

MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – APRIL 3, 2019
REGULAR MEETING – 7:00 P.M.

Item 1. Call to Order. Chairman Hayes called the regular meeting of the Scarborough Town Council to order at 7:09 p.m. He apologized for the delayed start, noting that the workshop held prior to this meeting ran a longer than anticipated.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Yolande P. Justice, Town Clerk. Thomas Hall, Town Manager, was also present. The following Councilors were present:

Councilor Shawn A. Babine	Councilor Jean-Marie Caterina
Councilor Paul M. Johnson	Councilor William J. Donovan
Councilor Kathleen M. Foley	Councilor Donald R. Hamill
Chairman Peter F. Hayes	

Item 4. General Public Comments. None at this time.

Item 5. Minutes: March 14, 2019 - Special Town Council Meeting and March 20, 2019 - Town Council Meeting. Motion by Councilor Foley, seconded by Councilor Donovan, to move approval of the March 14, 2019, Special Town Council meeting minutes and the March 20, 2019, regular Town Council meeting minutes.

Vote: 7 Yeas.

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 during the meeting.

Item 8. Non Action Item.

a. Joint presentation of the proposed FY2020 Municipal/School Budgets.

Thomas J. Hall, Town Manager and Dr. Kukenberger, Superintendent of Schools presented the annual proposed Municipal/School Budgets for FY2020. Mr. Hall noted that the Municipal Budget is coming in at 2.4% and the school Budget is coming in at 5.7%; the County side is at over 4% with the overall increase at just over 6.04% overall budget. The starting point is 4.3-5% increase [\$17.09 to \$17.27 mil rate].

There were four meetings held for public input that began in January and attended by over 70 residents.

Dr. Kukenburger spoke on school enrollment and enrollment projection. She then gave an overview on the upcoming enrollment projects for the K-2 schools. The budget presentation this evening would be posted to the Budget Portal. Mr. Hall and Dr. Kukenburger spoke briefly on the new Budget Portal noting that as information becomes available, it would be posted to the Portal.

Order No. 19-021, 7:00 p.m. Public hearing and action on the new request for a Food Handlers License from Cheryl & Justin Ryan d/b/a The Dairy Corner, located at 612 US Route One. [Town Clerk] The Town Clerk gave a brief overview on this Order. Chairman Hayes opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:41 p.m.

Motion by Councilor Caterina, seconded by Councilor Foley, to move approval on the new request for a Food Handlers License from Cheryl & Justin Ryan d/b/a The Dairy Corner, located at 612 US Route One.

Vote: 7 Yeas.

Order No. 19-022, 7:00 p.m. Public hearing and action on the new request for a Food Handlers and a Liquor License from Peak Hospitality, Inc. d/b/a Pine Point Grille, located at 240 Pine Point Road. [Town Clerk] The Town Clerk gave a brief overview on this Order. Chairman Hayes opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:42 p.m.

Motion by Councilor Caterina, seconded by Councilor Foley, to move approval on the new request for a Food Handlers and a Liquor License from Peak Hospitality, Inc. d/b/a Pine Point Grille, located at 240 Pine Point Road.

Vote: 7 Yeas.

Order No. 19-023, 7:00 p.m. Public hearing and action on the request from the Board of Education, to place on the June 11, 2019, Special Municipal Election Ballot, referendum language to create the Greater Sebago Education Alliance (GSEA), ballot question is as follows: [School Department]

Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance Regional Service Center, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?

Dr. Kukenburger gave a quick over on this Order. Chairman Hayes opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:44 p.m.

Motion by Councilor Foley, seconded by Councilor Donovan, to move approval on the request from the Board of Education, to place on the June 11, 2019, Special Municipal Election Ballot, referendum language to create the Greater Sebago Education Alliance (GSEA), ballot question as noted above.

Motion by Councilor Caterina, seconded by Councilor Donovan, to move approval to amend the main motion as follows:

Do you favor a plan for Scarborough School Department to join the Greater Sebago Education Alliance Regional Service Center through an interlocal agreement that will allow the School Department to receive additional revenue through the state funding formula and to more efficiently procure goods and services?

Vote on amendment: 7 Yeas.

Vote on main motion as amended: 7 Yeas.

OLD BUSINESS:

Order No. 19-014. Second reading on the proposed amendments to Chapter 304, Town of Scarborough Purchasing Policy. [Ordinance Committee] Thomas Hall, Town Manager, gave an brief overview on this Order.

Motion by Councilor Donovan, seconded by Councilor Foley, to move approval of the second reading on the proposed amendments to Chapter 304, Town of Scarborough Purchasing Policy, as follows:

**CHAPTER 304
TOWN OF SCARBOROUGH
MUNICIPAL PURCHASING POLICY**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 304 - the Town of Scarborough Municipal Purchasing Policy, by adding the underlined text and deleting the text shown in strikeover type, as follows:

Section 1. Purpose

The purposes of the regulation are to standardize the purchasing procedure of the Town of Scarborough thereby securing for the town the advantages of a centralized and uniform purchasing policy saving the taxpayers' money and increasing public confidence in the procedures for municipal purchasing; to promote the fair and equitable treatment of all suppliers of goods and services; and to set forth the duties and responsibilities of the department heads and the Purchasing Agent, thereby fostering interdepartmental cooperation and trust in the purchasing system.

Section 2. Definitions

1. ~~Approved vendors.~~

~~“Approved vendors” means those vendors identified by each department head to the Purchasing Agent, who maintains a list of approved vendors for bidding purposes. The Purchasing Agent shall keep detailed lists for each department on file at all times.~~

2. 1. Bid most advantageous to the Town.

“Bid most advantageous to the Town” means a bid chosen on the basis of price, quality of merchandise, suitability of merchandise, and service reputation of the vendor, and therefore may not necessarily mean the lowest bid received.

3. 2. Competitive bidding.

“Competitive bidding” means the process of obtaining the bid most advantageous to the Town for any purchase, whether through formal or informal bidding procedures.

4. 3. Informal bid.

“Informal bid” means a written or oral quotation obtained from an approved vendor but not required to be opened publicly at a specified day, place and time.

5. 4. Field purchase.

“Field purchase” means an informal purchase of supplies needed in small quantities for day-to-day operation made directly by a Department Head or her/his designated representative from any vendor. [Amended 11/02/17]

6. 5. Formal bid.

“Formal bid” means a written quotation obtained in a sealed envelope from an approved vendor or through advertisement and opened at a specific day, place and time.

7. 6. Cooperative purchase.

“Cooperative purchase” means a purchase made by the Town in conjunction with or from another governmental or quasi-governmental agency, such as but not limited to, the State of Maine, Greater Portland Council of Governments, the School Department, the Sanitary District or another municipality.

8. 7. Purchase.

“Purchase” means buying, renting, leasing, or otherwise acquiring supplies or services for a price.

9. ~~8.~~ Purchasing Agent.

“Purchasing Agent” means the Assistant Town Manager or the Assistant Town Manager’s designee.

10. ~~9.~~ Services.

“Services” means the lease or rental of all grounds, buildings, offices, space or equipment required by the Town, the repair or maintenance of equipment or real property owned by or the responsibility of the Town and all labor furnished to the Town by persons, firms, individuals or corporations not part of or connected with the Town government. “Services” shall not include professional services provided to or for the Town by lawyers, architects, engineers, auditors and consultants. Nor shall “services” include utilities such as electricity, water, and phone services.

11. ~~10.~~ Specifications.

“Specifications” means standards, including quality, set by department heads as a guide to the Purchasing Agent and as a measure of that which successful vendors must achieve. Specifications shall be either technical specifications for bids, which shall state formulations as broadly as practicable, yet shall be specific enough to describe the requirements of the department or non-technical specifications for bids, which shall state the quality required in general terms.

12. ~~11.~~ Supplies.

“Supplies” shall mean all supplies, materials and equipment.

Section 3. Applicability

This regulation shall apply to purchases made by departments and agencies of the Town, except as otherwise specified herein.

Section 4. Appropriation

Neither the Purchasing Agent nor any Department Head shall make any purchase or allow any purchase to be made until an appropriation therefore has been approved by the Town Council.

Section 5. Purchase Limits

1. A Department Head or the Department Head’s designated representative may make field purchases when the total purchase price for the goods or services being purchased is less than ~~\$500.00~~ 200.00, ~~provided the field purchases are reported to the Purchasing Agent in writing within 3 days thereafter.~~ (amended 09/17/03)

2. A Department Head may execute written orders when the total purchase price is \$5,000.00 or less and the requirements of this Purchasing Policy are complied with by the Department Head or her/his designee. Any purchase of computer hardware or software requires consultation with the IT Department prior to purchase. (amended 09/17/03)[amended 11/01/17]

3. The Purchasing Agent shall make any purchase when the total purchase price exceeds \$5,000.00 up to an amount within the municipal operating budget. (amended 04/18/01). (amended 09/17/03)

4. The Town Council shall approve and authorize any purchase beyond the amount as approved in the municipal operating budget. (amended 04/18/01).

Section 6. Competitive Bidding

1. Competitive bids shall be required for all purchases in excess of \$2,500.00 unless specifically exempted by this Policy or by action of the Town Council.

2. Informal bidding procedures shall be allowed when a purchase is required to be by competitive bidding if the total purchase price is less than \$10,000.00 ~~7,500.00~~, unless the Purchasing Agent recommends use of formal bidding procedures.

3. Formal bidding procedures shall be followed by the Purchasing Agent in all other cases when competitive bidding is required by this Policy.

4. The Purchasing Agent may make cooperative purchases without competitive bidding if the Purchasing Agent determines the purchase is being made after competitive bidding by the cooperative entity or at price more advantageous than the Town would be likely to obtain by competitive bidding.

5. The Purchasing Agent may waive the requirements for competitive bidding for purchases of \$25,000.00 or less in cases of emergency or when the purchase is inappropriate for competitive bidding due to the nature of the item, time constraints or other factors, provided that the Purchasing Agent shall file a full and complete statement of the reasons for waiving competitive bidding.

6. Purchases of computer hardware or software will be reviewed with the IT Department for approval prior to the bidding process.

Section 7. Procedure for Formal Bidding

The procedure for formal bidding shall be as follows:

1. Invitation for Bids. The Department Head or Purchasing Agent shall prepare the invitation for bids, describing the Town's requirements clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related (whether attached or incorporated by reference) material furnished prospective bidders for the purpose of submitting sealed bids. The Purchasing Agent shall determine that the requirements of the Town are clearly and accurately and completely stated within the invitation to bid. Every invitation to bid shall note that all purchases are subject to the conditions set forth in Section 9 hereof.

2. The Department Head or Purchasing Agent shall publicize the invitation for bids through distribution to prospective bidders, posting on the ~~bulletin board at Town Hall and~~ purchasing page of the Town's website, posting notice in the office of the department(s) involved, ~~advertising in a newspaper with local and/or regional circulation,~~ or such other means as the Purchasing Agent determines is appropriate at least ten calendar days prior to the time set for public opening of sealed bids. While no preference shall be made for local vendors, every attempt shall be made to ensure that appropriate local vendors are notified of applicable advertised bids.

3. Bidders shall submit sealed bids to the Town prior to the date and time specified for the opening of bids. Late bids shall not be accepted and no bidder shall be permitted to withdraw a bid after the deadline for bids specified in the invitation to bidders.

4. Bids shall be publicly opened at the time and place specified in the invitation to bid. A contract shall be awarded to the responsible bidder whose bid conforms to the invitation to bid and will be the most advantageous to the Town. Award may be delayed pending verification of a bidder's credentials and references or review of the bids received.

5. Nothing in this section shall preclude the Town from rejecting any and all bids as provided in Section 9 of this Policy.

Section 8. Procedure for Informal Bidding.

1. The Department Head or the Purchasing Agent shall solicit competitive bids either by written notice sent to ~~approved~~ vendors, and by posting on appropriate Town bulletin boards ~~and the purchasing page of the Town's website or by advertisement in a newspaper(s) having at least local circulation.~~ The notice shall contain specifications as to quantity and quality required, the availability of bid packages or other details, and the date and time when bids must be received. If bids will be opened publicly and read, the notice shall also specify the date, time and location where they will be opened and read. Any solicitation or advertisement shall note that all purchases are subject to the conditions set forth in Section 9.

2. All bids shall quote delivered prices, terms of payment and cash discounts if applicable. If oral quotations are accepted, the Purchasing Agent or the Department Head shall make a record of the quotation. The person from whom the quote is received, and the date and time the quote is received by the Town shall be recorded.

3. The Purchasing Agent or Department Head shall attempt to solicit at least three approved vendors on every purchase subject to informal bidding procedures. If less than three bids are received, or if in the opinion of the Department Head or the Purchasing Agent no bids are acceptable, rebidding may required.

4. In all cases the bid most advantageous to the Town, price, quality, and other factors being considered, shall be awarded.

Section 9. Administrative Procedures and Conditions

Competitive Bids shall be administered by the Purchasing Agent and shall be subject to the following conditions:

1. The Department Head or Purchasing Agent shall keep a record of all bids submitted and such records shall be opened to proper inspection by any person.

2. All bidders shall be notified in writing of bid results within ten days after the bids are opened.

3. Tie bids shall be resolved by the Town Manager except that if the price exceeds \$25,000.00, the Town Council shall resolve the tie.

4. All bids shall be awarded on the basis of the bid most advantageous to the Town.

5. The Town reserves the right to accept or reject any or all bids, to investigate the qualifications of any bidder, and to waive or not waive any and all informalities in the bids when making an award.

6. If an award is made to other than the low bidder, the Purchasing Agent shall file a full and complete statement of the reasons for determining that the low bid was not the bid most advantageous to the Town, together with all papers relating the bidding process.

7. The Town retain custody of all bids submitted to the Town pursuant to this policy.

Section 10. Duties of Department Heads

1. Determine acceptable quality of commodities and supplies to be purchased.

~~2. Cooperate with the Purchasing Agent in establishing lists of approved specifications and vendors.~~

3. 2. Share knowledge of special factors which will implement a policy designed to enable the Town to minimize cost and maximize quality.

~~4. Supply the Purchasing Agent with a list of estimated annual requirements of frequently used supplies, thereby fostering cooperative purchasing.~~

5. 3. Prepare requisitions with an eye toward cooperative purchasing and keep corresponding records to facilitate correct accounting charges.

6. 4. Be empowered to reject any unacceptable supply or commodity on the ground of high cost or low quality, and provide the Town Purchasing Agent a written detailed report of any rejection.

~~7. Department Heads shall choose vendors on the basis of responsibility and quality and shall submit a list of approved vendors to the Purchasing Agent. Department Heads shall notify the Purchasing Agent in writing regarding any additions or deletions to this list and shall give reasons for deletions.~~

8. Report to the Purchasing Agent the Following:

~~Items beyond use~~

~~Items being replaced or to be replaced~~

~~Items no longer of use to department operations~~

9. 5. Foster ~~regular~~ planned bulk or cooperative purchasing to minimize direct purchases.

Section 11: Ethical Purchases and Procurement Process (adopted 09/17/03)

It is in the interest of the Town of Scarborough to purchase and procure items of apparel, textiles and recreational equipment from responsible and ethical contractors who provide quality goods and services at a competitive price and who generally adhere to international conventions on wages, workplace health and safety, forced labor, child labor and freedom of association.

1. Application of Purchasing Code of Conduct.

This subchapter applies to competitive bids for the purchase of apparel, footwear or textiles pursuant to Chapter 304. Every purchase of apparel, footwear or textiles shall be accompanied by a signed affidavit stating that the bidder has complied with the municipal purchasing code of conduct established under Section 11 and that, to the best of the bidder's knowledge, the supplier at the point of assembly of the goods subject to the bid process is in compliance with the municipal purchasing code of conduct. The Purchasing Agent shall submit a series of questions (Exhibit A, Sample Form) to the vendor to determine the manufacturing facilities in which the products under consideration are made, to ascertain working conditions at these manufacturing facilities and to demonstrate that working conditions are of concern in the Town's purchasing decisions. Contract award will favor those retailers, suppliers, wholesalers, distributors and manufacturers who operate in accordance with established codes of corporate conduct regarding wages, workplace health and safety, forced labor, child labor, and freedom of association, as embodied in United Nations (U.N.) and International Labor Organization (I.L.O.) conventions.

2. Statement of belief; protection of local interests.

The affidavit provided by the municipal purchasing agent to bidders for contracts to provide goods covered by this subchapter must include a copy of the following statement:

“Scarborough is a town that believes employers should fairly compensate hard work, that the health and safety of working people should be protected and that no form of unlawful discrimination or abuse should be tolerated. Scarborough citizens are aware that law and regulations designed to safeguard basic tenets of ethical business practice are disregarded in many workplaces, commonly referred to as “sweatshops.”

3. Information Retained.

The Town’s Purchasing Agent, or designee, shall retain records of all information for 25 months regarding manufacturing working conditions supplied by the vendors replying to all purchase or bid solicitations. Any additional information used by the Purchasing Agent in making a bid award shall also be retained with the bid documentation. All records will be available to the public.

4. Report.

The Municipal Purchasing Agent shall submit a report to the Finance Committee by September 15 of each year concerning the administrative and financial impact of these requirements, the degree of voluntary compliance with the municipal purchasing code of conduct by the vendors; the number of vendors who agreed to and the number that declined to comply with the provisions of this subchapter; and any other information relevant to the municipal purchasing code of conduct.

Vote: 7 Yeas.

NEW BUSINESS:

Order No. 19-024. First reading and refer to the Planning Board, the proposed amendments to Chapter 405, the Zoning Ordinance, Section I, Contract Zoning. [Ordinance Committee] Jay Chace, Town Planner, gave a brief overview on this Order.

Motion by Councilor Caterina, seconded by Councilor Donovan, to move approval of the first reading and refer to the Planning, the proposed amendments to Chapter 405, the Zoning Ordinance, Section I Contract Zone, to come back to the Town Council upon receipt of the Planning Board’s recommendations, proposed amendments are as follows:

CHAPER 405 ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine Section II. Zoning Ordinance, is amended as follows:

SECTION II. ZONING ORDINANCE

I. CONTRACT ZONING [September 19, 2001][Amended 10/03/01][Amended 11/20/02][Amended 07/21/2004]

1. Contract Zoning Authorized

Contract zoning is authorized for zoning map and/or text changes when the Town Council, exercising its sole and exclusive judgment as the legislative body of the Town of Scarborough,

determines that it is appropriate to modify the zoning district regulations applicable to a parcel of land, subject to appropriate conditions and restrictions which relate to the physical development or operation of the property, and which will allow reasonable uses of the land which would not have been permitted by the existing zoning district regulations but which remain consistent with the Town of Scarborough Comprehensive Plan and compatible with the existing and permitted uses within the existing zoning district classification. For purposes of this section the term “contract zoning agreement” shall mean either an original agreement or any subsequent amendments.

2. Relationship to Shoreland Zoning

A parcel rezoned under this Section II(I) may include land areas subject to the Shoreland Zoning Ordinance for the Town of Scarborough, but any provision of a contract zoning amendment agreement adopted by the Town Council which removes or modifies any restrictions or limitations imposed by the Shoreland Zoning Ordinance shall not take effect until approved by the Commissioner of Environmental Protection as required by 38 M.R.S.A. Section 438-A(3).

3. Public Benefit Required

Contract zoning shall promote the general welfare of the residents of the Town of Scarborough. The Town Council shall approve a contract zoning request only if it determines, exercising its sole and exclusive judgment as the legislative body of the Town, that the proposed contract zoning is in the public interest and will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification. Guidelines for the Council to apply in making those determinations are set forth in Appendix A to this Ordinance.

4. Procedures

Requests for a contract zoning agreement or an amendment to an existing contract zoning agreement shall not be subject to Section II(G), but shall be processed exclusively as provided in this Section II(I). A summary of the procedural steps is contained in Appendix B to this Ordinance.

a. Preliminary Joint Review of Application for Contract Zoning by Planning Board and Town Council.

- i. The person proposing a contract zoning agreement or an amendment to an existing contract zoning agreement shall submit an application for contract zoning to the Town Planner, which shall include, at a minimum, the following elements:
 - A map showing existing and proposed zoning district lines.
 - The address or exact location of the request, including the Scarborough Assessor’s map references for the property to be rezoned.
 - The name, address and telephone number of the property owner and of the applicant, if the applicant is not the owner.
 - Evidence of the applicant’s right, title or interest in the property.
 - A site analysis that describes the major features of the property, allowing the Planning Board and Town Council to make informed judgments about how it will be used. Guidelines for preparation of the site analysis are contained in Appendix C to this Ordinance. This requirement may be waived by the Town Planner for amendments that do not propose to utilize lands that were not previously considered as part of the contract zone process.

- A conceptual development plan showing the approximate layout of all buildings, structures, streets, driveways, parking areas and other significant improvements to be constructed on or above the surface of the ground plus any proposed open spaces, conservation areas, buffer areas or other features of the development, but is not required to show subsurface infrastructure installations, building plans, engineering plans or other details which would be required for a subdivision plan or site plan. This requirement may be waived by the Town Planner for amendments that do not propose to utilize lands that were not previously considered as part of the contract zone process.
 - A statement describing the existing use of the property and the proposed new use and development and describing how the proposed contract zone will be consistent with the Town of Scarborough Comprehensive Plan, will be consistent with existing and permitted uses within the existing zoning district classification of the property, will be in the public interest, and will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification .
 - A proposed contract zoning agreement which complies with the requirements of Section II(I)(5) below.
 - Any other information requested by the Town Planner and/or the Town Engineer.
 - A non-refundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the Town Council
- ii. The Town Planner will review the application and, upon being satisfied that the application is sufficiently complete for review by the Planning Board and the Town Council, will schedule a joint meeting of the Planning Board and Town Council to commence review of the request for contract zoning. The Town Planner shall cause notice of the joint Planning Board/ Town Council meeting to be given in accordance with the requirements of 30-A M.R.S.A. § 4352(8), at the applicant's expense. Such notice shall be sent to the owners of all properties within five hundred (500) abutting of the property to be rezoned. Such notice shall indicate that the joint meeting will include a public hearing conducted by the Planning Board at which the public will be given an opportunity to speak on the proposed contract zoning ~~amendment~~ agreement.
- iii. The joint Planning Board/Town Council meeting shall be conducted as follows:
- Presentation by the applicant.
 - Comments from Town staff.
 - Comments from members of the public. (This shall constitute the public hearing by the municipal reviewing authority required by 30-A M.R.S.A. § 4352(8).)
 - Response or rebuttal from applicant.
 - Discussion among members of the Planning Board and the Town Council, which may include questions posed to the applicant, staff and the public.
 - Comments from members of the Planning Board concerning the land use implications of the proposed contract zoning ~~amendment~~ agreement.

- Preliminary Town Council discussion of contract zoning amendment agreement.

The Joint Planning Board/Town Council meeting may be continued from time-to-time by vote of the Town Council until the Council has concluded its discussion and is prepared to give the applicant preliminary direction concerning the further processing of the contract zoning request. At the conclusion of the discussion, the Council shall, by vote, advise the applicant: (1) to withdraw the request for contract zoning; (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or (3) to revise and resubmit the application for contract zoning, under Section II(I)(4)(a)(i) above. The vote of the Town Council shall constitute direction from the Council to the applicant as to how to proceed, but shall not be binding on either the applicant or the Council, which reserves its sole and exclusive judgment as the elected legislative body of the Town of Scarborough until its final vote on the proposed contract zoning amendment agreement.

b. Planning Board Plan Review.

- i. Every development proposed in an application for contract zoning shall require review and approval under the Town of Scarborough Site Plan Review Ordinance. In addition, if the development proposed is a subdivision, it shall require review under the ordinance entitled “Subdivision Regulations of the Town of Scarborough, Maine” (the “Subdivision Ordinance”). The application(s) for plan review shall be submitted only after the Town Council has given its preliminary directions to the applicant pursuant to Section II(I)(4)(a)(iii) above.
- ii. The Planning Board shall hold a public hearing to consider the site plan review application and the subdivision application, if required, whether or not a public hearing is required by the Site Plan Review Ordinance or the Subdivision Ordinance. The Planning Board shall review the site plan review application under the Scarborough Site Plan Review Ordinance and the subdivision application, if required, under the Subdivision Ordinance, applying the applicable standards of each ordinance and the zoning standards of the proposed contract zoning amendment agreement. If the Planning Board determines that the proposed development meets such standards, the Board shall grant preliminary, provisional approval to the plan[s], subject to enactment of the contract zoning amendment agreement by the Town Council.
 - a. The Planning Board shall also provide an advisory opinion to the Town Council and advise to the applicant of any changes or revisions to the proposed contract zoning agreement necessary to conform the amendment agreement to the Planning Board’s preliminary approval of the plan.
- iii. In the case of a subdivision, the Planning Board shall not make findings as to whether the proposed subdivision is in conformity with the Town of Scarborough Comprehensive Plan, but shall condition preliminary subdivision approval upon a determination by the Town Council under Section II(I)(4)(c)(ii), below that the proposed contract zoning amendment agreement is consistent with the Comprehensive Plan.

c. Town Council Action on the Contract Zoning Amendment Agreement. [Amended 08/20/08]

- i. Except as provided in Section II(I)(6)(b) below, the Town Council shall not take final action on the contract zoning amendment agreement until after the Planning Board has given preliminary site plan approval and preliminary subdivision

approval, if required. The Council shall process the proposed contract zoning ~~amendment agreement~~ under the procedures of section 213 of the ~~Council-Manager Charter of the~~ Town of Scarborough ~~Charter~~ and the Rules and ~~Orders Procedures~~ of the Scarborough Town Council. In addition to the public hearing required by section 213 of the Charter, the Council may also conduct as many additional hearings and meetings as the Council deems necessary for consideration of the contract zoning application.

- ii. Before taking its final vote on the contract zoning ~~agreement request~~, the Town Council shall determine whether the proposed contract zoning ~~amendment agreement~~:
 - (1) is consistent with the Town of Scarborough Comprehensive Plan,
 - (2) is consistent with the existing and permitted uses within the existing zoning district classification of the property,
 - (3) is in the public interest, and
 - (4) will have beneficial effects on the town as a whole which would not result if the property were developed under the existing zoning district classification.

The Council shall state its reasons for its findings and conclusions on each of those determinations, which shall constitute the legislative findings of the Town Council. The Town Council shall then vote on the contract zoning ~~amendment agreement~~, which shall include any necessary map change and a contract zoning agreement complying with the requirements of Section II(I)(5) below. Final passage of the contract zoning ~~amendment agreement~~ shall require the affirmative vote of at least two thirds of the Council members present and voting, but in no event less than four. [Amended 05/21/03 – retroactive to 11/20/02]

- iii. The contract zoning agreement approved by the Town Council shall be executed by the Town Manager or by such other Town officer as the Council may designate and recorded by the applicant in the Cumberland County Registry of Deeds. The agreement shall not take effect until it is recorded. If the agreement is not recorded within 90 days after the Town Council approves the request for rezoning, the Council, after giving the applicant notice and an opportunity to be heard, may rescind its approval of the agreement if the Council determines that changed circumstances warrant rescission. All contract zoning agreements approved and recorded prior to August 20, 2008 are hereby ratified, notwithstanding any different recording requirements in effect at the time of their approval.

d. Final Planning Board Action.

After the contract zoning agreement is recorded in the Registry of Deeds, the Planning Board shall complete its final site plan review of the development proposal and final subdivision review, if required. In the case of a subdivision, the Planning Board shall adopt as its findings under 30-A M.R.S.A. § 4404(9) and Sections 3(I) and 6:1 of the Subdivision Ordinance the findings made by the Council under Section II(I)(4)(c)(ii) above concerning consistency with the Town of Scarborough Comprehensive Plan.

5. The Contract Zoning Agreement

a. Contents of the Agreement.

The contract zoning agreement shall include a provision granting the Town of Scarborough the power to enforce all conditions and restrictions, both through enforcement action pursuant to this Ordinance and through legal action for specific performance. Conditions and restrictions imposed by the Town Council may include, but shall not be limited to, the following:

1. Limitations on the number and types of uses permitted.
2. Restrictions on the scale and density of development.
3. Specifications for the design and layout of buildings and other improvements, including landscaping.
4. Schedules for commencement and completion of construction.
5. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects.
6. Preservation of open space and buffers, and protection of natural areas and historic sites.
7. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewer, and special maintenance needs arising from the rezoning.
8. Provisions for enforcement and remedies for breach of any conditions or restrictions.
9. Provisions for reservation or dedication of land for public purposes.

The Town Council may impose conditions under this Section II(I) which are more restrictive than the otherwise applicable requirements of this Ordinance.

b. Effects of the Agreement.

The conditions and restrictions set forth in the agreement shall run with the land and bind all future owners of the land and any other person who claims an interest in the property, and may be removed only by subsequent action of the Town Council expressly removing, relieving or discharging one or more of the specific conditions or restrictions. If the conditions and restrictions are not fulfilled or complied with within the specified time limits, the Town Council may extend the time limits or may initiate a rezoning to the original zoning district classification or to another zoning district classification.

c. Modifications and Amendments. [Amended 07/21/2004][Amended 08/20/08]

The contract zoning agreement may allow for changes or modifications to the development, but shall specify the procedure for approval of any such changes or modifications, setting forth categories of changes or modifications which would require Planning Board approval only, those which would require Town Council approval only, and those which would require both Planning Board and Town Council approval. Unless otherwise specified in the contract zoning agreement, a request to amend a contract zoning agreement shall be processed as ~~follows:~~ stated in Section II(I)(4) above.

- ~~(i) The applicant requesting the amendment shall submit a letter to the Town Council, in care of the Town Manager, explaining the proposed amendment and the reasons for the request, together with the text of the proposed amendment and the application fee specified in the Schedule of License, Permit and Application Fees established by order of the Town Council. If the request includes any change to the boundary of the existing contract zoning district, the applicant shall also include a map of the area proposed to be rezoned.~~
- ~~(ii) The Town Manager shall transmit the request to the Town Council and shall place the proposed amendment on the Council's agenda for a first reading.~~
- ~~(iii) If the proposed amendment does not receive an affirmative vote by a majority of the Council upon first reading, the request shall be deemed denied and the application fee shall be refunded. If the proposed amendment receives an affirmative vote by a majority of the Council upon first reading, then the Council shall forward the application to the Town Planner for Planning Board review.~~

- ~~(iv) The Town Planner shall review the request and, upon being satisfied that the materials submitted are sufficiently complete for review by the Planning Board, shall schedule a public hearing before the Planning Board, causing notice of such hearing to be given in accordance with the requirements of 30 A.M.R.S.A. § 4352(8) at the applicant's expense.~~
- ~~(v) Upon conclusion of the public hearing, the Planning Board shall forward any recommendations or comments concerning the proposed amendment to the Town Council. In addition, if the proposed amendment requires a revision to a site plan and/or subdivision plan previously approved by the Planning Board, the Planning Board shall simultaneously consider such requested revisions, applying the applicable standards of the Site Plan Review Ordinance and/or Subdivision Ordinance and the zoning standards of the proposed amendment to the contract zoning agreement. If the Planning Board determines that the proposed development meets such standards, the Board shall grant preliminary, provisional approval to the plans, subject to enactment of the requested amendment to the contract zoning agreement by the Town Council.~~
- ~~(vi) After the Planning Board has forwarded its recommendations or comments to the Town Council and granted preliminary site plan approval and/or preliminary subdivision approval, as required, the Town Council shall proceed to a public hearing and second reading of the proposed amendment to the contract zoning agreement, under the procedures of section 213 of the Council Manager Charter of the Town of Scarborough and the Rules and Orders of the Scarborough Town Council. Final passage of the amendment to the contract zoning agreement shall require the affirmative vote of at least two thirds of the Council members present and voting, but in no event less than four.~~
- ~~(vii) The amendment to the contract zoning agreement approved by the Town Council shall be executed by the Town Manager or by such other Town officer as the Council may designate, and recorded by the applicant in the Cumberland County Registry of Deeds. The amendment shall not take effect until it is recorded. If the amendment to the contract zoning agreement is not recorded within 90 days after the Town Council approves the request, the Council, after giving the applicant notice and an opportunity to be heard, may rescind its approval of the amendment if the Council determines that changed circumstances warrant rescission. All contract zoning amendments approved and recorded prior to August 20, 2008, are hereby ratified, notwithstanding any different recording requirements in effect at the time of their approval. [Amended 08/20/08]~~
- ~~(viii) After the amendment to the contract zoning agreement is recorded in the Registry of Deeds, the Planning Board shall complete its final site plan review and subdivision review, if required.~~

d. Performance Guarantees.

As part of the contract zoning agreement, the Town Council may, but is not obligated to, require a bond, escrow agreement, irrevocable letter of credit, or other surety in such amount as is approved by the Town Manager as being reasonably necessary to ensure compliance with the conditions or restrictions required by the rezoning and, where necessary to ensure continued compliance, may require such surety to remain in effect after occupancy of the rezoned property. Such surety shall be posted before the agreement is recorded in the Registry of Deeds.

6. General Provisions

a. Use of Consultants.

Both the Planning Board and the Town Council may obtain the services of independent technical consultants if either body considers such services necessary for adequate review of the application for contract zoning, such consultants to be retained at the applicant's expense. By submitting an application for contract zoning under this Section II(I), the applicant agrees to reimburse the Town for the reasonable and necessary costs of such consultations, and the Town will not execute the contract zoning agreement until such amounts have been paid in full.

b. Waiver of Procedures for Phased Developments.

Notwithstanding any other provision of this Section II(I), where the development proposed in a request for contract zoning is designed to be constructed in phases and the Council concludes that it would be impracticable to require preliminary subdivision and/or site plan review and approval of all phases before approval of the contract zoning ~~amendment~~ agreement, the Town Council, in its discretion, may waive the provisions of Section II(I)(4)(c)(i) requiring the Planning Board to approve a preliminary plan before the Council takes final action on the contract zoning ~~amendment~~ agreement, but only with respect to phases subsequent to the first phase of the development to be constructed. If it grants such a waiver, the Council shall include a phasing schedule in the contract zoning agreement, specifying the dates for completion of the subdivision and/or site plan review, and may reserve in the contract zoning agreement the right of the Town Council to review the plans for subsequent phases prior to their construction.

c. No Rights Created Before Final Council Vote.

The submission of a request for contract zoning under this Section II(I), the payment of application fees, or the expenditure of funds by the applicant in presenting such a request shall not create any vested rights in the application. The conduct of meetings and hearings, the review of the application, comments by Town officials or staff, preliminary votes, findings or determinations, preliminary subdivision or site plan approval, and the availability of contract zoning under this Section II(I) shall not be construed as creating any entitlement to approval of a request for contract zoning. The decision whether or not to rezone remains committed to the Town Council exercising its sole and exclusive judgment as the elected legislative body of the Town of Scarborough and will not be made until the Council takes its final vote on the contract zoning ~~amendment~~ agreement.

Vote: 7 Yeas.

Order No. 19-025. Act on the request to amend Chapter 302A – the Town Committees/Boards Manual, relating to the charge for the Energy Committee. *[Energy Committee]* Rick Meinking of Hearn Road and Chair of the Energy Committee, gave an overview on this Order.

Motion by Councilor Caterina, seconded by Councilor Foley, to move approval to amend Chapter 302A – the Town Committees/Boards Manual, relating to the charge for the Energy Committee, as follows:

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the charge for the Energy Committee for the Town of Scarborough, Maine, is amended as follows:

ENERGY SUSTAINABILITY COMMITTEE

[Adopted April 7, 2010]

Established

There shall be ~~an Energy Sustainability~~ Committee with the objective to identify actions that the community as a whole [municipal/school, residential, commercial and industrial] can undertake to reduce ~~costly~~ energy consumption and increase sustainability¹ in the Town.

Purpose

The purpose of this Committee is to serve as ~~an energy and environmental~~ a sustainability committee for Scarborough, and to research ~~energy~~ programs, projects, and policies ~~through relative to energy~~ conservation, ~~and~~ alternative energy, recycling, and other related topics use.

Organization and/or Membership

Members shall be appointed for three-year terms, except for the initial appointments, which shall be two (2) members for terms of one year, two (2) members for terms of two years and one (1) member for a term of three years and two (2) alternates for a term of two years. Members whose terms expire shall continue to serve until their successors are appointed and qualified. The Town Council shall appoint one of its members to serve as Council liaison to the Committee. The Town Manager, or his/her designee, shall serve as staff liaison to the Committee. Neither the Town Council liaison nor the Town Manager or his/her designee shall be a voting member of the Committee.

Duties

The Committee shall have the following duties:

- Recommend ways to reduce the Town's environmental footprint;
- Provide guidance to the Town's Sustainability Coordinator;
- Review existing Town Ordinances and Policies and recommend updates to increase sustainability;
- Recommend new Town Ordinances and Policies related to sustainability issues;
- Recommend a funding mechanism for the Town's sustainability outreach;
- Prepare, recommend and implement a Comprehensive Energy Plan for the Town to be adopted by the Town Council, and recommend updates to the Comprehensive Energy Plan, as needed;
- Serve as a forum to review and recommend opportunities to increase the efficient use of energy through conservation and alternative energy initiatives;
- ~~Recommend ordinances and policies to the Town related to energy issues;~~
- Analyze municipal energy use patterns and benchmark usage ~~to identify opportunities;~~
- Pursue grant opportunities for energy efficiency, ~~and~~ alternative energy sources, recycling, and other sustainability initiatives;
- ~~Recommend ways to reduce the Town's environmental footprint by minimizing its energy use while reducing greenhouse gas emissions;~~

¹ For the purposes of this document, sustainability is defined as balancing the values of energy and environmental stewardship, social responsibility and economic vitality to meet present needs while ensuring the ability of future residents to meet their needs. The definition in this document may be referenced as sustainable practices, sustainable measures, and sustainable initiatives.

- Promote the local economy ~~and~~ while protecting ~~its~~ the local environment;
- ~~Explore the benefits and funding models for an Energy Office for the Town;~~
- ~~Provide Public education and awareness through community outreach.~~
- Provide an Annual Report to the Council.

Procedures

Three members of the Committee constitute a quorum. The Committee shall select one of its members to serve as chair and another member who shall serve as recording clerk and keep the minutes of all proceedings and submit these to the Town Clerk's Office for filing. The Committee shall set its own meeting schedule which will be open to the public.

Vote: 7 Yeas.

Order No. 19-026. Act on the request to set the date, time and location of the School Budget Validation Referendum Election for Tuesday, June 11, 2019, at 7:00 a.m. at the Scarborough High School in Alumni Gym, located at 11 Municipal Drive. [Town Clerk] The Town Clerk's gave a brief overview on this Order.

Motion by Councilor , seconded by Councilor , to move approval on the request to set the date, time and location of the School Budget Validation Referendum Election for Tuesday, June 11, 2019, at 7:00 a.m. at the Scarborough High School in Alumni Gym, located at 11 Municipal Drive, as follows:

**WARRANT
SCHOOL BUDGET VALIDATION REFERENDUM
(20-A M.R.S.A. § 1486 and 2307)
TOWN OF SCARBOROUGH
Tuesday, June 11, 2019**

Municipality: Scarborough

Voting District: Town Wide

Voting Place Name: Scarborough High School

Voting Location: 11 Municipal Drive

Polls Open at 7:00 A.M.

Polls Close at 8:00 P.M.

Absentee Ballot Processing (check all that apply):

Processed by: Clerk (Centrally) ☒ Clerk (At Polls)

Date/Time of Processing:

☒ **Saturday, June 8, 2019***

1-Hour Inspection time Period: 9:00 a.m. if no inspection is requested or 10:00 a.m. if an
Time Processing Begins: inspection has been requested.

Monday, June 10, 2019*

1-Hour Inspection Time Period: _____ Time Processing Begins: _____

☒ **During** Election Day (6/11) Processing Time(s): 8:00 a.m., 10:00 a.m. & 7:30 p.m.
Only after 8:00 p.m. on Election Day (6/11)

**WARRANT
SCHOOL BUDGET VALIDATION REFERENDUM
(20-A M.R.S.A. § 1486 and 2307)
TOWN OF SCARBOROUGH**

Tuesday, June 11, 2019

Cumberland County, ss.

State of Maine

TO: Robert A. Moulton, the Chief of Police for the Town of Scarborough:

You are hereby required in the name of the State of Maine to notify the voters of the Town of Scarborough of the Special Municipal Advisory Referendum Election, as described in this warrant.

To the Voters of the Town of Scarborough:

You are hereby notified that a School Budget Validation Referendum will held at the Scarborough High School Alumni Gymnasium, located at 11 Municipal Drive, in the Town of Scarborough on Tuesday, June 11, 2019, for the purpose of determining the following questions:

School Budget Validation Referendum Question No. 1:

Do you favor approving the Scarborough School budget for the upcoming school year that was adopted at the latest Town of Scarborough budget meeting held on May 15, 2019?

School Budget Validation Referendum Question No. 2:

Do you wish to continue the budget validation referendum process in the Scarborough School Administrative Unit for an additional three years?

Informational Note:

A “YES” vote will require the Scarborough School Department to continue to conduct a referendum to validate its annual school budget for the next three years.

A “NO” vote will discontinue the budget validation referendum for at least three years and provide instead that the annual school budget shall be finally adopted at a meeting of the (voters, municipal council or other legislative body, as applicable).

The polls shall be opened at 7:00 A.M. and closed at 8:00 P.M.

Absentee Ballots shall be processed on Saturday, June 8, 2019 and on Election Day, Tuesday, June 11, 2019, starting at 800 a.m. 10:00 a.m. and 7:30 p.m.

The Registrar of Voters will hold office hours during regular business hours of the Town Hall and at the Polls to correct any error or change a name or address on the voting list; to accept the registration of any person eligible to vote and to accept new enrollments.

A person who is not registered as a voter may not vote in any Scarborough election.

Given under our hand this 3rd day of April, 2019, at Scarborough, Maine.

Vote: 7 Yeas.

Order No. 19-027. Act on the request to set the date for nominations papers to be available to fill a vacancy on the Town Council created by the resignation of Shawn Babine, with a term to expire in 2020, from Thursday, April 4, 2019, to close of business on Tuesday, April 16, 2019, and set the Special Municipal Election date for Tuesday, June 11, 2019, to coincide with the School Budget Validation Referendum Election. [Town Clerk] The Town Clerk gave a brief overview on this Order.

Motion by Councilor Donovan, seconded by Councilor Foley, to move approval to set the date for nominations papers to be available to fill a vacancy on the Town Council created by the resignation of Shawn Babine, with a term to expire in 2020, from Thursday, April 4, 2019, to close of business on Tuesday, April 16, 2019, and set the Special Municipal Election date for Tuesday, June 11, 2019, to coincide with the School Budget Validation Referendum Election.

Motion by Councilor Donovan, seconded by Councilor Babine, to move approval to amend the main motion to change the date that nomination papers are due back to the Town Clerk to Tuesday, April 30, 2019.

Vote: 7 Yeas.

Main Motion as amended:

The date for nominations papers to be available to fill a vacancy on the Town Council created by the resignation of Shawn Babine, with a term to expire in 2020, from Thursday, April 4, 2019, to close of business on Tuesday, April 30, 2019, and set the Special Municipal Election date for Tuesday, June 11, 2019, to coincide with the School Budget Validation Referendum Election.

Vote: 7 Yeas.

Item 9. Standing and Special Committee Reports and Liaison Reports.

- Councilor Hamill gave an update on the ecomaine Recognition Ceremony.
- Councilor Donovan gave an update on the Energy Committee.
- Councilor Caterina gave an update on the Historic Preservation Implementation Committee and MMA Legislative Policy Committee.
- Councilor Foley noted that the Taste of the Town at Camp Ketcha would be Saturday.
- Councilor Johnson gave an update on the Communications Committee and the Chamber of Commerce.
- Councilor Babine gave an update on the Finance Committee.

Item 10. Town Manager Report. Thomas J. Hall, Town Manager, gave the following updates:

- The proposed funding of \$44,000 for the Beech Road School House would be used from the Land Bond Funds.
- There would be a meeting on the Eastern Trail Close the Gap Program and an update would be forth coming at a future meeting.
- The Police Department has received a grant for Operation Hope that would pay for a Vista Volunteer for a full year. The Police Department was one of 13 municipalities across the country that received this grant.
- He reminded the Town Council that there would be a workshop with the Library on May 10th, prior to the Special Town Council meeting and on May 1st there would be a Recycling Workshop and for future workshops there would be discussions on growth management; stormwater project; and an update on the Purchasing and Sale Agreement for the Public Safety Building.

Item 11. Council Member Comments.

- Councilor Babine asked everyone to find the time to pause and pay respect to the State Trooper who died today. He asked that voters vote No to continue to vote on the School Budget. He commented on the workshop prior to the meeting with the Board of Education relating to the modular at Eight Corners School. Trust your elected officials. Commented on the use of Indian symbols as mascots. Today the Babine family made history in that two family members are representing the State; he and a distant cousin are currently serving. He congratulated Daniel Volan and Colby Jackson-Paris on receiving their Eagle Scout award.
- Councilor Johnson spoke on the Council Political Policy.
- Councilor Foley also spoke on the workshop with the Board of Education that had been held prior to the Town Council meeting.
- Councilor Caterina also spoke on the workshop with Board of Education. We need to educate the community and she felt the way to go is to have a consolidated school. She then mentioned the budget and hoped that it would pass the first time round.
- Councilor Donovan also commented on the workshop with the Board of Education. He felt that the presentation on the budget was terrific. He thanked Colette Mathieson who worked all weekend to get the books done and also recognized Ruth Porter and Kate Bolton. He went on to mention the revaluation and that is had not been done in quite a while.
- Councilor Hamill also commented on the workshop with the School Board as well as issues that had occurred over the past week and how everything worked out. Thanks to the Town Manager and team for what had been presented.
- Chairman Hayes also commented on everyone staying at the table and the process. He commented on the new budget book and having conversations with the public.

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

Vote: 7 Yeas.

Meeting adjourned at 8:39 p.m.

Respectfully Submitted,

Yolande P. Justice
Town Clerk