

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
APPOINTMENTS COMMITTEE MEETING 6:15 P.M.
REGULAR MEETING – 6:30 P.M.

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

Item 1. Call to Order.

Item 2. Pledge of Allegiance.

Item 3. Roll Call.

Order No. 15-040. Act on the request for an executive session pursuant to Title 1, M.R.S.A. §405(6)(D) pertaining to Labor negotiations pertaining to the Scarborough police Benevolent Association.

Item 4. General Public Comments.*

Item 5. Minutes: May 20, 2015 – Regular Meeting.

Item 6. Adjustment to the Agenda.

Item 7. Items to be signed: a. Treasurer's Warrants.

***Procedure for Addressing Council** [Posted in Chambers.]

Order No. 15-038, 7:00 p.m. Public Hearing and second reading on the proposed amendments to Chapter 1002 – Shellfish Conservation Ordinance.

Order No. 15-041, 7:00 p.m. Public Hearing and action on the request for a Combined Massage Establishment / Massage Therapist License from Marie Ann Dittmer located at 7 Oak Hill Terrace.

Order No. 15-042, 7:00 p.m. Public Hearing and action on a request for a Liquor License from DJJR, Inc. d/b/a Salty Bay Seafood Take-Out, located at 68 Jones Creek Drive.

OLD BUSINESS: None at this time.

NEW BUSINESS:

Order No. 15-043. Act on the request as follows: Be it Ordered that the Town Council, following a the request made by the Treasurer, grants a tax abatement of the 2013-2014 taxes specially assessed to FLP, LLC in the amount of \$16,542.50 along with interest and fees in the amount of \$1,011.26 such taxes securing collection of the special assessment of the proportional costs of the utility improvements installed in the Haigis Parkway Development District benefitting the FLP, LLC property and the amount of the abatement reflecting the correct frontage and area of the FLP, LLC parcel used in determination of the special assessment to apportion development costs for the Haigis Parkway utility improvements; the Treasurer, Tax Collector and Assessor to also prepare and issue such other documents as also may be required.

Order No. 15-044. Act to authorize the Town Manager to renew the Parking Agreement with the Higgins Beach Inn.

Order No. 15-045. Act on the request to ratify the collective bargaining agreement between the Town of Scarborough and the Scarborough Professional Dispatchers Unit of Scarborough Firefighter Association - IAFF #3894.

Item 8. Non Action Items.

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

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-040. Move on the request for an executive session pursuant to Title 1, M.R.S.A. §405(6)(D) pertaining to Labor negotiations pertaining to the Scarborough police Benevolent Association.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-038. Move approval of the second reading on the proposed amendments to Chapter 1002 – Shellfish Conservation Ordinance.

CHAPTER 1002

TOWN OF SCARBOROUGH

SHELLFISH CONSERVATION ORDINANCE

IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, amends Chapter 1002 - the Town of Scarborough Shellfish Conservation Ordinance by adding either the underlined text or deleting the text shown in strikeover type, as shown below:

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CHAPTER 1002
TOWN OF SCARBOROUGH
SHELLFISH CONSERVATION ORDINANCE

1. Authority:

This Ordinance is enacted in accordance with 12 M.R.~~S.~~R.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.

3. Shellfish Conservation Committee:

The Shellfish Conservation Program for the Town of Scarborough will be administered by the Shellfish Conservation Committee consisting of 7 members to be appointed by the Town Council for terms of 3 years. The Committee'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 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 six 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]

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.

c. Conservation Projects

Conservation Projects may include seeding projects, crab projects, school projects, surveys or any other projects accepted by the Shellfish Conservation Commission.

5. Licensing - Municipal Shellfish License 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 except that~~ 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] [amended 07/17/02]

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, except ~~and except that~~ 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] [amended 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] [amended 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 of ~~himself~~ the holder and his or her family. 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).

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 of ~~himself~~ the holder and his or her family. 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). [03/19/03]

7. 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 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. [02/18/98]

8. 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 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. [02/18/98]

9. License must be signed.

The licensee must sign the license to make it valid.

10. Commercial license applicant may only apply for one type.

A commercial license applicant may only apply for one type of commercial license under this Ordinance.

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). [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. Fees for non-resident licenses shall not exceed twice the amount charged for the equivalent resident licenses. 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) after the date of issuance shall receive a refund of one-half the license fee. [01/05/00]

D. Conservation Activities:

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 may be required to participate in shellfish seeding as deemed necessary by the Shellfish Conservation Committee. 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 priority license renewal pursuant to Section 5.E.4.(a) of this Ordinance.

The Shellfish Conservation Committee 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 and submitted to the Shellfish Committee on a monthly basis for their records.

It shall be the sole responsibility of the Commercial License holder to contact the Shellfish Committee Members or the Shellfish 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. School conservation activities have a deadline of December 31st and are limited to a maximum of three (3) hours per project and six (6) hours total allowed.

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 do 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.

E. Issuance of Shellfish Licenses Limitation of Diggers:

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.

~~The Shellfish Conservation Committee will approve all accepted conservation projects by a majority vote. The names and number of hours completed on an accepted conservation project will be recorded in writing by the Shellfish Conservation Officer and submitted to the Shellfish Committee on a monthly basis for their records.~~

~~It shall be the sole responsibility of the Commercial License holder to contact the Shellfish Committee Members or the Shellfish Officer to determine the conservation work 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 required to contribute half their required conservation hours in the form of low tide work. The conservation year will run from May 1 to October 31. School conservation projects have a deadline of December 31 and are limited to a maximum of three (3) hours per project and six (6) hours total allowed. [amended 01/03/01] [amended 07/17/02] [amended 03/17/04][amended 03/21/13]~~

~~The Shellfish Conservation Committee may waive all or part of the requirement for conservation time 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 conservation time 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:~~

- ~~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 writing statement from a physician indicating that the applicant is no physically able to participate in regular conservation work. [01/05/00]~~

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 Monday in April, or on the first town office business day thereafter if the first Monday is not a business day. [03/19/03]

(a) Commercial Renewal Licenses.

(i): On ~~that the~~ first Monday of April and on the next subsequent business day, the Clerk shall issue license 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 ~~time~~ 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 pursuant to subparagraph (ii) below 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 approved 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. [03/16/2005]

(ii): Effective March 1, 1998 in lieu of applying in person pursuant to subparagraph (I) above, an applicant 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 March 31. 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.

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

(i) On the third and fourth subsequent business days, 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.

(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, 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(~~DE~~)(4)(b)(i).

(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.~~DE~~4(a), except that required shellfish seeding hours and additional voluntary conservation hours shall be:

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

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. ~~DE~~.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.

(d) 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.

(e) Non-resident Recreational Licenses.

On the second Monday, Tuesday and Wednesday until noon, in April annually, the Town Clerk shall accept applications for non-resident recreational licenses. Applicants must apply in person at the office of the Town Clerk and shall have their names placed in a lottery pool. On that Wednesday at 6:00 p.m., the licenses shall be awarded to applicants drawn at random from the pool by the Clerk and shall not exceed ten percent (10%) of the number of allocated resident recreational shellfish licenses. Physical presence and full payment are required at the time of drawing. The lottery shall be conducted in the same fashion as the lottery under section 5(~~DE~~)(4)(b)(i).

(f) 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. [03/16/2005] [11/02/2005]

(g) Day Licenses.

After all available resident and non-resident recreational licenses have been issued under Section 5(~~DE~~)(4)(d) and 5(~~DE~~)(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 without regard to residency of the applicant. Applicants must appear in person at the office of the

Town Clerk no earlier than 5 calendar days before the day for which the license is requested. An applicant may obtain only one day license at a time and must appear in person on a separate day 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. [03/16/2005] [11/02/2005]

E. License expiration date:

Each license issued under authority of this Ordinance expires at midnight the 30th of April next following the date of issue.

F. Reciprocal Harvesting Privilege:

Licensees 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.

G. 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 ~~himself~~ the holder and his or her family.” [amended 07/17/02]

H. Suspension: [amended 04/18/01] [amended 03/01/06]

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]
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]
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]
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 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]

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]

I. 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.

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]

J. 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 10/17/2007)[amended 03/21/13]

K. 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 04/04/2007]

L. 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, ~~in his~~ 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]

M. 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.

N. 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. [02/18/98]

O. 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. [03/01/06]

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-041. Move approval on the request for a Combined Massage Establishment / Massage Therapist License from Marie Ann Dittmer located at 7 Oak Hill Terrace.

Town of Scarborough, Maine

Town Clerk's Office

259 US ROUTE ONE

PO BOX 360

SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: May 29, 2015

RE: New Request for a Combination Massage Establishment/Massage Therapy License

The following applicant is requesting approval on a Combined Massage Establishment/Massage Therapist License:

- Marie Dittmer, d/b/a Focal Point Manual Therapies, located at 7 Oak Hill Terrace.

Applicant is in compliance with the requirements of the Town Clerk's Office and there are no outstanding issues. The completed application is on file with Clerk's Office.

It is recommended that this license be granted.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-042. Move approval on a request for a Liquor License from DJIJR, Inc. d/b/a Salty Bay Seafood Take-Out, located at 68 Jones Creek Drive.

Town of Scarborough, Maine

Town Clerk's Office

259 US ROUTE ONE

PO BOX 360

SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: May 29, 2015

RE: **Liquor License Request**

The following applicant is seeking approval on a new Liquor License Application:

- DJIJR, Inc. d/b/a Salty Bay Seafood Take-Out, located at 68 Jones Creek Drive.

The completed application is on file with Town Clerk's Office and there are no outstanding issues. It is recommended that this license be approved.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-043. Move approval on the request as follows: Be it Ordered that the Town Council, following a the request made by the Treasurer, grants a tax abatement of the 2013-2014 taxes specially assessed to FLP, LLC in the amount of \$16,542.50 along with interest and fees in the amount of \$1,011.26 such taxes securing collection of the special assessment of the proportional costs of the utility improvements installed in the Haigis Parkway Development District benefitting the FLP, LLC property and the amount of the abatement reflecting the correct frontage and area of the FLP, LLC parcel used in determination of the special assessment to apportion development costs for the Haigis Parkway utility improvements; the Treasurer, Tax Collector and Assessor to also prepare and issue such other documents as also may be required.

Memorandum

To: Tom Hall- Town Manager
From: Lisa Saulle/Deputy Tax Collector/Deputy Treasurer
Date: 5/29/2015
Re: **Request for Partial Abatement:** Special Supplemental Tax for R040-013, R040-027B and R040-027

I would like to request a partial abatement of tax in the amount of \$17,553.76 which includes an assessed tax of \$16,542.50 along with interest and fees of \$1,011.26 for the above mentioned Supplemental Tax related to a sewer assessment on Haigis Parkway that was corrected due to a calculation error.

Below please find background information and recommended action provided by Rob Crawford, Town Attorney:

Background:

As part of the development of the Haigis Parkway, the lots served by the Parkway were provided with water, sewer, natural gas and electricity utility infrastructure by the Town. As is typical in determining the methodology to apportion and assess the costs for such installations, the Town relied on its consulting engineers to develop a formula to apportion development costs for the utility installations between the Town and the lots benefited by the improvements. The methodology followed first determined the total costs of the utility installations and divided this total between those located within and outside of the Haigis Parkway improvement district. The costs within the district were then divided 50/50, half to be collected from the benefitted lots with other half to be funded by the Town. The 50/50 sharing ratio was later adjusted to 40/60 as an outcome of the Haigis Parkway litigation, the Town assuming the greater share. The lot assessments were then set by categorizing the likely use of the property after installation of the parkway and improvements; residential use bearing a lesser share, and then by a formula apportioning the costs assessed based on each individual lot's area and frontage.

As pertaining to the subject FLP, LLC property, located at 100 and 102 Haigis Parkway, Map R040, Lots 024B and 027, the owner made several challenges and refused for several years to pay the utility assessment for the properties. Most recently, the concern expressed was that the area and frontage of the subject lot properly had not been adjusted to reflect changes to the properties due to a Sanitary District parcel taken out of the original parcel for purposes of installing a sewer lift station. Late last year, with a close examination of surveys, plans and historic Town records, the actual lot frontage and parcel area, the area of the lift station parcel and related issues were able to be verified and it was determined that the corrected special assessment for the parcel was \$125,489.50. With outstanding accrued interest the corrected total due came to \$134,056.99. The previous and most current 2008 assessment for the utility assessments totaled \$151,610.75 which included an unpaid assessment of \$142,032.00 which accrued interest and fees of \$9,578.75. This sum served as the subject of the special tax assessment and lien filing made in tax year 2013-2014. The difference between the corrected assessment and interest and the specially assessed assessment based on incorrect area and frontage for the parcel comes to \$17,553.76. Last November, after years of negotiations and discussions with the Town, the property owner paid off the full amount of the corrected assessment with interest, the total amount of \$134,032.92, reflecting the sum due plus and additional minor interest charge.

Recommended Action:

To balance the Town's accounts, the Town Treasurer requested assistance on how to best address this unusual situation. In reviewing the statutes it was determined that there is no authority for the Assessor, Treasurer or Tax Collector to write off or abate \$16,542.50 difference between the recalculated and corrected amount of the utility assessment and the amount assessed as the special tax. The Town Council, however, has discretion within 3 years from the date of the commitment date of a tax (in the fall of 2013) "to grant abatements to correct errors or mistakes". 36 MRSA Section 841. The mistakes in this matter are the factual inaccuracies in the actual frontage and land area of the FLP, LLC parcel used to derive the utility assessment.

The amount that needs to be abated to correct the internal inconsistency in the Town's accounts related the special assessment as assessed in 2013 to secure payment of the underlying utility assessment based on inaccurate frontage and area, is **\$17,553.76**. The Treasurer requests the Council to make the requested abatement.

CC: Ruth Porter, Matthew Sturgis

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-044. Move approval to authorize the Town Manager to renew the Parking Agreement with the Higgins Beach Inn.

Town of Scarborough

Manager's Office Memorandum

To: Scarborough Town Council
From: Thomas J. Hall, Town Manager
Re: HBI Parking Lease – Higgins Beach Parking Lot
Date: May 29, 2015

Beginning with the first year of municipal ownership and operation of the Higgins Beach Parking Lot and ever since, the Town has contracted with the owners of the Higgins Beach Inn to provide daily services of closing the gate in the evening in exchange for use of parking spaces.

This relationship has been memorialized in the form of a Parking Lease. The original lease began in June 2011 and was for an initial two (2) year period and extended for an additional two (2) years, expiring at this month. This arrangement benefits both parties in that the HBI is in need of parking of their employees and the Town does not need to pay staff to close the gate on a daily basis. The area of the lot that is the subject of this lease was chosen because it has a separate entrance from the main lot and is not conducive to public parking due to the proximity of the abutters.

This relationship has worked well and therefore I recommend we extend the lease for five (5) additional years.

Attachment: Map of Leased Premises



Scarborough WebGIS



1: 1,067



Disclaimer

This map is a user generated static output from the Town of Scarborough Internet mapping site (WebGIS) and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



Legend

- Streams_
- Address Points
- Parcels with Owner Informati
- Roads
 - MTA
 - MTA
 - MDOT
 - PUBLIC
 - PENDING PUBLIC; PRIVATE; PF
 - CEMETERY; NOT YET BUILT; P
- Railroad
- Building Footprints

Notes

5/29/2015

PARKING LEASE AGREEMENT

This Parking Lease Agreement ("Lease") is made as of the ____ day of June, 2015 by and between the **TOWN OF SCARBOROUGH**, a body corporate and politic, located in Cumberland County and having a mailing address of P.O. Box 360, Scarborough, ME 04070 ("Landlord"), and **HIGGINS BEACH INN INC.**, a corporation organized under the laws of the State of Maine, with a place of business at 34 Ocean Avenue, Scarborough, Maine 04074 ("Tenant").

WITNESSETH:

1. **PREMISES LEASED:** Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, a small parking area accessed off Ocean Street more clearly defined on **Exhibit A** attached hereto (the "Leased Premises") on certain real property identified on Scarborough Tax Map U002 as Lot 4 (the "Property"). Within the Leased Premises, Landlord reserves one (1) parking space for use by the Town and one (1) parking space for use by the Tenant in the rental unit, such spaces to be reserved with signage. The Property and Leased Premises are further described as being located on Ocean Street, in the Town of Scarborough and State of Maine.
2. **TERM:** The original two year term of the lease was extended an additional two years, with an expiration date of June 29, 2013. Parties agree to extend the lease for additional five (5) year period from the date above. The terms and conditions of the original lease are unchanged and remain in effect for the duration of the extension period, and are re-stated herein. The Town is considering improvements to the Leased Premises and therefore is not able to commit to a longer term; however, Tenant shall have the option to express interest in renewing this Lease, with terms and conditions to be negotiated.
3. **CONSIDERATION:** In lieu of monetary rent, Tenant covenants and agrees to provide daily management services for the adjacent public parking lot (commonly known as "the Higgins Beach Parking Lot"), specifically related to opening the gate as close to daybreak as possible and closing the gate as soon after sunset as possible from the Saturday before Memorial Day to Labor Day each year.
4. **PERFORMANCE STANDARDS:** Tenant covenants and agrees to limit parking in the Leased Premises to employees only, and no spaces shall be occupied by patrons of the Higgins Beach Inn or Garofalo's Restaurant or sold to the public for short-term parking. Parking shall occur only in area depicted on **Exhibit A**. Users of the lot shall exercise extreme care to limit noise and otherwise any disturbance while utilizing the lot.
5. **MAINTENANCE AND MANAGEMENT:** Subject to Tenant's performance obligations in Section 3 above, Landlord shall manage the Higgins Beach Parking Lot which contains the Leased Premises, including appropriate signage, parking arrangement and control of unauthorized parking. Landlord shall provide maintenance, snow removal, and sanding of icy conditions of the parking area as needed. It shall be within the sole discretion of Landlord to determine the appropriate extent and timing of maintenance and management.

6. **ASSIGNMENT & SUBLETTING:** Tenant shall not assign this Lease or sublet the Leased Premises or any part thereof without the prior written consent of Landlord, which consent shall be entirely within Landlord's discretion.
7. **INSURANCE:** Tenant shall purchase and maintain a standard general liability insurance policy covering its use of the Leased Premises, in a reasonable coverage amount, which amount is to be determined by and satisfactory to the Landlord. The insurance policy shall name the Landlord as an additional insured at no cost to Landlord. Tenant shall provide a copy of the insurance policy to the Landlord within thirty (30) days of the execution of this Lease. Tenant shall also, at Landlord's request, provide proof that the insurance policy is in effect and the fees associated therewith paid to date.
8. **LIABILITY & INDEMNIFICATION:** Tenant shall defend, indemnify and hold harmless Landlord and Landlord's agents and employees in their public and individual capacities, from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from use of the Leased Premises by Tenant and Tenant's customers, guests, employees, agents and the like and Landlord assumes no liability or responsibility for damage or loss to vehicles or the contents of the vehicles parked in the Leased Premises and Tenant hereby waives all such claims against Landlord. Nothing in this Lease shall constitute a waiver of any immunities or defenses available to Landlord under the Maine Tort Claims Act or other applicable law.
9. **DEFAULT:** Since payment for use of the Leased Premises is in the form of management services, Tenant shall be in default of this Lease if Tenant fails to perform management services as described in Section 3 or for non-performance relating to the standards as defined in Section 4, in which event, Landlord may, at its option, send Tenant a written warning, including appropriate supporting documentation, notifying Tenant of violation(s). Prior to issuance of the first written warning, Landlord shall contact Tenant and the parties shall meet at a mutually agreeable time to discuss Tenant's overuse of public parking spaces. The meeting shall be held no later than ten (10) days after Landlord contacts Tenant regarding same, unless both parties agree to a longer period of time. At said meeting, Landlord and Tenant shall make best efforts to resolve any problems related to the use of the public parking spaces in a fair and expedient manner. If Tenant receives three (3) written warnings in any one calendar year, then the Landlord may declare Tenant in default and this agreement shall be null and void. Landlord's failure or election not to send a warning in any one instance shall not constitute a waiver nor modification of any of Landlord's rights or Tenant's obligations hereunder.
10. **TERMINATION:** This Lease may be terminated by either party at any time during the Lease, by meeting the conditions set forth in Section 10a, 10b, and 10c below:
 - a. Providing written notice of intent to terminate to the other party.
 - b. Providing ninety (90) days in said notice of termination.
 - c. Sending said notice of termination by certified mail, return receipt requested.

11. **SUCCESSORS AND ASSIGNS:** The provisions of this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

WITNESS

Denise J. D'Ambrise

HIGGINS BEACH INN, INC.

Bob Westburg
By: Bob Westburg
Its: President

WITNESS

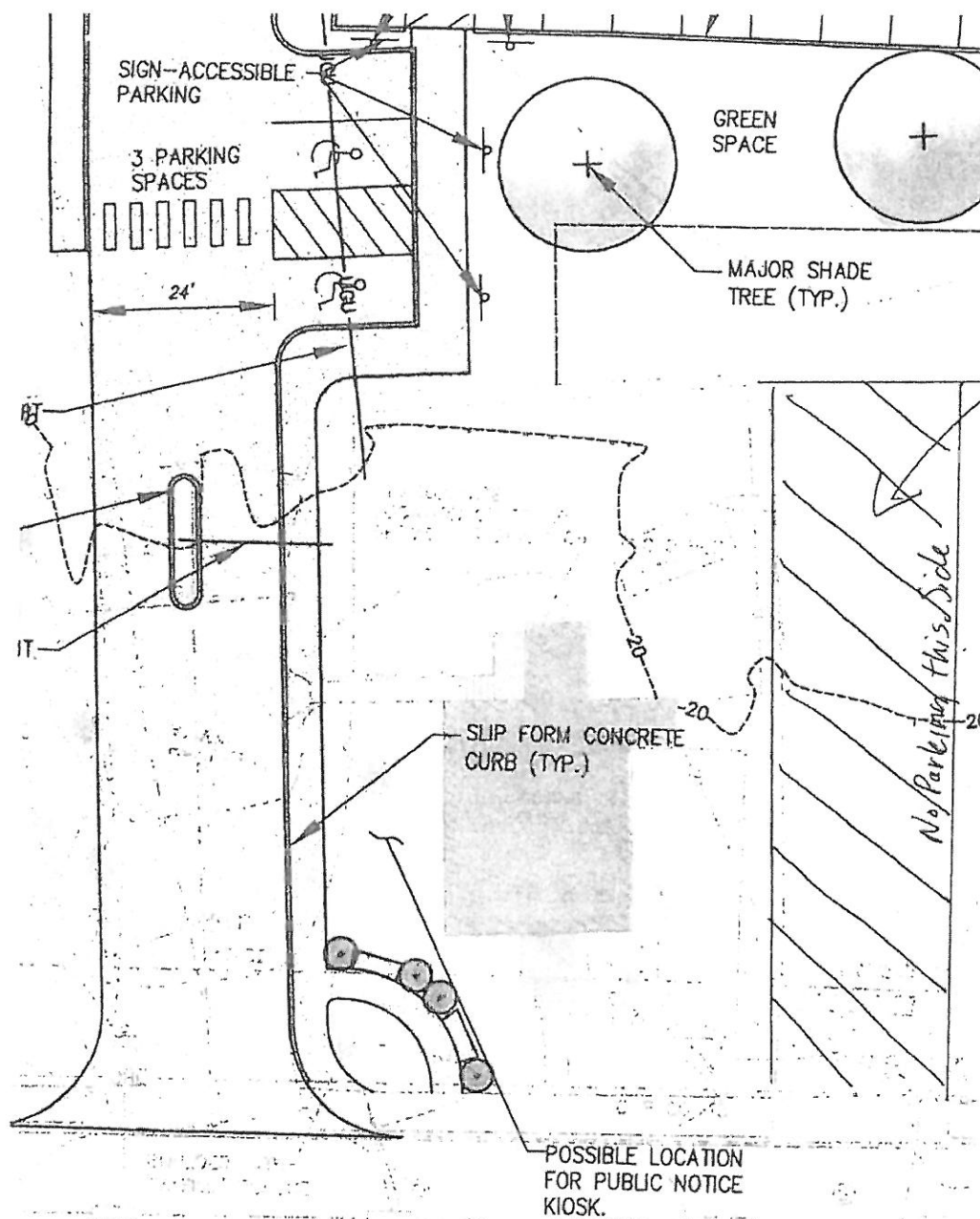
Denise J. D'Ambrise

Diane M. Garofalo
By: Diane M. Garofalo
Its: Treasurer

WITNESS

TOWN OF SCARBOROUGH

Thomas J. Hall
By: Thomas J. Hall
Its: Town Manager, duly authorized



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 3, 2015
REGULAR MEETING – 6:30 P.M.

Order No. 15-045. Move approval on the request to ratify the collective bargaining agreement between the Town of Scarborough and the Scarborough Professional Dispatchers Unit of Scarborough Firefighter Association - IAFF #3894.



Town of Scarborough, Maine

259 US ROUTE ONE, PO BOX 360
SCARBOROUGH, MAINE • 04070-0360

DATE: May 15, 2015
TO: Thomas J. Hall, Town Manager
Jessica Holbrook, Town Council Chair
FROM: Jaclyn Mandrake, Director of Human Resources
CC: Jean Marie Caterina, Town Council Vice-Chair
Robert Moulton, Police Chief
RE: Collective Bargaining Agreement – Dispatch Unit

I am very pleased to report that the Town has reached a tentative agreement for a three-year contract with the Scarborough Professional Dispatchers bargaining unit. A summary of the substantive proposed changes is attached for your review and approval. The union representatives have recommended to their membership the Town's offer of wages and benefits for a three year contract for the period of July 1, 2015 - June 30, 2018.

As a precursor to the negotiation process, Chief Moulton and I discussed priorities and established goals:

1. Keep the Town Council's budget parameters and goals in mind throughout the negotiation process.
2. Maintain a collaborative and productive relationship with the union.
3. Provide a reasonable cost-of-living adjustment to employees.
4. Seek employee concessions for rising health coverage plan costs and reduce the Town's costs for health coverage.

Prior to the start of formal negotiations, the Dispatch unit proposed extending the current contract for an additional three years with the exception of health insurance and wages. We agreed to negotiate on those two items. A summary of the terms and projected costs is attached. Funding for this proposal was included in the FY16 municipal budget. This proposal results in a net savings of approximately \$8,300 from our original budget projections.

**Summary of Proposed Changes
Collective Bargaining Agreement
Scarborough Professional Dispatchers Association, Local 3894**

Article 10 – Medical Insurance:

1. Eliminated the more costly POS-A health insurance option.
2. Added the higher deductible PPO-500 health insurance plan as a voluntary option and agreed to split the town's savings in cost between that plan and the POS-C plan 50% with the employee.

Article 20 – Wages: The wage package includes the following cost of living (COLA) adjustments:

1. FY16 2%
2. FY17 2.5%
3. FY18 2.5%

This equates to an average increase over the life of the contract of 2.3%.