



TOWN OF FREEPORT, MAINE

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ITEM # 179-22
INCIDENTAL
PROCESSING-EARTH
MATERIALS

MEMO

TO: Freeport Town Council

FROM: Peter Joseph, Town Manager

DATE: August 31, 2022

RE: Ordinance Chapter 64 - Incidental Processing of On-Site Earth Material

This draft ordinance was developed in response to resident concerns about the on-site processing of earth materials (stone, gravel, dirt, etc.), which has become a more common occurrence as portable rock crushers, gravel screening mills, and the like have become more accessible to small and medium sized earthwork contractors. The intent of this ordinance is to clarify that raw materials such as stone, gravel, dirt, etc., which are brought on to a vacant lot or construction site are prohibited from being processed on that site. Materials that are harvested from a vacant lot or construction site may be processed and used on that site in limited quantities, or in larger quantities after review and approval by the Project Review Board

The Ordinance Committee reviewed and recommended a previous version of this ordinance earlier this year. The draft ordinance was then reviewed by the Town Attorney, who made recommendations for comprehensive revisions to the original draft. Notably, the Town Attorney developed an application and review process, including standards of approval, for applications made for processing quantities greater than 100 cubic yards of material on-site. The Town Attorney also strongly recommended that applications be made to and reviewed by the Project Review Board, instead of the Town Council, as the previous version of the ordinance had specified.

Please feel free to contact me with any questions you have about the proposal prior to Tuesday's meeting.

Chapter 64
Town of Freeport Incidental Processing of On-Site Earth Material Ordinance

ARTICLE I – TITLE & PURPOSE

Section 1 – Title

This Ordinance shall be known and may be cited as the “Incidental Processing of On-Site Earth Material Ordinance” (referred to herein as “this Ordinance”).

Section 2 – Purpose

The purpose of this Ordinance is to establish standards and limitations applicable to the temporary and/or incidental on-site processing of modest amounts of earth material excavated from any single parcel of land, when such processing is a temporary activity incidental to construction, alteration, development or other improvement of the parcel or portion thereof for uses other than excavation operations, and where no earth materials are brought onto the parcel from off-site for processing. The on-site processing of earth materials incidental to non-excavation uses may have adverse impacts on adjacent and nearby properties due to the potential for producing noise, dust, vibration, traffic, groundwater contamination and other land disturbances. This Ordinance is intended to minimize any adverse impact of such on-site processing on adjacent and nearby properties.

The activities regulated by this Ordinance are intended to be separate and distinguished from excavation uses (defined in Sections 104 and 509 of the Freeport Zoning Ordinance), uses accessory to excavation operations, and Processing Uses (defined in Section 427.B.5 of the Freeport Zoning Ordinance), which are governed by and subject to the review requirements and standards in Section 509 of the Freeport Zoning Ordinance.

ARTICLE II – DEFINITIONS

Earth material: materials including, but not limited to, gravel, clay, soil, topsoil, loam, sand, rock, stone, crushed stone, duff, ore, minerals, mineral substances and organic materials other than vegetation, and similar materials either found below or upon the surface on a parcel of land.

Earth material processing: the processing of earth material that involves the use of powered equipment to sort, crush, refine, wash, polish, break down, or otherwise convert one type or grade of earth material into another type, size, or grade of earth material. Examples of earth material processing include, but are not limited to:

- Using a powered rock crusher to process earth material into earth material of smaller sizes or grades;
- Using a powered screening plant or other similar piece of equipment to sift or sort earth material into varying sizes or grades of earth material;

- Using a powered jackhammer or jackhammer attachment to break loose stone or rock of any size for further processing into smaller sizes.

On-site earth material processing: the processing of earth material obtained from the same parcel of land upon which the processing activity is taking place, that does not include the processing of earth material brought in from a location outside the parcel.

ARTICLE III – EXEMPTIONS

This Ordinance shall not apply to:

- A. Removal of earth material from a site or filling of earth material from off-site that is incidental to approved construction, alteration or repair of a structure, approved development or improvement of a parcel of land, or approved uses of a parcel other than for non-excavation or processing uses, including the landscaping incidental thereto;
- B. The on-site processing, handling or removal of less than one hundred (100) cubic yards of earth material obtained from the same parcel of land upon which the earth material processing is taking place, within any twelve-month period, provided such removal does not disturb more than one (1) acre of land;
- C. Removal or detachment of earth material from ledge, bedrock, large boulders or other similar substrate located on a parcel of land, for example, by a powered jackhammer or blasting, if incidental to construction.
- D. Movement or relocation of earth material within a parcel of land, if incidental to construction;
- E. Earth material processing and/or excavation uses that are subject to the review and approval requirements of Section 509 of the Freeport Zoning Ordinance.

ARTICLE IV – PROHIBITIONS

- A. No earth material processing regulated under this Ordinance is permitted within 300' of a residential dwelling other than a dwelling permitted on the same parcel of land.
- B. The processing of earth material that has been brought onto a parcel of land from off-site is prohibited, unless such processing use and/or excavation is permitted under the review and approval requirements of Section 509 of the Freeport Zoning Ordinance.

ARTICLE V – PERMIT REQUIRED

No person may conduct on-site earth material processing activities of one hundred (100) cubic yards or more of earth material within any twelve-month period without first obtaining approval of such activity from the Project Review Board. If the Project Review Board determines that the proposed on-site earth material processing activity constitutes an excavation use or processing use that is not incidental to some other principal use of the parcel, the Project Review Board may require the applicant to submit instead to the review and approval requirements under Section 509 of the Freeport Zoning Ordinance.

ARTICLE VI – SUBMISSION REQUIREMENTS AND APPLICATION PROCEDURES

Section 1 – Application Materials.

An applicant for a permit required under this Ordinance shall submit the following:

- (a) Fees including an application fee, abutter notification fee and a public hearing fee at the amounts established by the Freeport Town Council.
- (b) Completed application form which shall include the following information:
 - 1. Name and address of owner/operator
 - 2. Copy of deed of parcel, map and lot number, lease, if applicable.
 - 3. Scalable drawing or plan containing approximate size and boundaries of parcel, location of anticipated on-site earth material processing on the parcel, name of road frontage, existing slope and topography on parcel, location of any structures (including residential dwellings) located on adjacent parcels within 300’ of the parcel’s property boundary.
 - 4. Location and description of all on-site earth material processing activities, including specifically, their anticipated duration and frequency.
 - 5. Information on depth to groundwater and location of exposed groundwater.
 - 6. Location of surface water, if any, on the parcel (e.g., streams, brooks, ponds).
 - 7. If the activity will include blasting, a blasting plan prepared by a qualified professional in accordance with the requirements of Chapter 63 – Town of Freeport Blasting Ordinance, where applicable.

Section 2 – Additional Information.

The Project Review Board may require other pertinent information which it deems necessary to determine if the proposed processing of earth material meets the requirements of this Ordinance.

Section 3 – Waiver.

The Project Review Board may grant waivers from specific submission requirements if it determines that the information is not necessary to evaluate the extent of impact on surrounding properties and the environment.

ARTICLE VII – REVIEW AND APPROVAL PROCESS

Section 1 – Timing of Application Review

The application submitted shall be reviewed by the Project Review Board, and a decision rendered within 60 days of the Board’s determination that the application is complete, unless a further extension is mutually agreed to by the applicant and Board.

Section 2 – Public Hearing

Prior to the approval of any request for on-site earth material processing incidental to other principal non-excavation/processing uses, the Project Review Board shall hold a public hearing, notice of which shall be provided by first class mail (or equivalent) to all owners of property located within five-hundred (500) feet of the boundary line of the parcel in question, at least

seven (7) days prior to the public hearing. A notice of the nature of the application and of the time and place of the public hearing shall be published at least seven (7) days in advance in a newspaper of general circulation in the area.

Section 3 – Decision upon Review of Completed Application

After the public hearing the Project Review Board may approve the application, deny the application, or approve the application with such condition(s) as it may find reasonably necessary to ensure compliance with the purposes and requirements of this Ordinance. If the Project Review Board shall vote to deny an application under this Ordinance, the owner or authorized agent shall be notified in writing and the specific cause of disapproval shall be noted.

If the application meets the requirements of this Ordinance, with or without conditions, the Project Review Board shall issue an approval which shall expired one (1) year from the date of approval.

ARTICLE VIII – MINIMUM STANDARDS

The earth material processing activities for which a permit is required under this Ordinance must be reviewed and approved by the Project Review Board for compliance with the following minimum standards:

Section 1 – Noise, Dust, Vibration, Traffic

The applicant must make adequate provision for control of noise, dust, vibration and traffic generated by the processing of on-site earth material and, where applicable, reduce such anticipated impacts on surrounding properties and nearby residential properties. With respect to noise specifically, all earth material processing activities must comply with the standard of Chapter 39 – Town of Freeport Loitering, Curfew and Noise Ordinance.

The Project Review Board may, as a term or condition of approval, require the applicant to mitigate adverse anticipated impacts, through conditions that may include, but not be limited to, enclosing equipment, imposing reasonable hours of operation and/or a ceiling on duration and frequency of processing activities, imposing a limitation on the frequency and timing of trips onto and off of the parcel made by processing and/or other heavy equipment used in connection with the earth material processing activity, and designating a specific location on the parcel where processing of materials will have a reduced noise impact on surrounding properties and uses.

Section 2 – Groundwater or Surface Water Impacts

The applicant must make demonstrate that the proposed earth material processing activity will not have an adverse impact to groundwater and/or surface water or to neighboring private water supplies, where applicable. The Project Review Board may, as a term or condition of approval, require the applicant to mitigate adverse anticipated impacts to nearby groundwater and/or surface water, through appropriate conditions of approval.

Section 3 – Miscellaneous Standards

Nothing in this Article or Ordinance should be construed to limit the authority of the Project Review Board to impose additional standards or conditions of approval beyond those described above in this Article that the Board deems to be reasonably related to the purpose of this Ordinance to reasonably limit the adverse impact of the proposed processing activity on surrounding properties.

ARTICLE IX – APPEALS

Any appeal of any decision made by the Project Review Board under Articles V and VII of this Ordinance shall be appealable only directly to Superior Court.

ARTICLE X – VIOLATIONS; ENFORCEMENT

Failure to comply with any conditions of approval and/or terms of the approval granted by the Project Review Board under this Ordinance shall be construed to be a violation of this Ordinance, subject to enforcement and/or legal action as authorized under Section 601 and 602 of the Freeport Zoning Ordinance and 30-A M.R.S. § 4452 *et seq.*, and shall further be grounds for revoking the approval, initiating legal proceedings to enjoin the specific activity violating the approval or conditions of approval, or imposing such fines as the Town Council and/or court may establish for violations of this Ordinance, for each day the violation continues to exist after official notification by the Codes Enforcement Officer.

ARTICLE XI – CONFLICTS WITH OTHER ORDINANCES

In the event of a conflict between the provisions of this Ordinance and any applicable federal, state or local ordinance, law or regulation, the more restrictive provision shall control.