

MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – SEPTEMBER 2, 2009
APPOINTMENTS COMMITTEE MEETING – 6:30 P.M.
REGULAR MEETING – 7:00 P.M.

Item 1. Call to Order. Chairman Wood 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. Rolled was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager, was also present.

Ronald D. Ahlquist	Shawn A. Babine
Carol S. Rancourt, Vice Chair	Judith L. Roy
Richard J. Sullivan, Jr.	Karen A. D’Andrea [Absent]
Michael J. Wood, Chairman	

Item 4. Minutes: August 19, 2009 – Regular Meeting. Motion by Councillor Rancourt, seconded by Councillor Babine, to move approval of the minutes of the August 19, 2009 regular Town Council meeting.

Vote: 6 yeas.

August 19, 2009 – Special Meeting. Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval of the minutes of the August 19, 2009, special Town Council meeting.

Vote: 6 yeas.

Item 5. Items to be signed: a. Treasurer’s Warrants. Treasurer’s warrants were signed during the meeting.

Order No. 09-108, 7:00 p.m. Public hearing and second reading on the order authorizing issuance of up to \$1,000,000 bonds of the Town to fund the purchase of parks and conservation lands. Mr. Anderson of the Land Trust spoke in support of this recommendation and urged the voters of Scarborough to also support this. Chairman Wood opened the public hearing. There being no comments the hearing was closed at 7:06 p.m.

Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval of the second reading on the order authorizing issuance of up to \$1,000,000 bonds of the Town to fund the purchase of parks and conservation lands, as follows:

**ORDER AUTHORIZING ISSUANCE OF UP TO \$1,000,000 BONDS OF THE TOWN
TO FUND PURCHASE OF LAND AND INTERESTS IN LAND THROUGHOUT THE
TOWN FOR PURPOSES OF CONSERVATION OF NATURAL AREAS, PROVIDING
PUBLIC ACCESS AND RECREATION, AND PROTECTION OF WILDLIFE
HABITAT AND SCENIC OR ENVIRONMENTALLY SENSITIVE AREAS**

BE IT ORDERED by the Town Council by the Town of Scarborough, Maine, in Town Council assembled, as follows:

That under and pursuant to the provisions of Title 30-A, Sections 5723, 5726, 5728 and 5772, as amended, and the Charter of the Town of Scarborough, Maine, a public improvement program consisting of the acquisition, by purchase or donation of land, real estate rights or other interests in land throughout the town for purposes of conservation of natural areas, providing public access and recreation, and protection of wildlife habitat, and scenic or environmentally sensitive areas is hereby approved; and,

That a sum not to exceed \$1,000,000 is hereby appropriated to provide for the costs of this program; and,

That to fund said appropriation, the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, including temporary notes in anticipation of the sale thereof, in an aggregate principal amount not to exceed \$1,000,000; and,

That the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment call(s) for redemption, form(s), and other details of said securities, including execution and delivery of said securities against payment therefor, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council.

BE IT FURTHER ORDERED, that the following referendum question shall be submitted to the voters of the Town of Scarborough, Maine at the regular municipal election to be held November 3, 2009:

Referendum Question No. _____:

Shall the Order entitled “**ORDER AUTHORIZING ISSUANCE OF UP TO \$1,000,000 BONDS OF THE TOWN TO FUND PURCHASE OF LAND AND INTERESTS IN LAND THROUGHOUT THE TOWN FOR PURPOSES OF CONSERVATION OF NATURAL AREAS, PROVIDING PUBLIC ACCESS AND RECREATION, AND PROTECTION OF WILDLIFE HABITAT AND SCENIC OR ENVIRONMENTALLY SENSITIVE AREAS**” be approved?

EXPLANATION AND RECOMMENDATION: Approval of this question would allow (not require) the Town of Scarborough, on approval of the Town Council, to issue up to \$1,000,000 of bonds to fund future purchases of properties or rights to properties for the following purposes:

- To provide or maintain public access.
- To allow passive or active recreation.
- To conserve water quality, natural resources, or other natural areas.
- To provide easements for walking or biking trails.
- To preserve significant historic sites.
- To preserve sites which can be considered part of the character to the community.
- To add to existing conservation and public areas.

Bonds will only be issued as needed to fund specific projects. It is likely that the bonds would be issued as a number of smaller bonds over the next several years as potential land purchases are evaluated for overall benefit to the people of Scarborough, and, if deemed the best opportunities, recommend to the Town Council for purchase. The Town Council may choose to establish by ordinance a board to assist with the evaluation process.

Approval of this appropriation would allow the Town of Scarborough to seek significant matching funds, both private and public, from sources such as the Land for Maine's Future Program and the Maine Outdoor Heritage Fund.

All municipal bonds are subject to an annual independent audit. The Town Council recommends approval of this question.

FINANCIAL STATEMENT

1 Total Indebtedness	
A. Bonds outstanding and unpaid:	\$67,785,000
B. Bonds authorized and unissued:	\$ 3,785,230
C. Bonds to be issued if this Article is approved	\$ 1,000,000

2 Costs

At an estimated maximum interest rate of 4.50% for a twenty (20) year maturity, the estimated costs of this bond issue will be:

Principal:	\$1,000,000
Interest:	\$ 450,000
Total Debt Service:	\$1,450,000

3. Validity:

The validity of the bonds and of the voters' ratification of the bonds may not be affected by any errors in the above estimates. If the actual amount of the total debt service for the bond issue varies from the estimate, the ratification by the electors is nevertheless conclusive and the validity of the bond issue is not affected by reason of the variance.

s/Ruth D. Porter _____
Town Treasurer

Vote: 6 Yeas.

Order No. 09-106, 7:00 p.m. Public hearing and second reading on the proposed new ordinance, Chapter 419 - Post-Construction Stormwater Infrastructure Management Ordinance. Sarah Wojoski, Recycling Coordinator and handles the Stormwater Permitting to the State, gave a brief overview as to why this ordinance is being brought forward. Chairman Wood opened the public hearing. There being no comments the hearing was closed at 7:16 p.m.

Motion by Councillor Rancourt, seconded by Councillor Babine, to move approval of the first reading on the proposed Post-Construction Stormwater Infrastructure Management Ordinance and schedule public hearing and second reading, as follows:

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following new Chapter 419 – Post-Construction Stormwater Infrastructure Management Ordinance for the Town of Scarborough, Maine, be and hereby adopted, as follows:

Chapter 419
Town of Scarborough
Post-Construction Stormwater Infrastructure Management Ordinance

Section 1. Purpose.

The purpose of this “Post-Construction Stormwater Infrastructure Management Ordinance” (the “Ordinance”) is to provide for the health, safety, and general welfare of the citizens of the Town of Scarborough through administrative oversight of New Development and Redevelopment’s compliance with the stormwater infrastructure management plans in order for the Town of Scarborough to comply with the minimum control measure requirements of the Federal Clean Water Act, of Federal regulations and of Maine’s Small Municipal Separate Storm Sewer Systems General Permit.

Section 2. Objectives

This Ordinance seeks to meet the above purpose by monitoring, enforcement and reporting to the State, compliance status of Maine Department of Environmental Protection approved stormwater infrastructure management plan for New Developments, pursuant to Maine Department of Environmental Protection Chapter 500 and 502 Rules; and by applying this administrative oversight to all New Development and Redevelopment within the Town municipal boundary.

Section 3. Definitions.

Unless otherwise defined in this ordinance, terms used in this ordinance shall have the same meanings as defined terms in Zoning Ordinance of the Town of Scarborough, Maine (“Zoning Ordinance”). The following terms shall have the following meanings:

Applicant. "Applicant" means a Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.

Best Management Practices (“BMP”). “Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. “Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.

Construction Activity. “Construction Activity” means Construction Activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

Discharge. “Discharge” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

Disturbed Area. “Disturbed Area” is clearing, grading and excavation. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered “disturbed area.” “Disturbed area” does not include routine maintenance but does include redevelopment. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Municipality. “Municipality” means the Town of Scarborough.

Municipal Permitting Authority. “Municipal Permitting Authority” means the Town of Scarborough Code Enforcement Office or Planning Board, whichever has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.

Municipal Separate Storm Sewer System, or MS4. “Municipal Separate Storm Sewer System” or “MS4,” means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. “National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” means a permit issued by the U.S. Environmental Protection Agency (“EPA”) or by the Maine Department of Environmental Protection (“DEP”) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

New Development. “New Development” means any Construction Activity on an unimproved Premise which is subject to review under the Town of Scarborough Site Plan Review Ordinance or the Subdivision Ordinance.

Person. “Person” means any individual, corporation, government agency, municipality, trust, estate, partnership, association, two or more individuals having joint or common interest, or other legal entity.

Pollutant. “Pollutant” means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Stormwater Management Plan. “Post-Construction Stormwater Management Plan” means BMPs and Stormwater Management Facilities employed by a New Development or Redevelopment to meet the standards of this Ordinance.

Premises. “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

Qualified Post-Construction Stormwater Inspector. “Qualified Post-Construction Stormwater Inspector” means a person who conducts post-construction Stormwater Management Facilities, Best Management Practice (“BMP”), inspections and meets the following qualifications:

1. The inspector shall have a working knowledge of Chapter 500, Stormwater Management Rules, and Maine’s Stormwater BMP Manual, and
2. The inspector shall meet at least one the following criteria outlined below; or the inspector must be on the DEP’s list of approved post construction stormwater BMP inspectors.

Non- Proprietary Stormwater Management Facilities

- a. Is a licensed professional engineer in the State of Maine with experience designing, evaluating or inspecting stormwater management facilities; or
- b. Has a college degree in an environmental science or civil engineering, or comparable expertise, and has demonstrated a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and has the ability to determine if stormwater facilities are performing as intended. This qualification must be accompanied by two references from a licensed professional engineer in the State of Maine to be valid; or
- c. Has successfully completed the requirements of a DEP training course on inspecting post-construction stormwater management facilities. Note: successful completion may require receiving a passing grade in an examination at the conclusion of the course.

Proprietary Stormwater Management Facilities

- a. Proprietary stormwater management facilities must be inspected by a person approved by the manufacturer.

Redevelopment. “Redevelopment” means Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Regulated Small MS4. “Regulated Small MS4” means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” effective July 1, 2008 (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Small Municipal Separate Storm Sewer System, or Small MS4. “Small Municipal Separate Storm Sewer System”, or “Small MS4,” means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm Drainage System. “Storm Drainage System” means the Municipality’s Regulated Small MS4.

Stormwater. “Stormwater” means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

Stormwater Management Facilities. “Stormwater Management Facilities” means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.

Town. “Town” means the Town of Scarborough and is synonymous with the term “Municipality.”

Urbanized Area (“UA”). “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Section 4. Applicability.

A. In General.

This Ordinance applies to all New Development and Redevelopment activities to which at least one of the following criteria apply:

1. one acre or more of Disturbed Area, or
2. less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre, or
3. activity within the Shoreland Zone that is subject to review and approval of the Site Plan Review Ordinance requirements and is subject to permits pursuant to Maine Department of Environmental Protection Chapter 500 and 502 Rules.

B. Exception. This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance; said lot, tract or parcel shall not require separate review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

Section 5. Post-Construction Stormwater Management Plan Approval

A. General Requirement. Except as provided in Section 4.B. above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit for New Development or Redevelopment unless the New Development or Redevelopment has an approved Post-Construction Stormwater Infrastructure Management Plan as part of all pertinent State and Federal permits pursuant to Maine Department of Environmental Protection Chapter 500 and 502 Rules.

B. Performance Standards

1. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the New Development or Redevelopment through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection’s Chapters 500 and 502 Rules and shall comply with the practices described in the most recently revised version of the manual *Stormwater Management for Maine*, published by the Maine Department of Environmental Protection which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

2. The Applicant may meet the quantity and quality standards above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the Town documentation, approved as to legal sufficiency by the Town's attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located -- by easement, covenant or other appropriate legal instrument -- to ensure that the facilities will be able to provide post-construction stormwater management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.

3. Where the Applicant proposes to retain ownership of the Stormwater Management Facilities shown in its Post-Construction Stormwater Management Plan, and the Stormwater Management Facilities will not be dedicated to the Town, the Applicant shall enter into a Maintenance Agreement with the Town. The form of the Maintenance Agreement is attached as Appendix 1 to this Ordinance. The Applicant shall cause the Maintenance Agreement to be recorded in the Cumberland County Registry of Deeds within 30 days of the date of execution of the Agreement. Failure to comply with the terms of the Maintenance Agreement shall constitute a violation of this Ordinance.

4. Whenever elements of the Stormwater Management Facilities are not within the right-of-way of a public street and the facilities will not be offered to the Town for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage, and in a form acceptable to the Town's attorney, shall be provided to the Town allowing access for maintenance, repair, replacement and improvement of the Stormwater Management Facilities. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Stormwater Management Facilities under this Ordinance until such time (if ever) as they are accepted by the Town. Nothing in this Ordinance requires the Town to accept any Stormwater Management Facilities offered or dedicated by the Applicant.

5. In addition to any other applicable requirements of this Ordinance and the Town's land use ordinances, any New Development or Redevelopment which also requires a stormwater management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with town ordinances, the stricter (more protective) standard shall apply.

6. Engineering and administrative review fees. Prior to the issuance of a permit for the construction activity authorized by the post-stormwater management plan approval, the applicant shall pay all engineering and administrative review fees associated with the review of the plan. The amount of the fee shall be determined by the Town Planning Department, and shall include the actual cost incurred by the Town to engage consultants to undertake the review of the applicant's plan submission, plus any other additional costs incurred to the Town during the review process.

In addition, any persons required to file an annual certification under Section 6 of this Ordinance shall include with the annual certification payment in the amount specified in the Schedule of License, Permit and Application Fees established by order of the Town Council.

7. As-Built Certification. Prior to the issuance of a Certificate of Compliance for a project requiring a Post-Construction Stormwater Management Plan under this Ordinance, the Applicant shall submit evidence in the form of a letter or plan prepared and stamped by a Professional Engineer who either prepared the Post-Construction Stormwater Management Plan and its associated Facilities or supervised the Plan and Facilities construction and implementation. The letter or plan shall certify that the Stormwater Management Facilities have been installed in accordance with the approved Post-Construction Stormwater Management Plan and that they will function as intended by said Plan.

8. Notice of BMP Discharge to Municipality's MS4. At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

Section 6. Post-Construction Stormwater Management Plan Compliance

A. General Requirements. Any Person owning, operating, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Infrastructure Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows:

1. A Qualified Post-Construction Stormwater Inspector shall be hired by that Person to, , at a minimum, annually inspect the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all town and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.
2. If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
3. The Qualified Post-Construction Stormwater Inspector, shall, on or by June 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form identical to that attached as Appendix 1 to this Ordinance, certifying that the Person has inspected the Stormwater Management Facilities and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Infrastructure Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Stormwater Management Facilities and, if the Stormwater Management Facilities require maintenance or repair of deficiencies in order to function as intended by the approved

Post-Construction Stormwater Infrastructure Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

Within one (1) week of the date of above, the Code Enforcement Officer shall submit a copy of the received certifications to the Public Works Department. The Public Works Department shall be responsible for the annual reporting to the Maine Department of Environmental Protection, as set forth in Section 6(C).

B. Right of Entry. In order to determine compliance with this Ordinance and with the Post-Construction Stormwater Management Plan, a municipal employee or agent acting on behalf of the Municipality may enter upon a property with an approved post construction stormwater management plan at reasonable hours to inspect the Stormwater Management Facilities.

C. Annual Report. Beginning July 1, 2009 and each year thereafter, the Municipality shall include the following in its Annual Report to the Maine Department of Environmental Protection:

1. The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;
2. A summary of the number of sites that have Stormwater Management Facilities discharging into their MS4 that were reported to the Municipality;
3. The number of sites with documented functioning Stormwater Management Facilities; and
4. The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.

Section 7. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Code Enforcement Officer determines that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Code Enforcement Officer may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

A. Notice of Violation. Whenever the Code Enforcement Officer determines that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Code Enforcement Officer may order compliance with this Ordinance or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
2. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
3. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

B. Penalties/Fines/Injunctive Relief.

1. Any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality’s attorney’s fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation.

2. Any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys’ fees and costs, incurred by the Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person’s violation of this Ordinance or of the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under paragraph 1 of this subsection B.

C. Consent Agreement. The Code Enforcement Officer may, with the approval of the Town Manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.

D. Notice of Violation Not Appealable. There is no appeal to any official, board, body or agency of the Town of Scarborough from a Notice of Violation under this Ordinance.

E. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then the Code Enforcement Officer may recommend to the Town Manager that the town’s attorney file an enforcement action in a Maine court of competent jurisdiction.

Section 8. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

Section 9. Basis.

The Town of Scarborough enacts this “Post-Construction Stormwater Infrastructure Management Ordinance” (the “Ordinance”) pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the “Wastewater Discharge Law”), 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act”), and 40 CFR Part 122 (U.S. Environmental Protection Agency’s regulations governing the National Pollutant Discharge Elimination System (“NPDES”). The Maine Department of Environmental Protection, through its promulgation of the “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,” has listed the Town of Scarborough as having a Regulated Small Municipal Separate Storm Sewer System (“Small MS4”); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance in order to satisfy the minimum control measures required by Part IV D 5 (“Post-construction stormwater management in new development and redevelopment”).

APPENDIX 1

**Maintenance Agreement for
Stormwater Management Facilities**

This Maintenance Agreement is made this _____ day of _____ 20__ by and between _____ (“Applicant”) and the Town of Scarborough, Maine (the “Town”).

The project name is _____.

The location is: _____, Scarborough, Maine.

The project’s Tax Map and Lot Numbers are Tax Map Lot _____

The project is shown on a plan entitled " _____ " dated _____ and most recently revised on _____, approved by the _____ [Municipal Permitting Board] on _____.

The last recorded deed in the chain of title for the property within the Project is recorded in the Cumberland County Registry of Deeds at Book _____, Page _____.

WHEREAS, the approval of the Project includes Stormwater Management Facilities which requires periodic maintenance; and

WHEREAS, in consideration of the approval of the Project the Town of Scarborough requires that periodic maintenance be performed on the Stormwater Management Facilities;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the approval of the Project by the Town and the agreement of Applicant to maintain the Stormwater Management Facilities, the parties hereby agree as follows:

1. Applicant, for itself, and its successors and assigns, agrees to the following:
 - (a) To inspect, clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system;
 - (b) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection;
 - (c) To provide a summary report on the inspection, maintenance, and repair activities performed annually on the Stormwater Management Facilities to the Town Code Enforcement Officer;
 - (d) To allow access by Town personnel or the Town’s designee for inspecting the Stormwater Management Facilities for conformance with these requirements.

(e) If lots or units will be sold separately, to create an association of lot or unit owners (the "Association") for the purpose of maintaining the Stormwater Management Facilities.

2. Upon creation of the Association, the Association shall become responsible for compliance with the terms of this Agreement.

3. This Agreement shall constitute a covenant running with the land, and Applicant shall reference this Agreement in all deeds conveying any interest in real estate within the Project.

Witness

By: _____
Its: _____

TOWN OF SCARBOROUGH

Witness

By: _____
Its: _____

STATE OF MAINE

_____, ss.

_____, 20__

Personally appeared the above-named _____, the _____ of _____, and acknowledged the foregoing Agreement to be said person's free act and deed in said capacity.

Before me,

Notary Public / Attorney at Law

Print Name: _____

STATE OF MAINE

_____, ss.

_____, 20__

Personally appeared the above-named _____, the _____ of the Town of Scarborough, and acknowledged the foregoing Agreement to be said his/her free act and deed in said capacity.

Before me,

Notary Public / Attorney at Law

Print Name: _____

APPENDIX 2

Annual Stormwater Management Facilities Certification
*(to be completed by a Qualified Post-Construction Stormwater
Inspector and sent to Town Code Enforcement Officer)*

I, _____ (print or type name), a Qualified Post-Construction Stormwater Inspector, certify the following:

1. I am making this Annual Stormwater Management Facilities Certification for the following property: _____ (print or type name of subdivision, condominium or other development) located at _____ (print or type address), (the "Property");

2. The owner, operator, tenant, lessee or homeowners' association of the Property is: _____ (name(s) of owner, operator, tenant, lessee, homeowners' association or other party having control over the Property);

3. I have knowledge of erosion and stormwater control and have reviewed the approved Post-Construction Stormwater Management Plan for the Property;

4. On _____, 20__, I inspected the Stormwater Management Facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved Post-Construction Stormwater Management Plan for the Property;

5. At the time of my inspection of the Stormwater Management Facilities on the Property, I identified the following need(s) for routine maintenance or deficiencies in the Stormwater Management Facilities:

6. On _____, 20__, I took the following routine maintenance or the following corrective action(s) to address the deficiencies in the Stormwater Management Facilities stated in 6. above:

7. As of the date of this certification, the Stormwater Management Facilities are functioning as intended by the approved Post-Construction Stormwater Management Plan for the Property.

Date: _____, 20__ By: _____
Signature

Print Name

STATE OF MAINE

_____, ss. _____, 20__

Personally appeared the above-named _____, the _____ of _____, and acknowledged the foregoing Annual Certification to be said person's free act and deed in said capacity.

Before me,

Notary Public/Attorney at Law

Print Name: _____

9. The owner, operator, tenant, lessee, or other party having control over the Property shall sign below verifying the information above was completed by a Qualified Post-Construction Stormwater Inspector.

Date: _____, 20__ By: _____
Signature

Print Name

STATE OF MAINE

_____, ss. _____, 20__

Personally appeared the above-named _____, the _____ of _____, and acknowledged the foregoing Annual Certification to be said person's free act and deed in said capacity.

Before me,

Notary Public/Attorney at Law

Print Name: _____

Mail or hand deliver this certification to the Municipal Code Enforcement Officer at the following address:

Town of Scarborough
c/o Code Enforcement Officer
PO Box 360
Scarborough, ME 04074

Vote: 6 years.

Order No. 09-111, 7:00 p.m. Public hearing on the new request for a combine Massage Establishment/Massage Therapist License from Charlene H. Jenness, d/b/a Hearts & Hands Massage, located at 128 Broadturn Road. Chairman Wood opened the public hearing. There being no comments the hearing was closed at 7:18 P.M.

Motion by Councillor Roy, seconded by Councillor Babine, to move approval on the new request for a combine Massage Establishment/Massage Therapist License from Charlene H. Jenness, d/b/a Hearts & Hands Massage, located at 128 Broadturn Road.

Vote: 6 Yeas.

Resolution 09-07. Recognizing the month of September as *Pain Awareness Month*. Representatives of the American Chronic Pain Association spoke in support of this recommendation.

Motion by Councillor Roy, seconded by Councillor Babine, to move approval of Resolution 09-07, recognizing the month of September as *Pain Awareness Month*, as follows:

**Resolution 09-07
Proclaiming the Month of September, 2009, as**

Pain Awareness Month

BE IT RESOLVED, by the Council of the Town of Scarborough, Maine, in Town Council Assembled, that,

WHEREAS, pain is one of our nation's most serious health problems and an estimated one in three Americans or 75 to 150 million people suffer from some type of chronic pain and is the number one cause of adult disability in the United States; and,

WHEREAS, there is no cure for chronic pain and can be a source of frustration for the health care professionals who seek to provide care and assistance; and,

WHEREAS, chronic pain can touch nearly every part of a person's daily life, has an impact on the entire family, and, because of its economic and social consequences, affects us all; and,

WHEREAS, Partners of Understanding Pain is a consortium of organizations that touch the lives of people with chronic, acute, and cancer pain; and,

WHEREAS, the Maine Pain Initiative, a committee of the Maine Hospice Council, is a multidisciplinary group of health care professionals, consumers, and other interested people, serving as an advocate for people experiencing pain; and,

WHEREAS, the Chronic Pain Support Group of Southern Maine has since 1993 offered a safe, welcoming place where people with chronic pain can support one another, develop friendships, and learn coping skills from others who understand and care; and,

WHEREAS, these groups seek to increase awareness of chronic pain in the State of Maine, to inspire people to work toward reducing barriers and increasing access to appropriate pain management, and to improve the quality of life of those suffering from pain,

NOW, THEREFORE, BE IT RESOLVED, by the Scarborough Town Council in Town Council assembled, that we do hereby proclaim September as *Pain Awareness Month*.

Signed and dated this 2nd day of September, 2009 on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine. Signed by Michael J. Wood, Council Chair and attested by Yolande P. Justice, Town Clerk.

Vote: 6 Yeas.

Item 6. Non Action Item.

a. Presentation and discussion on a proposed Tax Increment Finance District on the former Konica property, located at 71 U.S. Route One. Thomas Hall, Town Manager, introduced Andrew Gilmore of Monks O'Neil Development, LLC who gave a brief presentation regarding the proposed Tax Increment Finance District. Drew Roccas of ????? also spoke on this proposal. Robert Gaudreau, potential developer of the Konica Building presented drawings of what is being proposed. Harvey Rosenfeld, President of Scarborough Economic Development Corp, endorsed this project. Councillors agreed that this would be proposal that they would like to see brought forward.

OLD BUSINESS: None at this time.

NEW BUSINESS:

Order No. 09-95. Act on the re-appointment of William Austin and Robert Vautin, to the Scarborough Economic Development Corporation Board of Trustees. [Carried over from previous meetings.] Motion by Councillor Rancourt, seconded by Councillor Babine, to move approval on the re-appointment of William Austin and Robert Vautin, to the Scarborough Economic Development Corporation Board of Trustees.

Vote: 6 Yeas.

Order No. 09-96. Act to authorize the Town Manager to sign documents authorizing acceptance of \$11,852.00 or any portion thereof, to be placed in the Asset Forfeiture Account. [This money is the Police Department's equitable share of seizures obtained in recent drug cases]. [Carried over from previous meetings.] Robert Rovner of 4 King Street asked if these monies could be used for improvements to the beach access area.

Motion by Councillor Babine, seconded by Councillor Rancourt, to move approval to authorize the Town Manager to sign documents authorizing acceptance of \$11,852.00 or any portion thereof, to be placed in the Asset Forfeiture Account. [This money is the Police Department's equitable share of seizures obtained in recent drug cases].

Vote: 6 Yeas.

Order No. 09-98. Act to accept the following street, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Peregrine Way. [Caried over from previous meetings.] Motion by Councillor Babine, seconded by Councillor Ahlquist, to move approval to accept the following street, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Peregrine Way.

Vote: 6 Yeas.

Order No. 09-99. Act to authorize the Town Manager to sign an easement deed on property located 93 King Street - Map U21, Lot 21. [Carried over from previous meetings.] Motion by Councillor Babine, seconded by Councillor Rancourt, to move approval to authorize the Town Manager to sign an easement deed on property located 93 King Street - Map U21, Lot 21.

Motion by Councillor Babine, seconded by Councillor Ahlquist, to table Order No. 09-99 to the next Council meeting scheduled for Wednesday, September 16, 2009

Vote: 6 Yeas.

Order No. 09-108. Act to authorize the Town Manager to sign a release deed for property located at 72 Black Point Road - Map R74, Lot 7. [Carried over from previous meeting.] Motion by Councillor Roy, seconded by Councillor Rancourt, to move approval to authorize the Town Manager to sign a release deed for property located at 72 Black Point Road - Map R74, Lot 7.

Vote: 6 Yeas.

Order No. 09-112. First reading and schedule a public hearing and second reading the proposed new ordinance Chapter 604A - the Horse Beach Permit Ordinance. Councillor Rancourt gave a brief overview on this recommendation.

Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval of the first reading on the proposed new ordinance Chapter 604A - the Horse Beach Permit Ordinance and schedule a public hearing and second reading for the next Town Council meeting scheduled for Wednesday, September 16, 2009, as follows:

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following new Chapter 604A – the Town of Scarborough Horse/Beach Permit Ordinance for the Town of Scarborough, Maine, be and hereby adopted, as follows:

**CHAPTER 604A
TOWN OF SCARBOROUGH
HORSE/BEACH PERMIT ORDINANCE**

604A-1. Authority

This Ordinance is enacted pursuant to the authority of 30-A M.R.S.A. § 3001 and also implements 17 M.R.S.A. § 3853-A. The Town Clerk shall have the powers and exercise the duties of the municipal officers under 17 M.R.S.A. § 3853-A.

604A-2. Purpose

The purpose of this Ordinance is to allow horses to be present on Pine Point Beach in Scarborough and Old Orchard Beach in the Town of Old Orchard Beach during appropriate times of year, and subject to appropriate regulation and control. This Ordinance recognizes that Pine Point Beach and Old Orchard Beach form a continuous strand of sand beach and establishes a system of reciprocal licensing for horses on that strand of beach.

604A-3. Definitions

As used in this Ordinance, the following terms have the following meanings:

1. “Beach” means Pine Point Beach and/or Old Orchard Beach.

2. “Old Orchard Beach” means the sand beach bordering the Atlantic Ocean from the Scarborough/Old Orchard Beach town line to the Saco city line.
3. keeping or having custody, possession or control of a horse.
4. “Pine Point Beach” means the sand beach bordering the Atlantic Ocean from the mouth of the Scarborough River to the Old Orchard Beach town line.
5. “Rider” means any person who rides, leads or drives a horse.
6. “Town of Old Orchard Beach” means the municipality so named.

604A-4. Permit Required

No rider shall bring a horse onto the beach without a permit therefor issued by the Town Clerk of either the Town of Scarborough or the Town of Old Orchard Beach. Every rider must have an individual permit.

604A-5. Procedure for Obtaining a Permit

A rider seeking a permit to bring a horse onto the beach must apply in writing to the Town Clerk of the Town of Scarborough or the Town Clerk of the Town of Old Orchard Beach, using forms supplied by such clerk. The application must be accompanied by identification issued “Owner” means any person or persons, firm, association, partnership or corporation owning, by a government agency and by the application fee required by the Schedule of License, Permit and Application Fees in the municipality where the application is made. If the applicant is a minor, the application must be signed by a parent or guardian, who must supply the required identification (the minor need not supply identification). A permit issued by either municipality shall be valid in both municipalities. Permits are valid only between October 15th and May 1st. All permits, whenever issued, expire on May 1st.

604A-6. Regulation of Horses on the Beach

1. Horses are allowed on the beach only from October 15th through May 1st.
2. Except for gaining access to and egress from the beach, horses are allowed only in the intertidal zone (between the mean high tide line and the mean low water line).
3. Parking of horse trailers is limited to Hurd Park in the Town of Scarborough and the Milliken Street Municipal Parking Lot in the Town of Old Orchard Beach.
4. Any rider or owner who allows a horse to be present on the beach must remove and dispose of animal waste as required by Section 604-9 of the Town of Scarborough Animal Control Ordinance. Violation of Section 604-9 constitutes a violation of this Ordinance.

604A-7. Violation/Penalties

Any person who violates this Ordinance within the Town of Scarborough shall be subject to civil penalties for each violation as follows:

First violation: not less than \$50.00 and not more than \$100.00, plus costs.

Second violation: not less than \$100.00 and not more than \$250.00, plus costs.

Third and subsequent violations: not less than \$250.00 and not more than \$500.00, plus costs.

A person issued a civil violation citation for violating this Ordinance may elect to pay the minimum penalty specified above for each violation alleged in the citation, in lieu of appearing in court to answer the citation. Such payment must be received at the Office of the Scarborough Town Clerk in the amount specified in the citation prior to the court appearance date specified in the citation. Upon receipt of such payment by the Clerk, the Town shall cause the citation to be dismissed. However, the violations alleged in the citation shall be deemed admitted for purposes of assessing any future penalties under this section.

If a horse is present on the beach in violation of this Ordinance and the rider is not the owner, the owner shall be jointly and severally liable with the rider for civil penalties.

604A-8. Enforcement

This Ordinance may be enforced by any officer of the Police Department of the Town of Scarborough.

604A-9. Severability Clause

If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance.

Vote: 5 Yeas [Councillor Ahlquist absent from Chambers].

Order No. 09-113. Act to authorize the Town Manager to sign the Southern Maine Regional Special Weapons and Tactics Team Agreement [SWAT]. Motion by Councillor Babine, seconded by Councillor Roy, to move approval to authorize the Town Manager to sign the Southern Maine Regional Special Weapons and Tactics Team Agreement [SWAT].

Vote: 5 Yeas [Councillor Ahlquist absent from Chambers].

Order No. 09-114. Act on the request from the Town Clerk to appoint a new Election Warden. Motion by Councillor Rancourt, seconded by Councillor Babine, to move approval on the request from the Town Clerk to appoint Roger Beeley as the new Election Warden.

Vote: 5 Yeas [Councillor Ahlquist absent from Chambers].

Order No. 09-115. Act to authorize the Town Manager to sign the necessary paperwork to purchase property located at 14 Saco Street [Map R015 – Lot 38] in amount not to exceed \$154,000, funds to be used from the Public Safety Building Capital Improvement Account, as authorized by the Town Council on June 17, 2009. Motion by Councillor Roy, seconded by Councillor Babine, to move approval to authorize the Town Manager to sign the necessary paperwork to purchase property located at 14 Saco Street [Map R015 – Lot 38] in amount not to exceed \$154,000, funds to be used from the Public Safety Building Capital Improvement Account, as authorized by the Town Council on June 17, 2009.

Vote: 6 Yeas.

Item 7. Committee Reports: Standing Committee Reports and other reports.

- Councillor Roy noted that the Appointments Committee had met just prior to the council meeting and would like to post the following names.

Charter Review Committee:

Linwood M. Higgins
Tinamarie Smith
Sylvia Most as an Alternate

Conservation Commission:

Peter Slovinsky (2010)

Personnel Appeals Board:

Edward Blaise, III (2009) Full Voting member
Daniel Dwyer (2011) 1st Alternate

Senior Wow Program Advisory Board:

Cynthia Taylor (2009)

Shellfish Conservation Committee:

Sheldon W. Blais (2009) Alternate
Matthew Toohey (2009) Full voting members

Councillor Roy noted the Energy Committee will meet on Thursday, September 10th at 8:15 a.m. in the Town Manager's Conference Room. She also gave an update on the Senior WOW Group.

- Councillor Babine noted the Finance Committee met on June 24th and discussed the funding on Outside agencies; reviewed the recommendations from the Auditors and reviewed the Fund Balance Policy
- Councillor Rancourt noted the Ordinance Committee met on August 25th and discussed dogs; yard sale permits and the proposed horse beach permit – which the Council had before them this evening. The next meeting is scheduled for Tuesday, September 29th at 4:30 p.m.
- Chairman Wood noted the Rules and Policies Committee met on Monday, August 31st and discussed the propose changes to the current manual and would like to forward it to the Council for the September 16th Council meeting.
- Councillor Ahlquist gave an update on the Payne Road Study Committee and the next meeting is scheduled for Wednesday, September 16th at 7:30 a.m. in Chamber B.

Item 8. Public Comments.

1. George Pulkkinen of 15 Ocean View Road read a letter that had been sent to all Councillors requesting a recall provision be added to the Town Charter.
2. Sean Flaherty of Pine Point and State Representative apologized to the Council if he broke any of the Council's rules; that was not his intention.
3. Judy Shirk of Pine Point made comments regarding the Depot Street issue.
4. Sue Perrino of Driftwood Lane also made comments regarding the Depot Street issue.
5. Barney Martin of Foxwell Drive voiced his concerns regarding the Payne Road Study Group.
6. Jim Flaherty of Scottow Hill Road also voiced his concerns regarding the Payne Road Study Group.
7. Robert Rovner of 4 King Street spoke of his concerns regarding safety issues with the proposed changes to the intersection of Pine Point Road and King Street

Item 9. Town Manager Report. Thomas J. Hall, Town Manager, commented on the following:

- He commented on two of the referendum questions that would be on the ballot this fall: the Excise and Tabor 2 – there will be a public forum on September 15th at 6:30 p.m. at the South Portland Recreation Center.
- Town staff, along with the School Department have been, and will continue, working on the H1N1 Flu issue.
- He commented on the Payne Road issue.

Item 10. Council Member Comments.

- Councillor Babine thanked Sean Flaherty for his comments and asked that the information that Mr. Flaherty on the Depot Street issue be supplied to the Council – as of this date the Council has seen nothing.
- Councillor Roy made comments regarding the Pine Point issue.
- Chairman Wood responded to Mr. Pulkkinen letter by noting that the Charter Review Committee is in the process of reviewing the Town Charter and that he might want to present his information to this Committee. He encourage those who spoke their concerns regarding the Payne Road Committee to attend the next meeting scheduled for September 16th at 7:30 a.m. He sent condolences to the Lowell Family and the Avery Family.
- Councillor Rancourt sent farewell wishes to Norm Justice and wished him will on his new job in Gorham. She noted the Scarborough Community Television Cable that station Channel 2 will now primarily be a public access channel broadcasting sporting events, local concerts, school and town functions, and local publicly produced programming and Channel 3 will now primarily be official town and school meetings.
- Councillor Sullivan applauded Councillor Roy’s comments regarding the Pine Point Road issue.
- Councillor Ahlquist commented on the purchase of the Maxfield Property, it was a wise decision. He went on to make comments regarding the Payne Road Study Committee.

Item 11. Adjournment. Motion by Councillor Babine, seconded by Councillor Roy, 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