

MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 16, 2010
REGULAR MEETING – 7:00 P.M.

Item 1. Call to Order. Council Chair Rancourt called the regular meeting of the Scarborough Town Council to order at 7:00 p.m.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager was also present.

Ronald D. Ahlquist [Absent]	Karen A. D’Andrea
Jessica L. Holbrook	Michael J. Wood
Shawn A. Babine	Judith L. Roy, Council Vice-Chair
Carol S. Rancourt, Council Chair	

Item 4. Introduction of the new K-9 Police Dog. Police Chief Moulton introduced the Police Departments newest member: K-9 Officer Kona. Officer Sawyer brought Kona forward who was then sworn in by the Town Clerk and was presented his shield by Wendy Sawyer [Officer Sawyer’s wife]. We would like to welcome Kona to the Municipal Family!

Item 5. General Public Comments. None at this time.

Item 6. Minutes: June 2, 2010 – Regular Meeting. Motion by Councillor Babine, seconded by Councillor Roy, to move approval of the meeting minutes as noted.

Vote: 6 Yeas.

Item 7. Adjustment to the Agenda. Thomas J. Hall, Town Manager, requested that the names that would be posted later this evening to the Ad-Hoc Higgins Beach Parking Committee be approved this evening as the next Council meeting is not until July 21st and the committee is charged to report back to the Council in September. This item would be taken up after Order No. 10-58.

Item 8. Items to be signed: a. Treasurer’s Warrants. Treasurer’s Warrants were signed during the meeting.

Order No. 10-42, 7:00 p.m. Public Hearing on the fifth amendment to the Contract Zoning Agreement IX [New England Expedition – Scarborough, LLC] of Chapter 405 – the Zoning Ordinance. [This item was postponed from the May 19, 2010, Town Council meeting.] Prior to the public hearing, Dan Bacon, Town Planner, gave a brief overview of the proposed changes to the proposed changes to the contract zone. Councillor Chair Rancourt opened the public hearing. Gene Beaudion, representing New England Expedition presented a brief power point presentation showing the recommendations for changes to the signage for this area; responded to questions from the Council pertaining to the signage; how these amendments would affect the current tenants; the amount of traffic; how these changes differ from other plazas and what they can do.

As there were no comments either for or against the hearing was closed at 7:14 p.m. The second reading is scheduled for Wednesday, July 21, 2010.

OLD BUSINESS: None at this time.

NEW BUSINESS:

Order No. 10-58. Act to authorize the Town Manager to sign a Mutual Aid Agreement with other Municipalities in Cumberland County. Thomas J. Hall, Town Manager, introduced Chief Moulton who gave a brief overview on the proposed agreement.

Motion by Councillor D'Andrea, seconded by Councillor Roy, to move approval to authorize the Town Manager to sign a Mutual Aid Agreement with other Municipalities in Cumberland, as follows:

**AGREEMENT BETWEEN
MUNICIPALITIES IN CUMBERLAND COUNTY
TO PROVIDE MUTUAL AID**

AGREEMENT made this ____ day of _____, 20____ by and between the undersigned municipalities.

W.I.T.N.E.S.S.E.T.H.

WHEREAS, 30-A M.R.S.A. §2674 authorizes the assignment of police officers from one municipality to another to assist with police activities; and

WHEREAS, the undersigned municipalities wish to provide mutual aid to one another, on a short-term, emergency basis; and

WHEREAS, said municipalities agree to assign their police officers upon reasonable notice of the request from the Chief of Police or other designee of the municipality requesting aid;

NOW, THEREFORE, the parties do hereby agree as follows:

1. DEFINITIONS

REQUESTING MUNICIPALITY: The municipality which is asking another municipality to provide police assistance.

RESPONDING MUNICIPALITY: The municipality which is asked to provide another municipality with police assistance.

2. PURPOSE

The purpose of this agreement is to set forth the framework through which the law enforcement agencies of Cumberland County will work together by providing each other with easy access to police resources or specialties that may be needed in a police emergency and to provide emergency service resources in quantities or specialties beyond the means of any single department.

3. ASSIGNMENTS

3.1 The **RESPONDING MUNICIPALITY** agrees to assign its officers to provide police services on a temporary, short-term basis within the **REQUESTING MUNICIPALITY**. The specific individual(s) to be assigned are to be determined by the **RESPONDING MUNICIPALITY**. Such temporary assignments shall not exceed twenty-four (24) hours except by the specific written agreement of the Chiefs of Police or other designee of each municipality.

3.2 Assignments shall be made only if the Chief of Police of the RESPONDING MUNICIPALITY determines in his or her sole discretion that the RESPONDING MUNICIPALITY has adequate personnel available.

4. EMPLOYER-EMPLOYEE RELATIONSHIP RETAINED

4.1 The RESPONDING MUNICIPALITY shall be the sole and exclusive employer of persons assigned hereunder; persons assigned hereunder are not intended, nor shall they be deemed, to be employees of the REQUESTING MUNICIPALITY as a result of said assignment. In addition, nothing herein shall be construed to create a joint employer relationship between the REQUESTING MUNICIPALITY and the RESPONDING MUNICIPALITY. The RESPONDING MUNICIPALITY retains all of the legal responsibilities of the employer-employee relationship while its officer(s) are on assignment in the REQUESTING MUNICIPALITY.

4.2 Police officers assigned hereunder shall be paid by their employer their wages and fringe benefits and shall accrue benefits in the customary manner. No overtime work shall be permitted by officers while on assignment, unless approved by the RESPONDING MUNICIPALITY.

5. TRAINING

5.1 Each municipality shall be solely responsible for the training and equipment of its personnel.

5.2 The RESPONDING MUNICIPALITY shall not assign an employee to the REQUESTING MUNICIPALITY to perform a function that the employee is not trained or equipped to perform.

5.3 The REQUESTING MUNICIPALITY shall not ask or assign an employee of the RESPONDING MUNICIPALITY to perform a function that the employee is not trained or equipped to perform.

6. DEFENSE AND INDEMNIFICATION

6.1 To the fullest extent permitted by law, the REQUESTING MUNICIPALITY, at its own expense, shall defend or cause to be defended, the RESPONDING MUNICIPALITY, its officers and employees, from and against any and all claims, causes of action or suits, just or unjust, arising out of, or in any way connected with the act(s), omission(s) or negligence of any officer or employee of the RESPONDING MUNICIPALITY occurring while such officer or employee is working hereunder, including but not limited to a determination, under Paragraph 3.2 of this Agreement, not to assign officers or employees to the REQUESTING MUNICIPALITY.

6.2 In addition to, and without limiting the foregoing, the REQUESTING MUNICIPALITY shall indemnify and hold harmless the RESPONDING MUNICIPALITY, its officers and employees, from any and all liability, costs, damages, expenses or judgments resulting from or in any way connected with the act(s), omission(s) or negligence of any such officer or employee of the RESPONDING MUNICIPALITY occurring while such officer or employee is working hereunder, including, but not limited to a determination, under Paragraph 3.2 of this Agreement, not to assign officers or employees to the REQUESTING MUNICIPALITY, subject to the exclusions set forth in the attached and incorporated herein Exhibit A.

6.3 In the event that it is determined that the RESPONDING MUNICIPALITY, its officers or employees, require separate legal representation, the selection of such counsel shall be subject to the approval of the REQUESTING MUNICIPALITY. Reasonable requests for separate legal representation shall be subject to the approval of the REQUESTING MUNICIPALITY. Selection, approval and requests for legal representation shall be subject to the limitations and requirements, if any, of REQUESTING MUNICIPALITY'S liability coverage.

6.4 Any case or claim in which RESPONDING MUNICIPALITY, or its officers or employees, is a party shall not be settled without the approval of RESPONDING MUNICIPALITY, which approval as to the RESPONDING MUNICIPALITY and its officers and employees shall not be unreasonably withheld. In the event that the RESPONDING MUNICIPALITY does not approve a proposed settlement of RESPONDING MUNICIPALITY, or its officers or employees, which is otherwise acceptable to a claimant and to the REQUESTING MUNICIPALITY, the REQUESTING MUNICIPALITY shall be relieved of any further obligation which it may have to defend under Paragraph 6.1 and any obligation which it may have to indemnify or hold harmless under Paragraph 6.2, if said obligation is in excess of the proposed settlement offer. The settlement process will be subject to the limitation and requirements, if any, of the REQUESTING MUNICIPALITY'S liability coverage. An admission of liability on the part of the RESPONDING MUNICIPALITY, its officers or employees, shall be included in a settlement agreement only with the consent of the RESPONDING MUNICIPALITY.

6.5 The RESPONDING MUNICIPALITY shall be fully responsible for all workers' compensation coverage for its officers or employees hereunder and the RESPONDING MUNICIPALITY hereby waives any right of subrogation or lien pursuant to 39-A M.R.S.A. §107 against the REQUESTING MUNICIPALITY, its officers or employees, arising out of or resulting from said workers' compensation claims.

6.6 The REQUESTING MUNICIPALITY shall give the RESPONDING MUNICIPALITY immediate notice in writing of any notice of claim, legal action or suit filed related in any way to the incident which required mutual aid or which may affect the performance of this Agreement. The RESPONDING MUNICIPALITY shall give the REQUESTING MUNICIPALITY immediate notice in writing of any notice of claim, legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under this Agreement.

6.7 Nothing herein waives or limits the sovereign or qualified immunity of the parties under Federal, State or constitutional law, including, but not limited to immunity pursuant to the Maine Tort Claims Act.

7. DESIGNATED REPRESENTATIVE

The municipal officers of each municipality shall designate the Chief of Police or other designee for implementation of this Agreement, except as otherwise provided by municipal charter or ordinance.

8. COMMAND

All persons assigned hereunder shall be subject to the direction and control of the command officers in the REQUESTING MUNICIPALITY for the duration of said assignment.

9. RECORDS & REPORTS

Records regarding performance of the obligations required by this agreement will be maintained by the respective parties. Each party will maintain the confidentiality of agency records as required by State and Federal law. Parties may seek access to the other party's records on an as needed basis and to the extent allowed by law.

10. MEDIA

The REQUESTING MUNICIPALITY is expressly authorized to release to the public / media the details of law enforcement actions within that community, as appropriate.

11. DURATION & TERMINATION

This agreement shall become effective upon proper execution and agreement of the parties. This agreement may be modified upon the mutual written consent of the parties. Said agreement shall remain in effect until termination by the municipality upon thirty days written notice to the other municipalities subject to this agreement. The decision of one municipality to terminate its participation in this agreement shall not affect the validity or operation the agreement as to the other municipalities. Any existing defense and indemnification obligations shall survive any such termination of this agreement.

IN WITNESS WHEREOF, the undersigned municipalities have caused this Agreement to be signed by their authorized representatives, as of the day and year first above written.

Town of Gorham

By _____

Title _____

City of South Portland

By _____

Title _____

City of Westbrook

By _____

Title _____

City of Portland

By _____

Title _____

Town of Bridgton

By _____

Title _____

Town of Scarborough

By _____

Title _____

Town of Cape Elizabeth

By _____

Title _____

Town of Falmouth

By _____

Title _____

Town of Cumberland

By _____

Title _____

Town of Windham

By _____

Title _____

Town of Freeport

By _____

Title _____

Town of Brunswick

By _____

Title _____

Town of Yarmouth

By _____

Title _____

EXHIBIT A

Exclusions

The REQUESTING MUNICIPALITY’S obligation to indemnify and hold harmless pursuant to Paragraph 6.2 shall not apply:

- (a) to any liability, cost, damage, expense or judgment to the extent that it is finally determined to be the intentional misconduct or gross negligence of the RESPONDING MUNICIPALITY, its officers or employees, other than those acts necessary to preserve life or property
- (b) to any liability arising out of the willful violation of any statute or ordinance if committed at the direction of the RESPONDING MUNICIPALITY or any of its officers or employees; or
- (c) to any liability arising from defamation if the defamatory statement was made by or at the direction of the RESPONDING MUNICIPALITY or any of its officers or employees with knowledge of its falsity or reckless disregard for the truth.

Vote: 6 Yeas.

Motion by Councillor Babine, seconded by Councillor D’Andrea, to move approval to suspend the rules to appoint the Ad Hoc Higgins Beach Parking Committee.

Vote: 6 Yeas.

Order No. 10-59. Act on the request to post and approve individuals to Ad Hoc Higgins Beach Parking Committee. Motion by Councillor Babine, seconded by Councillor Wood, to move approval on the following individuals to serve on the Ad Hoc Higgins Beach Parking Committee:

Non-Beach Front Representative:	Richard Napolitano
Surfrider Representative:	Iver Carlson
Acorn Lane Representative:	Jeff Jones
Beach Front Representative:	Rodney Laughton
At-Large Representative:	Barbara Belicose
At-Large Representative:	Glennis Chabot
Council Representative:	Councillor Roy

Vote: 6 Yeas.

Item 9. Non Action Items.

- **Update on the Haigis Parkway/Route One Intersection Improvement Plans.** Dan Bacon, Town Planner and Tom Gorrill of Gorrill-Palmer Consulting Engineers gave a brief update on the Haigis Parkway/Route One Intersection Improvement Plan. The proposed plan has been designed to minimize impacts to wetlands that border the intersection; owners of the abutting properties and the intersection improvements are designed to comply with the Federal Highway and Maine DOT standards, with the exception of a few “design exceptions”. The proposed design includes new sidewalks and crosswalks as well as street trees, low maintenance plantings. The proposed plans have been submitted to Maine DOT for their review and endorsement.

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

- Councillor Holbrook noted that the next Charter Review Committee meeting is scheduled for Thursday, June 24th at 9:00 a.m. A Council workshop has been scheduled for Wednesday, July 7th at 7:00 p.m. She further noted that the Housing Alliance would not be meeting over the summer.

- Councillor Babine noted that the Appointments Committee had met prior to the Council meeting this evening and would like to post the following names to the Energy Committee: Scott Berube as 1st Alternate and Mark Follansbee as 2nd Alternate. He further noted that the SEDCO Board had presented a slate of individuals to be appointed

SEDCO Board: Three names to be posted.

Stanley W. Gawron (term to expire 06-30-2011)

Vincent Maniaci (term to expire 06-30-2011)

Maureen Van Uden (term to expire 06-30-2012)

Three members with terms expiring on 06-30-2010.

All are renewing for another three years.

Stuart Axelrod (new term to expire 06-30-2013)

Roger H. Beeley (new term to expire 06-30-2013)

Jim Damicis (new term to expire 06-30-2013)

- Councillor Roy noted that the Finance Committee meeting scheduled for yesterday had been postponed to Thursday, July 8th at 4:00 p.m. The Energy Committee had held its first meeting on June 10th and has scheduled its next meeting for Thursday, June 24th at 8:45 a.m. This committee will be meeting every other week.
- Councillor Wood gave a brief update on the Library Board of Trustees noting that the Library Book Sale will be held on Friday, June 18th thru Sunday, June 20th.
- Councillor D'Andrea noted that the Ordinance Committee would be meeting on Tuesday, June 29th at 4:30 p.m. There will be discussion on a possible fence ordinance as well as second hand dealers.

Item 11. Town Manager Report. Thomas J. Hall, Town Manager, gave an update on the following:

- A request from the Football Boosters to use Black Point Park has been received; however, due to the vote that had been taken a few years back and the sentiment of the abutters there has been a meeting scheduled for interested citizens to discuss the use of Black Point Park by the Scarborough Football Club. This meeting is scheduled for Wednesday, June 23, 2010, at 6:00 p.m. in Chamber B in town hall.
- Phase I of the Pine Point Project is complete and Phase II is now under way which is the landscaping.
- He thanked Councillors D'Andrea, Roy, Holbrook and Rancourt for manning the "Name the Park" table on Election Day.
- Asked if anyone noticed that Farmers Market Sign – noting that this was a special exception for being placed where it has been.
- The Trust for Public Lands and the Surfrider Foundation would like to recognize the Vasile Family and those who donated to the new parking lot at Higgins Beach. This will take place on July 1st-Mr. Hall will forward the details within the next week or so.

Item 12. Council Member Comments.

- Councillor D'Andrea congratulated the Scarborough Seniors and announced that the Farmers Market is underway on every Sunday from now until the end of October from 9:00 a.m. to 2:00 p.m.
- Councillor Wood thanked those who took the time to get out and vote. Scarborough has accomplished much to be proud of – the intersections of Haigis/Route One and Dunstan/Route One. He commented on the refurbishing of the Konica Building. He had noticed the Farmers Market sign – no comment.

- Councillor Roy noted she had noticed the Farmers Market sign. She also mentioned that the Kiwanis are interested in donating money for a reader board in front of Town Hall. She sent condolences to the family of Richard Twomey and further mentioned that Jackie Perry had been recognized by the Board of Education for her contributions to the School Department.
- Councillor Babine thanked Gary Lorfano, Sanitary District Superintendent for meeting with him regarding the relocation of the pump station from the Eastern Road to the end of Old County Road – Mr. Lorfano answered a number of questions. He felt the Farmers Market sign was ungodly looking and would support a reader board out in front of town hall. He hoped that the Farmers Market stayed where it is currently at or relocates to Memorial Park. He thanked everyone for coming out to vote.
- Councillor Holbrook noted that she had taken a tour of the Fish & Game Ranges and thanked Ron Nelson for his assistance. She thought the Farmers Market sign was fine. She reminded everyone that tomorrow is that last day of school and wished all the kids to have a great summer.
- Council Chair Rancourt asked for an update on the Payne Road improvements at the next Council meeting. She noted that the Concert in the Park Series begins on July 1st with The Governors. She too congratulated the Scarborough Seniors.
- Councillor Babine added that the Pine Point Park looks great and have heard many positive comments.

Item 13. Adjournment. Motion by Councillor Wood, seconded by Councillor Babine, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 6 Yeas.

Meeting adjourned at 9:17 p.m.

Respectfully submitted,

Yolande P. Justice
Town Clerk