from the third business day after mailing of the Notice of Suspension or upon presentation of the Notice of Suspension by the Shellfish Conservation Officer, whichever is earlier. The license holder may appeal the administrative suspension in the same manner as an automatic suspension under section 5.H.(3). The Shellfish Conservation Officer may, at their discretion, employ the administrative suspension in addition to or as an alternative to the penalties provided in section 5.K. The administrative suspension process and determinations resulting from that process are separate from and shall not be affected by the pendency or outcome of any court proceeding for the imposition of penalties under section 5.K. [Amended 02/18/98; 06/03/15]

N. Clam Size and Tolerance of Harvest:

1) Clam size and tolerance of harvest. A person shall not harvest or possess softshell clams which are less than two (2) inches in the longest diameter to the amount of more than ten (10) percent of any lot.

2) The method of determining tolerance. The tolerance of ten (10) percent must be determined by a numerical count of not less than one (1) nor more than four (4) pecks

taken at random from various parts of the lot. If the lot contains less than one (1) peck, the tolerance must be determined by numerical count of the entire lot.

O. Unlawful Sale of Shellfish.

It is a violation of this Ordinance for any holder of a license under this Ordinance to sell or otherwise receive remuneration for any shellfish dug or taken within the Town of Scarborough by any person who does not hold a valid shellfish license issued by the Commissioner of Marine Resources pursuant to 12 M.R.S.A. § 6601. [Amended 02/18/98]

P. Method of Harvest.

The only acceptable method of harvest shall be by use of the hand-held clamrake, with a handle no more than eighteen inches in length. Use of shovels, spades and pitch forks shall be prohibited. [Amended 03/01/06]

Vote: 7 Yeas. Motion Passes.

Order No. 25-006. First reading and schedule a public hearing and second reading on the proposed amendments to Chapter 311 – the Schedule of Fees relating to Chapter 1401 and Chapter 1002, above. [Marine Resource Officer] Daryen Granata, Marine Resource Officer, gave a brief overview on this Order and answered Town Council questions.

Motion by Councilor Anderson, seconded by Councilor Cushing, to move approval of the first reading on the proposed amendments to Chapter 311 – the Schedule of Fees relating to Chapter 1401 and Chapter 1002, above and schedule a public hearing and second reading for Wednesday, February 5, 2025, as follows:

Chapter 311 – Schedule of Fees

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 311 - the Schedule of License and Permit Fees, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

Chapter 1002 - Shellfish Ordinance, Fees	Fee
Resident Commercial	\$200.00
Non-resident Non-reciprocating Commercial	\$400.00
Resident Student Commercial	\$100.00
Non-resident Student Commercial	\$200.00
Over - 60 Years Resident Commercial (Bushel)	\$100.00
Resident Recreational - (Over 65 Free)	\$25.00
Non-Resident Recreational 20 Available – (Over 65 Free -14 Available) [Adopted 12-17-2003]	\$50.00
Resident Recreational Day Pass (Amended 04/06/05; 01/17/24)	\$10.00
Non-Resident Recreational Day Pass (Adopted 01/17/24)	\$20.00
<u>Non-Resident Recreational 3 Day pass</u>	<u>\$45.00</u>

Chapter 1401 – Coastal Water and Harbor Fees [amended 02-20-13]	Fee
Annual Mooring & Pier Use Fees	
Recreational Pier Use - Resident and/or Taxpayer (amended 05/05/04; 12/20/17; 02/15/23)	\$250.00
Recreational Pier Use - Non-Resident (amended 05/05/04; amended 12/20/17; 02/15/23)	\$500.00
Commercial Pier User – Resident and/or Taxpayer (amended 12/20/17; 02/15/23)	\$450.00
Commercial Pier User – Non-Resident (amended 12/20/17; 02/15/23; 05/03/2023)	\$700.00
Recreational Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$300.00
Recreational Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$500.00
Commercial Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$500.00
Commercial Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$700.00
<u>Mooring Fee for outside of the Federal Anchorage and Special Anchorage</u>	<u>\$150.00</u>
One Time Pier Use Fee Resident (adopted 02/15/23; amended 05/03/2023)	\$150.00
One Time Pier Use Fee Non-Resident (adopted 02/15/23)	\$350.00
Mooring Wait List Annual Fee: Annual fee will be allied over the course of time on waiting list. Once the mooring is issued and what monies have been paid while on the wait list will be credited, not to exceed the annual mooring fee, for the first year only. (Adopted on June 26, 2024)	\$35.00
BOAT LAUNCHING FEE	
Launching from any town facility, includes Ferry Beach Boat Launch and Co-op Boat Launch (Note – Ferry Beach – parking is not included)	
Resident – Daily Boat Launching Fee (amended 05/05/04; 02/15/23)	\$25.00
Resident – Seasonal Boat Launching Fee (amended 02/15/23)	\$125.00
Resident – Additional Boat Launching Fee Registered to the Same Address (Amended 05/18/16; 02/15/23)	\$15.00
Resident Commercial Fisherman Seasonal Boat Launch Pass	Free
Non-Resident - Daily Boat Launching Fee (amended 05/05/04; 02/15/23)	\$45.00
Non-Resident - Seasonal Boat Launching Fee (amended 12/20/17; 02/15/23)	\$250.00
Resident - Commercial Charter Boat Fee- Seasonal (Adopted 02/15/23)	\$400.00
Non- Resident - Commercial Charter Boat Fee- Seasonal (Adopted 02/15/23)	\$600.00
<u>Special Anchorage Fee</u>	<u>\$3,000.00</u>

Vote: 7 Yeas. Motion Passes.

Order No. 25-007. Act on the request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance, to approve the acceptance of public infrastructure, as noted and recommended by the Town Engineer. [Town Engineer] Angela Blanchette, Town Engineer, gave a brief overview on this Order.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance, to approve the acceptance of public infrastructure of a portion of Scarborough Downs Road, including the roundabout, as noted and recommended by the Town Engineer.

Vote: 7 Yeas. Motion Passes.

Order No. 25-008. Act on the request to authorize the Town Manager to sign a Memorandum of Understanding from Maine Health and the Town of Scarborough. [Social Services Manager] Lauren Dembski-Martin, Social Services Manager gave a brief overview on this Order.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval to authorize the Town Manager to sign a Memorandum of Understanding from Maine Health and the Town of Scarborough.

Vote: 7 Yeas. Motion Passes.

Order No. 25-009. Act on the request to ratify the collective bargaining agreements between the Town of Scarborough and the Public Works Department, Teamsters Local #340 and authorize the Town Manager to sign said contracts. [Assistant Town Manager] Liam Gallagher, Assistant Town Manager, gave a brief overview on this Order.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval to ratify the collective bargaining agreements between the Town of Scarborough and the Public Works Department, Teamsters Local #340 and authorize the Town Manager to sign said contracts.

Vote: 7 Yeas. Motion Passes.

Motion by Councilor Anderson, seconded by Councilor Cushing to suspend the rules and continue the meeting past 10:00 p.m.

Vote: 7 Yeas. Motion Passes.

Item 9. Non-Action Item. None at this time.

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

- Councilor Anderson spoke in regards to the Transportation Committee and feedback being provided from residents. SEDCO had a workshop last week and the focus was how to support small businesses in the community. Finance met to review the budget agenda and approved the plan and a sustainability reserve fund.
- Councilor Donovan spoke in regards to the School Building Committee and posted the following names from the Appointments and Negations Committee (read by Kristen Barth, Town Clerk per Councilor Donovan's request):

Board of Assessment Review:

Appoint Richard Silkman as a full voting member, with a term to expire 2027, Leroy Crockett as first alternate, with a term to expire 2025 and Jean-Marie Caterina as second alternate, with a term to expire 2027.

Coastal Waters and Harbor Advisory Committee:

Appoint Vincent Clough, Andrew Fortunato, and Alfred Morrow as full voting members, with a term to expire 2027.

Community Services Advisory Board:

Appoint Amanda Doherty and Ellen Coughlin-Quin as full voting members, with a term to expire 2027 and Brittaney Jackson as first alternate, with a term to expire 2027.

Conservation Commission:

Appoint Abel Plaud and Jessica Sargent as full voting members, with a term to expire 2027, appoint Bennett Flanders as a full voting member, with a term to expire 2026, appoint Kate Borduas as first alternate, with a term to expire 2026, and Crescencia Maurer as second alternate, with a term to expire 2027.

Long Range Planning Committee:

Appoint Portia Hirschman as a full voting member and business representative, with a term to expire 2027 and Jean-Marie Caterina as first alternate, with a term to expire 2027.

Parks and Conservation Land Board:

Appoint Noah Perlut and Stephen Zamierowski as full voting members, with a term to expire 2027.

Personnel Board of Appeals:

Appoint Peter Freilinger as a full voting member, with a term to expire 2027, appoint Penny Whitney-Asdourian as first alternate with a term to expire 2026 and appoint Brittaney Jackson as second alternate with a term to expire 2027.

Planning Board:

Appoint Jennifer Ladd as a full voting member with a term to expire 2027, appoint Bennett Flanders as first alternate, with a term to expire 2026, and appoint Tyler Davis a second alternate, with a term to expire 2027.

Transportation Committee:

Appoint Jennifer Ladd as full voting member, with a term to expire 2027, Craig Robinson as a full voting member and Chamber of Commerce member, with a term to expire 2027 and Stanis Moody-Roberts as first alternate, with a term to expire 2027.

Scarborough Housing Alliance Committee:

Appoint Eric Boucher, Leroy Crockett, and Jean-Marie Caterina as full voting members, with a term to expire 2027.

Shellfish Conservation Commission:

Appoint Liam Erickson as a full voting member, with a term to expire 2027, appoint Jason Quirk as a full voting member, with a term to expire 2026 and Julie Gondzar as first alternate, with a term to expire 2027.

Sustainability Committee:

Appoint Ronald Allen as a full voting member, with a term to expire 2027, appoint Lydia Jopp as a full voting member, with a term to expire 2025, appoint Patrice Kastenzholz to first alternate, with a term to expire 2026 and appoint Dan Shapiro as second alternate, with a term to expire 2027.

Zoning Board of Appeals:

Appoint David Bourke and Peter Freilinger as full voting members, with a term to expire 2027, appoint Kyle Noonan as a full voting member, with a term to expire 2025, appoint Joseph Doherty as first alternate, with a term to expire 2026 and Michael Campbell as second alternate, with a term to expire 2027.

- Councilor Fellows spoke in regards to the LRPC discussing the current moratorium moving to ordinance, Planning Board approving the FedEx project, and Rules and Policies will be meeting for the first-time next week.

- Councilor Cushing spoke in regards to the Communications Committee discussing the Budget process, round tables and Councilor corner articles. He also asked Chair Sither in regards to audience behaviors and steps the Council can take.
- Councilor Anderson and Chair Sither spoke in regards to the momentum the School Building Committee currently has.
- Chair Sither provided an update on the Vulnerability Assessment.

Item 11. Council Member Comments. None at this time.

Order No. 25-010. Act on the request for an executive session pursuant to Title 1, §405.6.(a) regarding the Town Manager's Performance Evaluation. [Council Chair Sither] Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the request for an executive session pursuant to Title 1, §405.6.(a) regarding the Town Manager's Performance Evaluation; to come back to public session to adjourn the regular meeting.

Vote: 7 Yeas. Motion Passes.

The meeting recessed to executive session at 10:18 p.m. The meeting was reconvened at 11:20 p.m.

Item 12. Adjournment. Motion by Councilor Anderson, seconded by Councilor Cushing , to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 Yeas. Motion Passes.

Meeting adjourned at 11:21 p.m.

Respectfully submitted,

Kristen M. Barth
Town Clerk