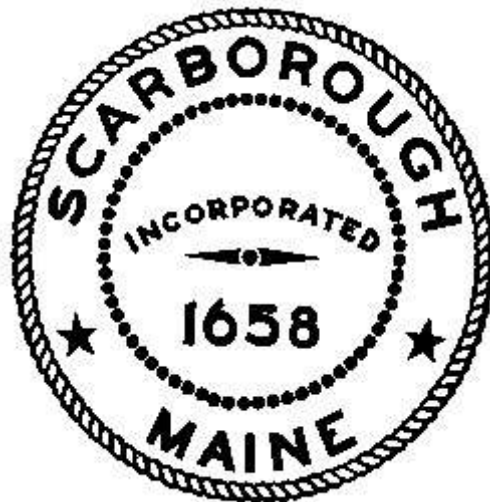


CHAPTER 413

TOWN OF SCARBOROUGH

GROWTH MANAGEMENT ORDINANCE



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**CHAPTER 413
TOWN OF SCARBOROUGH
GROWTH MANAGEMENT ORDINANCE**

1. TITLE

This ordinance shall be known as the “Growth Management Ordinance of the Town of Scarborough, Maine” and shall be referred to herein as the “Ordinance.”

2. LEGAL AUTHORITY (Amended 07/16/2008 – Effective 01/01/2009)

This Ordinance is adopted pursuant to the home rule powers as provided for in VIII-A of the Maine Constitution and 30-A M.R.S.A. § 3001, 30-A M.R.S.A. § 4323, and 30-A M.R.S.A. § 4360.

3. PURPOSE (Amended 07/16/2008 – Effective 01/01/2009)

The purpose of this Ordinance is to protect the health, safety and general welfare of the residents of Scarborough through placing reasonable and appropriate limitations on residential development in accordance with the 2006 Update of the Comprehensive Plan, more specifically:

- a. to provide for the immediate housing needs of the existing residents of the Town of Scarborough.
- b. to ensure fairness in the allocation of building permits.
- c. to plan for continued residential population growth in Scarborough which will be not limited to, education, public safety, transportation infrastructure, waste disposal and health services.
- d. to avoid circumstances in which the rapid development of new residences, potentially housing many families with school age children, would outpace the Town’s capability to expand its schools and other necessary services soon enough to avoid serious school overcrowding and a significant reduction in the level and quality of other municipal services.

4. DEFINITIONS (Amended 07/16/2008 – Effective 01/01/2009)

Terms not specifically defined in this Ordinance shall have the same meaning as in the Zoning Ordinance.

A. Affordable housing:

A dwelling unit that may be purchased or leased by a household with low or moderate income. As used in this ordinance, the term “affordable housing” has the same meaning as in the Zoning Ordinance.

B. Building Inspector:

Code Enforcement Officer.

C. Building permit:

A permit issued by the Building Inspector pursuant to Section IV(D) of the Zoning Ordinance.

D. Code Enforcement Officer:

The Town of Scarborough Code Enforcement Officer, an assistant code enforcement officer or an authorized agent of either.

E. Dwelling unit:

A dwelling unit as defined in Section VI of the Zoning Ordinance.

F. Family gift lot:

A lot which is not within a subdivision and which has been created by a gift from a parent to a child (including an adopted child or stepchild) or from a child to a parent (including an adoptive parent or stepparent).

G. Gift:

The conveyance of property for which the grantor receives no money, property or any other value as consideration for the conveyance.

H. Growth permit:

A permit, issued in accordance with the provisions of this Ordinance, which allows the issuance of a building permit for the construction, creation or placement of one new dwelling unit within the Town of Scarborough.

I. Multiplex:

A multiplex dwelling as defined in Section VI of the Zoning Ordinance, except that, for purposes of this Ordinance only, the term multiplex includes two family dwellings in a subdivision which also contains multiplex buildings. (Amended 12/18/02).

J. Subdivision:

A subdivision as defined in 30-A M.R.S.A. § 4401, as such may be amended from time to time, and approved by the Scarborough Planning Board pursuant to the Town of Scarborough Subdivision Regulations on or after August 18, 1971.

K. Zoning ordinance:

The Zoning Ordinance of the Town of Scarborough, Maine, as such may be amended from time to time.

5. APPLICABILITY

Except as provided in Section 6 below, this Ordinance shall apply to the construction, creation or placement of any new dwelling unit within the Town of Scarborough.

6. EXEMPTIONS (Amended 06/18/2003; Amended 11/17/2004 – Effective 01/01/2005; Amended 07/16/2008 – Effective 01/012/2009)

This Ordinance shall not apply to:

- a. the repair, replacement, reconstruction or alteration of an existing dwelling unit.
- b. a dwelling unit on a family gift lot, provided that no person may obtain more than one building permit pursuant to this exemption during the time this ordinance is in effect.

7. ADMINISTRATION (Amended 06/18/2003; Amended 11/17/2004 – Effective 01/01/2005; Amended 07/16/08 – Effective 01/01/09)

A. Share of growth permit required per dwelling unit.

- 1) The creation of each new dwelling unit shall require one (1) growth permit except as provided for in 2.
- 2) If the dwelling unit is located in a two-family dwelling, multifamily dwelling, or mixed use building, the creation of a new dwelling unit shall require a fraction of a growth permit in the same proportion as the density requirement for the type and size of unit set forth in Section VII C. A. Residential Density of the Zoning Ordinance regardless of whether the density provision applies to the dwelling unit (For example, a unit that could be counted as half a dwelling unit for density purposes requires half of a growth permit).
- 3) If any dwelling unit that was constructed based upon receiving a fraction of a growth permit in accordance with 2) is subsequently expanded such that the dwelling unit after expansion would require a larger fraction of a growth permit, the owner shall obtain a fractional permit for the difference between the pre-and post expansion requirements.

B. Two sources of growth permits.

Growth permits are available from two sources, from an annual allocation of growth permits, and from a reserve pool of growth permits.

- 1) The number of growth permits allocated annually and the process for the issuance of growth permits from this annual allocation are set forth in sub-sections C, D, and E.
- 2) The operation of the reserve pool of growth permits is set forth in sub-sections F and G.

- C. Annual allocation of growth permits per calendar year.
- 1) Commencing on January 1, 2005, the maximum number of growth permits issued between January 1st and December 31st each year shall be one hundred thirty-five (135). Any growth permits from the annual allocation that are not issued in the calendar year shall expire and shall not be carried forward to the next year.
 - 2) During each calendar year, no more than fifty (50) growth permits shall be issued from the annual allocation for dwelling units located in the Rural Residence and Farming District R-F and the Rural Residence, Farming, and Manufactured Housing District R-F-M west of the Maine Turnpike in the area designated as a Limited Growth Area in the 2006 Update of the Comprehensive Plan.
 - 3) During each calendar year, no more than twenty percent (20%) of the growth permits available from the annual allocation shall be issued for dwelling units within any one subdivision or other development.
- D. Application procedure for growth permits.
- 1) A growth permit application must be completed and signed by a record owner of the lot for which the growth permit is sought, on a Growth Permit Application form provided by the Code Enforcement Officer.
 - 2) The growth permit application shall be accompanied by: (i) a nonrefundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the Town Council, which shall be credited toward the building permit fee if the growth permit is replaced by a building permit under Section 7(E)(2) below; (ii) a deed or other instrument establishing the applicant's ownership interest in the property; and (iii) either a copy of the completed subsurface wastewater disposal system application (Form HHE-200) for the lot for which the growth permit application is sought or evidence that the lot will be served by public sewer.
 - 3) The growth permit application shall be submitted to the Code Enforcement Officer either by mail or in hand during normal business hours at the Town Office. The Code Enforcement Officer shall endorse each application with the date and time of receipt. In the event two or more growth permit applications are received simultaneously, the Code Enforcement Officer shall determine their order by random selection.
 - 4) The Code Enforcement Officer shall review growth permit applications for completeness and accuracy in the order in which they are received. If an application is incomplete, the Code Enforcement Officer shall notify the applicant of the additional information or material needed to complete the application and shall resume review of the application only when such additional information or materials are provided. Once the Code

Enforcement Officer determines that an application is complete, he/she shall approve the application as complete, endorsing the date and time of such approval on the application. [amended 11/02/17]

- 5) A separate growth permit application is required for each dwelling unit.
- 6) No growth permit application shall be accepted by the Code Enforcement Officer until the effective date of this Ordinance.

E. Issuance procedure for growth permits from the annual allocation.

- 1) Growth permits from the annual allocation shall be issued on a first-come, first-served basis according to the dates and times the applications are approved as complete by the Code Enforcement Officer under Section 7(D)(4) above. If a growth permit is available under Section 7(C A) on the date the Code Enforcement Officer approves an application as complete, the Code Enforcement Officer shall issue the growth permit by endorsing the date of issuance on the application and mailing a copy to the applicant at the address provided by the applicant on the application. If no growth permit is available from the annual allocation at the time the application is approved as complete, the application shall remain pending, and as growth permits subsequently become available, the Code Enforcement Officer shall issue permits in the order in which the applications were approved as complete, mailing the issued permits to the applicants as provided above.
- 2) Once issued, a growth permit must be replaced by a building permit for construction, placement or creation of the dwelling unit or units authorized by the growth permit on the specific lot for which the growth permit was issued, no later than 180 days after the date of issuance. A growth permit which is not replaced by a building permit within such 180 day period shall expire, except that the Code Enforcement Officer may approve one extension for one additional period of 90 days if a request for the extension is made prior to the expiration of the original 180 day period. If a growth permit expires, a subsequent application for a growth permit on the same lot shall be processed and ranked as a new application pursuant to Section 7(D) above. Expired growth permits shall not be counted in determining the maximum number of permits which may be issued during any calendar year.
- 3) At the end of each calendar year, if the number of approved applications for growth permits from the annual allocation exceeds the number of permits available for issuance, such approved applications shall remain pending into the next calendar year and shall retain their ranking according to the order in which they were approved as complete.

F. Establishment of the reserve pool of growth permits.

- 1) Un-issued growth permits as of December 31, 2007 that were carried forward to 2008 shall be placed in a reserve pool and shall be allocated in accordance with the provisions of subsection G below.
- 2) Each growth permit for a single-family dwelling that was carried forward to 2008 shall be counted as one growth permit under the amended system.
- 3) Each growth permit for a multi-plex that was carried forward to 2008 shall be counted as five (5) growth permits under the amended system.
- 4) The growth permits in the reserve pool shall remain available until used and un-issued permits shall carry over from year-to-year.
- 5) Twenty (20) of the growth permits in the reserve pool at the beginning of each calendar year shall be set aside for affordable housing units and may be used during the year as set forth in subsection G. If any of these growth permits are not used during the year they shall not be carried forward but the affordable housing set aside for the following year shall be reset at twenty (20) growth permits.
- 6) The Town Council may add growth permits to the reserve pool by formal vote of the Council following public hearing as part of its periodic review of the Ordinance or if the number of units in the reserve pool drops below fifty (50) or if the available growth permits are not adequate to allow the construction of a project in accordance with subsection G below.
- 7) If the number of growth permits in the reserve pool at the end of a calendar year is less than twenty (20), additional growth permits shall be automatically be added to the pool so that a minimum of twenty (20) growth permits are available and these twenty (20) permits shall be set aside for affordable housing units.

G. Allocation of growth permits from the reserve pool.

- 1) The Code Enforcement Officer may issue up to five (5) growth permits from the reserve pool each calendar year for detached single family dwellings that are located on lots that are not part of a subdivision provided that there are no growth permits available from the annual allocation.
- 2) Except as provided in 1 above, the Planning Board shall be responsible for determining if a subdivision or other development is eligible for the allocation of growth permits from the reserve pool.
- 3) A property owner or his/her representative may request that the project be designated as eligible to receive growth permits from the reserve pool at the time of subdivision or site plan review for new or expanded projects. An approved subdivision or project as of the date of adoption of this provision may also be determined to be eligible to receive growth permits

from the reserve pool. This request shall be in writing on forms provided by the Code Enforcement Officer and shall demonstrate how the project conforms to the requirements of this subsection.

- 4) If the Planning Board determines that a subdivision or other development is eligible to receive growth permits from the reserve pool, it shall notify the Code Enforcement Officer in writing of this determination.
- 5) The Planning Board shall determine that a subdivision or other development is eligible to receive growth permits from the reserve pool only if it finds that at least one of the following are met:
 - a) The dwelling units to which the growth permits may be allocated are part of a contract zone in which the provisions of the zoning provide for some or all of the growth permits needed for the project to come from the reserve pool.
 - b) The dwelling units to which the growth permits may be allocated are part of an affordable housing project in which at least fifty (50) percent of the dwelling units are affordable housing.
 - c) The dwelling units to which the growth permits may be allocated are part of a housing project or mixed-use development that will use either the affordable housing density bonus provisions or the development transfer provisions of the Zoning Ordinance.
 - d) The dwelling units to which the growth permits may be allocated are part of an approved subdivision or other project as of the date of adoption of this provision and will be located in two-family, multifamily, or mixed-use buildings.
- 6) The growth permits in the reserve pool are intended to allow the construction of housing that is not easily accommodated within the annual allocation or that could unreasonably reduce the availability of growth permits to other property owners because of the scale or type of development. Therefore, in considering requests for the eligibility of projects to receive growth permits from the reserve pool, the Planning Board shall approve such requests only if it finds that the use of growth permits from the annual allocation (see subsection C above) may not permit the dwelling units to be constructed in a timely and efficient manner or that the use of the growth permits from the annual allocation may unreasonably reduce the availability of growth permits to other property owners due to the scale of the project and the number of permits available through the annual allocation.
- 7) If a project is determine to be eligible to receive growth permits from the reserve pool, the record owner of the property shall apply for a growth permit for each dwelling unit in accordance with subsection D above.

- 8) The Code Enforcement Officer shall process the application for a growth permit(s) in accordance with subsection E above except as follows:
 - a) If no growth permits from the annual allocation are available at the time of application, the Code Enforcement Officer shall issue the growth permits from the reserve pool.
 - b) If the subdivision or development has not previously received twenty percent (20%) of the available growth permits from the annual allocation during the current calendar year, the Code Enforcement Officer shall issue the growth permits from the annual allocation until the twenty percent (20%) limit is reached and any additional growth permits shall be issued from the reserve pool.
 - c) The issuance of growth permits for a subdivision or other project that is subject to contract zoning shall occur in accordance with these provisions unless the contract zoning contains specific alternative provisions. In this case, the Code Enforcement Officer shall issue the growth permit in accordance with the terms of the contract zone.
 - d) If the subdivision or other project utilizing growth permits from the reserve pool is an affordable housing project or includes affordable housing units, the growth permits for the affordable units shall first be taken from the twenty (20) permit set aside for affordable housing. If the growth permits available in the affordable housing set aside are not adequate to allow construction of the project, the balance of the growth permits shall be taken from the permits in the reserve pool that are not set aside for affordable housing.

H. Transferability.

Growth permits are issued only for the specific lot identified in the growth permit application. A growth permit may be transferred to a new owner of the lot, provided notice of the transfer of ownership is given in writing to the Code Enforcement Officer before the growth permit is replaced by a building permit. Transfer of ownership does not change the date of issuance or the ranking of an issued growth permit. An application for a growth permit is not transferable.

8. PERIODIC REVIEW OF ORDINANCE (Amended 06/18/2003; Amended 11/17/2004 – Effective 01/01/2005; Amended 07/16/08 – Effective 01/01/09)

The Town Council shall conduct a periodic review of this Ordinance to evaluate whether the rate of residential growth remains consistent with the Town's ability to absorb the growth, and shall determine whether the number of growth permits available under this Ordinance should be adjusted by amendment to this Ordinance. The Town Council shall conduct a review at least once every three (3) years. The Town Council may seek

assistance or advice from the Planning Board in connection with such review. This section does not limit the Council's authority to review and/or amend the Ordinance at any other time.

9. VIOLATION, PENALTIES AND ENFORCEMENT

Any person who constructs, creates or places a dwelling unit within the Town of Scarborough without a growth permit required by this Ordinance or who owns or occupies a dwelling unit constructed, created or placed within the Town of Scarborough without a growth permit required by this Ordinance commits a civil violation and is subject to the fines, penalties and remedies provided in 30-A M.R.S.A. § 4452. Each day a violation continues to exist after notice of the violation constitutes a separate violation. This Ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer in the manner provided for enforcement of violations of the Zoning Ordinance under Section IV, subsections (A) and (B) of the Zoning Ordinance.

10. APPEALS (Amended 07/16/08 – Effective 01/01/09)

An applicant for a growth permit who is adversely affected by a decision or action of the Code Enforcement Officer in the administration of this Ordinance may appeal to the Scarborough Board of Appeals under the provisions governing administrative appeals in Section 5 of the Zoning Ordinance. Decisions of the Code Enforcement Officer to approve a growth permit application as complete or to issue a growth permit are not appealable.

An applicant requesting that a subdivision or other development be determined to be eligible to receive growth permits from the reserve pool who is adversely affected by a decision of the Planning Board may appeal to Superior Court in accordance the Maine Rules of Civil Procedure, Rule 80B. Actions of the Planning Board with respect to this Ordinance are not appealable to the Scarborough Board of Appeals.

Be it further ordained, that these amendments shall take effect on January 1, 2009. Any growth permit applications submitted and any growth permits issued prior to January 1, 2009, shall be governed by the ordinance provisions in effect prior to January 1, 2009.