



TOWN OF FREEPORT, MAINE

Planning Department

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Freeport, ME 04032

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TO: FREEPORT TOWN COUNCIL

FROM: CAROLINE PELLETIER, TOWN PLANNER

**RE: RECOMMENDED ZONING ORDINANCE AND SUBDIVISION AMENDMENTS
PERTAINING TO NOISE**

DATE: TUESDAY, DECEMBER 7, 2021

Background: At the Wednesday, November 3, 2021 Planning Board meeting, the Planning Board reviewed the following agenda items:

ITEM III: **Public Hearing(s)**

- a) This will be a **public hearing** to discuss proposed amendments to Chapter 21 Freeport Zoning Ordinance, Section 515. Noise Regulation, to clarify what types of temporary use of machinery are not covered by the standards in this Section of the Zoning Ordinance and to add a cross reference to the regulations in Chapter 39: Loitering, Curfew and Noise Ordinance which does regulate the temporary use of machinery.
- b) This will be a **public hearing** to discuss proposed amendments to Chapter 25 Freeport Subdivision Ordinance, Article 11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances, to add a cross reference to the Loitering, Curfew and Noise Ordinance.

The original request for ordinance amendments pertaining to noise originated from residents who requested that the Town consider regulations pertaining to construction noise (attached). The Ordinance Committee and Town Council recently adopted amendments to the Town of Freeport Chapter 39 Loitering Curfew and Noise Ordinance (attached). The Council also requested that the Planning Board consider amendments to Chapter 21 Freeport Zoning Ordinance and Chapter 25 Freeport Subdivision Ordinance, as those amendments need to follow a public hearing process with the Planning Board (the "municipal reviewing authority" for Freeport) prior to being considered by the Town Council.

Regulations pertaining to noise are included in Chapter 39 Loitering, Curfew and Noise and would apply throughout Town, with certain exceptions. Upon guidance from the Town Attorney (attached), it was recommended that the best approach for incorporation of such regulations into the Zoning and Subdivision Ordinances would be with some minor wording clarification and a cross reference to Chapter 39 Loitering Curfew and Noise Ordinance.

Process: The Planning Board discussed the item at the 10/06/21 Planning Board meeting and held a noticed public hearing at the 11/03/21 Planning Board meeting. Notification was completed in accordance with the Planning Board Rules of Order and Procedure and included standard posting and circulation of the agenda. Legal ads for the public hearing were published in the Brunswick Times Record on 10/20/21 and 10/26/21. There were no public comments at the public hearings.

Public Notice

PUBLIC HEARINGS

The Freeport Planning Board will hold public hearings on Wednesday, November 3, 2021 at 6:00 p.m. in the Freeport Town Hall Council Chambers to discuss proposed amendments to the following:

1) Chapter 21 Freeport Zoning Ordinance, Section 515. Noise Regulation, to clarify what types of temporary use of machinery are not covered by the standards in this Section of the Zoning Ordinance and to add a cross reference to the regulations in Chapter 39: Loitering, Curfew and Noise Ordinance which does regulate the temporary use of machinery.

2) Chapter 25 Freeport Subdivision Ordinance, Article 11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances, to add a cross reference to the Loitering, Curfew and Noise Ordinance.

The public is welcome to attend. Submitted materials are available for viewing on the Town's website at www.freeportmaine.com or in the Planning Department at the Freeport Town Office during normal business hours.

Recommendation from the Planning Board: The Planning Board made the following motions:

MOVED AND SECONDED: To accept the amendment to Chapter 21 Freeport Zoning Ordinance, Section 515. Noise Regulation, to clarify what types of temporary use of machinery are not covered by the standards in this Section of the Zoning Ordinance and to add a cross reference to the regulations in Chapter 39: Loitering, Curfew and Noise Ordinance which does not regulate the temporary use of machinery. This is in line with our Comp Plan in that it provides a safe and comfy environment and which continues to be a desirable place to live. (Ball & Cannan) **VOTE:** (5 Ayes) (2 Excused-Child & Savona) (0 Nays)

MOVED AND SECONDED: That we accept the amendment to Chapter 25 of the Freeport Subdivision Ordinance, Article 11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances to add a cross reference to the Loitering, Curfew and Noise Ordinance. This is in line with the Comp Plan and provides a safe and desirable place to live. (Ball & Cannan) **VOTE:** (5 Ayes) (2 Excused-Child & Savona) (0 Nays)

Proposed Amendments – Chapter 21 Freeport Zoning Ordinance
As recommended by the Planning Board at the 11/03/21 Public Hearing

Note – Proposed new additional text is shown with an underline, text to be deleted is shown with a strikethrough

Section 515. Noise Regulation *{Amended, 12/15/20}*

A. Noise is required to be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. The average dba count resulting from any activity shall not exceed at any point on or beyond the lot line the maximum levels as set forth in the following table:

District	Average dba (day-night)
1. Resource Protection I and II, Island, Rural Residential I & II, <u>Nature-Based and Art Overlay District (NBAOD)</u>	55 - 45
2. Medium Density Residential I & II	60 - 50
3. Medium Density	65 - 55
4. Village I and Village II	70 - 55
5. Village Commercial I, II and III, Commercial I, II and III, Marine Waterfront and Local Business	75 - 55
6. Industrial I, II	85 - 60

The average dba count for any activity shall be computed based on samples taken during hours of operation at intervals over a 24-hour period. Daytime hours extend from 6:00 a.m. to 8:00 p.m.

- B. During the peak activity of 60 minutes in a 24-hour period, a noise may not exceed these average dba counts by more than 15 dba in any zone.
- C. If a lot abuts a district requiring a lower noise level, the maximum permitted level for that lot shall be reduced by 5 dba; however, the volume of sound shall not exceed 60 dba or whichever is lower at lot boundaries adjacent to residential districts.
- D. Athletic events in the Village 1 (V-1) District shall not use amplification for any reason after 10PM, except as allowed in Sec. 515. E below. *{Adopted, Effective 06/06/17}*
- E. For activities of a temporary nature unable to meet these requirements, a special permit must be obtained from the Codes Enforcement Officer. The noise standards shall not apply to the temporary use of such machinery as motorized construction, excavation, or demolition equipment; domestic power equipment such as chain saws and lawn and garden tools; ~~lawn mowers~~ and snowmobiles, which is regulated pursuant to Chapter 39, Section 39-103.-

Proposed Amendments – Chapter 25 Freeport Subdivision Ordinance
As recommended by the Planning Board Public at the 11/03/21 Public Hearing

Note- proposed new additional text is shown with an underline.

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

A. State Standard

Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision ordinance, zoning ordinance, floodplain ordinance, the comprehensive plan, and other ordinances included in the municipal code as appropriate. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

B. Performance Standards

The proposed subdivision shall meet all applicable performance standards or design criteria from this Ordinance, the Zoning Ordinance, the Floodplain Management Ordinance, the Loitering, Curfew and Noise Ordinance, and all other applicable land use regulations. If there is a conflict between the requirements of this ordinance and any other ordinance or between the requirements of other ordinances, the more stringent requirement shall apply.

C. Design Guidelines

For lots in large lot subdivisions, and other lots greater than twice the minimum lot size, deed restrictions and notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board based upon the criteria of the subdivision statute at the time of the revision, the standards of the Town's Subdivision Ordinance then in effect, and any conditions placed on the original approval.

CHAPTER 39
LOITERING, CURFEW AND NOISE

ARTICLE I LOITERING, CURFEW AND NOISE ORDINANCE

SECTION 39-101 LOITERING

No person shall loiter in, on, or adjacent to any of the streets, ways or public places, in the Town of Freeport, and no person shall loiter unnecessarily in or about any private dwelling or peep into windows of any private dwelling to the discomfort or alarm of the residents of such dwelling, the neighbors, or any person going to and from the same.

SECTION 39-102 CURFEW

No parent, legal guardian or other person having the care and control of a child under the age of fifteen years shall permit such child to be or remain in or on any of the streets, ways, or public places of the Town of Freeport after nine o'clock in the evening unless such child shall be engaged in the performance of some lawfully authorized employment or shall be in the course of active travel over said streets, ways, or public places between a specific point of origin and a specific destination or shall be accompanied by said parent, legal guardian or other adult person.

SECTION 39-103 NOISE

- A. No person shall make, continue, or cause to be made or continue any loud, profane, boisterous, unnecessary, or unusual noises which shall either annoy, disturb, injure, or endanger the comfort, repose, health, peace, or safety of others. The sounding of any horn or signaling device, except as a danger warning; the playing of any radio, musical instrument, phonograph, or any other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of neighboring inhabitants and passersby; the use of any loud speaker or amplifier for the purpose of commercial advertising or attention of the public to a specific building, location or business; yelling, shouting, hooting, whistling, or singing shall be considered to be loud, disturbing, and unnecessary noises and a violation of this Ordinance but such enumeration shall not be deemed exclusive except as authorized by the Town Council.
- B. Subsection (A), above, shall not apply to noise emitted by or related to:
1. Any bell or chime from any building clock, school, or church.
 2. Any siren, whistle, or bell lawfully used by emergency vehicles or any

other alarm systems used in an emergency situation; provided, however, that burglar alarms or car alarms not terminating within 30 minutes after being activated shall be unlawful.

3. Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.
4. Farm operations as defined by 7 M.R.S. § 152.
5. Noise from domestic power equipment including, but not limited to, lawn and garden tools, chainsaws used to fell trees and remove logs from a site, or similar devices operated during daytime hours.
6. Timber harvesting activities as defined by 12 M.R.S. § 8868.
7. Noise generated by any motorized construction, excavation, or demolition equipment (including, but not limited to: excavators, dump trucks, bulldozers, loaders/backhoes, graders, well-drilling rigs, hydraulic hammers, rock processing and screening machines, and blasting equipment) operated Mondays through Fridays 7:00 a.m. to 6:00 p.m., excepting major holidays as defined in subsection (C), below.
8. Noise from excavation activities regulated under Section 509. Extraction of the Freeport Zoning Ordinance.
9. Municipal, public works, or utility projects.
10. Noise generated by amplification during athletic events in the Village I (V-I) District after 10:00 pm as regulated by Section 515.D Noise Regulation of Freeport Zoning Ordinance.

NOTE: Noise created by refuse and solid waste collection is regulated pursuant to Chapter 28.

- C. For the purposes of section 39-103(B), “daytime hours” means the hours between 7:00 a.m. and 6:00 p.m. Mondays through Fridays and between 9:00 a.m. and 5:00 p.m. Saturdays through Sundays which do not fall on New Year’s Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, and Christmas Day (collectively, “major holidays”).

SECTION 39-104 ENFORCEMENT

- A. This Ordinance may be enforced by any sworn law enforcement officer of the Freeport Police Department as a civil violation.
- B. Violations of sections 39-101 shall be punishable by a civil penalty or not more than \$100, which shall be assessed against the person creating the violation.
- C. Violations of Section 39-102 shall be punishable by a civil penalty of not more than \$100, which shall be assessed against the parent, legal guardian, or other adult person responsible for the care and control of the child in question.
- D. Violations of section 39-103 shall be punishable by a civil penalty assessed against either the person creating the violation, or the owner of record of the property upon

which the violation occurs or continues to occur, if that person should be a separate and distinct entity from the person causing the violation. Each day that a violation occurs or continues to occur shall be considered a separate violation and may be punished separately. Violations shall be punishable by a civil penalty according to the following schedule:

- i. The first violation in a one year period shall be punishable by a civil penalty of at least \$250, but not more than \$500.
- ii. The second violation in a one year period shall be punishable by a civil penalty of at least \$500, but not more than \$1,000.
- iii. The third and any subsequent violations in a one year period shall be punishable by a civil penalty of at least \$1,000, but not more than \$2,000.
- iv. In addition to civil penalties listed above, any subsequent violations beyond three within a one year period shall constitute a nuisance subject to injunctive relief.

Revision history

The provisions of this chapter were originally adopted as an Ordinance at the annual Town Meeting on March 12, 1962.

Revised 04/03/2018 – Added sec. 39-103(B)&(C), substantially revised sec. 39-104.

Revised 05/21/2019-Removed sentence in Section 39-103 Noise.

Revised 09/21/21 -Section 39-103.B, items 5, 6, 7, 8, & 10 and Section 39-103.C

MEMORANDUM

September 30, 2021

TO: Caroline Pelletier and Peter Joseph
Town of Freeport

FROM: Agnieszka A. Dixon, Esq.
Drummond Woodsum

RE: Proposed Amendments to Town of Freeport Ordinances Concerning
Construction-Related Noise

Per your request, I have reviewed a proposal submitted by Sarah Cronin and Tammy Morrissey to the Town of Freeport Ordinance Committee to amend the Town's Zoning and Subdivision Ordinances (referred to as the "Proposed Amendments" in this memo).

For purposes of this analysis, reference is made to the Town's Loitering, Curfew, and Noise Ordinance (Chapter 39, hereafter referred to as the "Noise Ordinance"), which was recently amended by the Town Council. As amended, the Noise Ordinance prohibits the generation of certain types of noise that rise to the level of being a nuisance to the health, peace, or safety of persons. Among other things, the Noise Ordinance prohibits such noise generated by the following activities:

- Noise from domestic power equipment (including chainsaws used to fell trees and remove logs from a site) operating on weekdays before 7:00 a.m. and after 6:00 p.m., on weekends before 9:00 a.m. and after 5:00 p.m., and on major holidays.
- Noise generated by motorized construction, excavation, or demolition equipment (including excavators, dump trucks, bulldozers, loaders/backhoes, graders, well-drilling rigs, hydraulic hammers, rock processing and screening machines, and blasting equipment) operating on weekdays before 7:00 a.m. and after 6:00 p.m., at any time on weekends, and on major holidays.

See Noise Ordinance, §§ 39-103(B)(5), (B)(7), (C).

ANALYSIS: THE PROPOSED AMENDMENTS

I understand that the key goal of the Proposed Amendments is to minimize disturbance to residential neighborhoods (including residential dwellings on previously approved subdivision lots) from construction-related activities. In particular, the amendments seek to ensure that noise generated from motorized construction equipment, including rock crushing and road-construction equipment, does not disturb residents. To that end, the Proposed Amendments contain a number of suggested modifications to the Town's Zoning and Subdivision Ordinances. Each of these are described next, along with my legal analysis and recommendations.

Proposed Amendments to the Zoning Ordinance

- ***Section 509 (Extraction):*** *The Proposed Amendments would add a requirement for a blasting permit.*

Section 509 contains performance standards for mineral extraction operations, including existing operations, expansions of existing operations, and new operations. Under Section 509, these operations—including blasting and processing—already require a permit from the Project Review Board. If blasting is involved, a blasting plan must be prepared by a qualified professional, which must include an assessment of the potential impact on surrounding areas.

Under the Zoning Ordinance, extraction regulated under Section 509 is not the same as construction-related operations where extraction, blasting, or processing of gravel or topsoil is incidental to another allowed activity, such as the construction of a subdivision road or filling and grading a commercial lot as part of a project to build a professional office building. This type of “extraction” work is not regulated by Section 509. Rather, work that is incidental to construction, alteration, or grading activities, is regulated as part of the operation itself. For example, a subdivision road would be regulated under the Subdivision Ordinance, whereas the construction of a new professional office building would be regulated as a development proposal subject to site plan review under the Zoning Ordinance. For this reason, Section 509 exempts any such work that is “necessarily incidental to construction, alteration, or grading” and which requires a building permit or other construction permit from the Section 509 performance standards.

Accordingly, a new blasting/processing permit provision in Section 509 as suggested by the Proposed Amendments is not necessary because blasting and processing already require a permit under Section 509. Likewise, a new blasting/processing permit provision in other parts of the Zoning or Subdivision Ordinances is not necessary because nearly all construction activities are incidental to land uses that are already regulated by the Town’s ordinances and most, if not all, of those activities also require permits.

If the Council wishes to impose blasting and processing standards on construction activities that are incidental to other categories of land uses (for example, blasting incidental to building a subdivision road, constructing a residential dwelling, or installing a foundation beneath a commercial structure), such standards would best be incorporated into other parts of the Zoning Ordinance or Subdivision Ordinance that concern specific land uses and are not limited solely to extraction operations as defined by Section 509.

In sum, while the Council has authority to regulate blasting and processing activities beyond those already regulated, Section 509 is not the proper place for housing blasting standards that are meant to apply to other land use categories.

- ***Section 534—Construction Operations:*** *The Proposed Amendments would prohibit “Construction Operations involving motorized or engine powered equipment” on weekdays before 7:00 a.m. or after 6:00 p.m., on weekends, and on major holidays, with three exceptions:*

1. *“Construction or repair work as it relates to individual single-family house lots (non-subdivision)” would be exempt from this prohibition;*
2. *The Project Review Board could extend hours of operation if it finds that extended hours would not unreasonably interfere with neighboring residential uses; and*
3. *Hours of operation could exceed those authorized by the Project Review Board in case of emergency on no more than two days in any calendar year, subject to securing a Temporary Activity Permit pursuant to Section 501.*

The Town’s Zoning Ordinance is structured like most municipal zoning regulations: It first identifies which categories of land uses (e.g., residential dwellings, schools, business and professional offices,

public utilities, bed and breakfast inns, village cafés, etc.) are permitted within which parts of the Town, and then specifies the permitting requirements and performance standards that apply to those uses. Construction work is necessarily incidental to many of these land uses, and for this reason it is not typically identified a land use in and of itself. Indeed, treating construction work as a land use could result in potentially unintended consequences. For example, as proposed, Section 534 would foreclose the ability of the Town to construct or repair roadways or bridges, or even fix a burst water main, on weekends and holidays without first securing approval from the Project Review Board or securing a Temporary Activity Permit. Section 534 would also prohibit “after hours” renovations and repairs to existing commercial and non-residential structures, such as roof repairs, exterior painting, and interior renovations—all activities that commonly use a gas engine or electric motor to operate.

To the extent the purpose of these Proposed Amendments is to ensure that “after hours” noise from motorized construction equipment does not create a nuisance to neighbors, the amended Noise Ordinance addresses this concern. If the intent of these amendments is to also ensure that developers are put on notice about the requirements of the Noise Ordinance, then I would recommend amending Section 515 (Noise Regulation) of the Zoning Ordinance, as follows:

E. For activities of a temporary nature unable to meet these requirements, a special permit must be obtained from the Codes Enforcement Officer. The noise standards shall not apply to the temporary use of such machinery as motorized construction, excavation, or demolition equipment; domestic power equipment such as chain saws; and lawn and garden tools; mowers, and snowmobiles, which is regulated pursuant to Chapter 39, Section 39-103.

- **Section 534—Processing Operations:** *The Proposed Amendments would prohibit “Processing Operations” in residential neighborhoods. “Processing Operations” are defined as “Operations which include, but are not limited to, washing, cleaning, sifting, crushing, blasting, sawing, grinding and polishing of raw materials, and the creation of products such as concrete and asphalt.” Residential neighborhoods are undefined. The Proposed Amendments would allow the CEO to issue a “special permit” to grant exceptions to this prohibition but only “under extreme extenuating circumstances.”*

As discussed above, Section 509 of the Zoning Ordinance already regulates processing associated with extraction operations, and a new section is not necessary to prohibit these operations in residential neighborhoods. Rather, the Council could amend Section 509 to accomplish this objective; provided, however, that the terms “residential neighborhood,” “special permit” and “extreme extenuating circumstances” are precisely defined. Any such amendment should also clearly specify the process by which special exception permits could be issued by the CEO. Otherwise, this provision would run the risk of being deemed void for ambiguity. If the Council wishes to proceed with this concept, I can assist in drafting the necessary legal language with some additional guidance on what is meant by the above-identified terms.

Also, to the extent these Proposed Amendments are meant to prohibit processing operations that are incidental to other categories of land uses (for example, processing operations incidental to the construction of a subdivision road), such an amendment should be housed in the Subdivision Ordinance rather than in Section 509. Finally, as noted before, if the goal of these amendments is to address noise nuisances, the amended Noise Ordinance addresses this concern.

- **Section 604 (Conflict with Other Ordinances):** *The Proposed Amendments would add the term “construction” to the following clause: “Where this Ordinance imposes a greater restriction upon the use or construction of land, buildings or structures, the provisions of this Ordinance shall control.”*

The Zoning Ordinance regulates land uses, structures, and lots, and construction activities are necessarily incidental to land uses, structures, and lots. As such, the conflict provision is drafted to ensure that if there are conflicting restrictions, the greater restriction controls. It is not necessary, and potentially confusing, to add the term “construction” to this provision. I would recommend against this amendment.

Proposed Amendments to the Subdivision Ordinance:

- **Article 10 (Inspection and Enforcement):** *The Proposed Amendments would add a provision requiring all “construction operations” to follow the requirements of the Noise Ordinance and proposed Section 534 of the Zoning Ordinance. The Proposed Amendments would also strike the words “Land Use” from the title of subsection 11.9 as follows: “Conformance with Zoning Ordinance and other ~~Land Use~~ Ordinances” and modify Subsection B (Performance Standards) to require subdivisions to meet “all other applicable land use or construction regulations.”*

For the reasons already discussed, I advise against adopting the Proposed Amendments to Section 534, and a reference to Section 534 should therefore not be included in the Subdivision Ordinance. If the intent of these amendments is to put subdividers on notice about the Noise Ordinance requirements, then I would recommend amending Section 11.9(B) as follows:

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

...

B. Performance Standards

The proposed subdivision shall meet all applicable performance standards or design criteria from this Ordinance, the Zoning Ordinance, the Floodplain Management Ordinance, the Loitering, Curfew and Noise Ordinance, and all other applicable regulations. If there is a conflict between the requirements of this ordinance and any other ordinance or between the requirements of other ordinances, the more stringent requirement shall apply.

CONCLUSION

In sum, I would recommend that the Council decline to adopt the Proposed Amendments, as drafted. It appears that the recently enacted amendments to the Noise Ordinance will achieve the goals of the proposers to minimize the adverse impacts of construction-related noise to neighbors. If the Council would like to clarify that the Noise Ordinance applies to construction work incidental to commercial development and subdivision projects, other provisions of the Town’s Zoning and Subdivision Ordinances could be amended to achieve this objective without running afoul of the Town’s existing regulatory framework and its organizational structure. For example, the Council could consider amending Section 515 of the Zoning Ordinance and Section 11.9(B) of the Subdivision Ordinance as suggested above.

I trust this memo is responsive to your request. If you have any further questions, please don’t hesitate to contact me.

/AAD

Date: May 27, 2020

To: Town of Freeport Ordinance Committee

From: Sarah Cronin, 14 Norton Farm Rd, sarahecronin@yahoo.com
Tammy Morrissey, 6 Norton Farm Rd, searching4seaglass@comcast.net

Re: Request #2 for amendments to: Subdivision Ordinance Article 10
Zoning Ordinance Sections 509 & 604

We are writing this proposal to request amendments to the Town of Freeport's Subdivision & Zoning Ordinances, as they relate to construction activity.

Currently, the Subdivision Ordinance has no regulations or restrictions for the processing of rock material or the blasting of rock in a residential neighborhood. The Zoning Ordinance does have rock processing and blasting regulations, but they only apply to mining operations in an approved rock quarry location.

To have stricter regulations for mining/rock quarry operations than for those same operations in a residential neighborhood does not make any sense. The Town of Freeport must protect the residents and their properties, for their health and well-being, equally and fairly – whether those residents live near a rock quarry, downtown or in a rural neighborhood on a private road. We all deserve the same consideration when it comes to the negative side effects of such construction activities as rock processing and blasting.

As a final note and request: there has been an argument that the regulations in some ordinances do not apply to certain land use or construction operations. Rather than allow for picking and choosing from various ordinances to make the situation “work,” we are proposing that the language be amended to ensure that **whenever** there is a conflict, the more stringent restriction will apply. We strongly believe that this was the intent when these ordinances were first written.

Attached are our recommendations to amend these two Ordinances, so the regulations and restrictions are uniform across both. This will not only allow for further protections; it will also eliminate future discrepancies over what rules apply to what situation.

Also attached, is a summary of the history of events, which is the basis and reason for our request.

Thank you in advance for your consideration.

**TOWN OF
FREEPORT**

**ZONING ORDINANCE
May 2008**

Section (534?). Construction

A. Construction Operations involving motorized or engine powered equipment (to include, but not limited to: excavators, dump trucks, bulldozers, loaders/backhoes, graders, well-drilling rigs, hydraulic hammers, rock processing and screening machines, blasting equipment) shall meet the following requirements:

Such activities shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday. No construction operations involving motorized or engine powered equipment is allowed on weekends or the following holidays: New Year's Day, Easter Sunday, Memorial Day, 4th of July, Labor Day, Thanksgiving & Christmas Day.

Exception: Construction or repair work as it relates to individual single-family house lots (non-subdivision) is exempted.

The Project Review Board may approve extended hours of operation if it determines that such extended hours will not unreasonably interfere with neighboring residential uses existing at the time of the request. In the case of emergency need for extended hours of operation, the hours of construction may exceed those approved by the Project Review Board on no more than two days in any calendar year. Any construction operations to exceed the approved hours for more than two days require a Temporary Activity Permit pursuant to Section 501 of this Ordinance.

B. Processing Operations:

1. Definition: Operations which include, but are not limited to, washing, cleaning, sifting, crushing, blasting, sawing, grinding and polishing of raw materials, and the creation of products such as concrete and asphalt.

2. Processing operations are not permitted in a residential neighborhood. These operations are restricted to an approved Mining and Extraction Overlay District only. Only under extreme extenuating circumstances will exceptions be made, and prior approval via a special permit from the Codes Enforcement Officer will be required.

Section 604. Conflict with Other Ordinances

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law.

Where this Ordinance imposes a greater restriction upon the use **or construction** of land, buildings or structures, the provisions of this Ordinance shall control.

Subdivision Ordinance
Town of Freeport, Maine

ARTICLE 10 - INSPECTIONS AND ENFORCEMENT

10.1 Inspection of Required Improvements.

- A. Prior to the recording of the approved plan in the Cumberland County Registry of Deeds and at least five (5) days prior to commencing construction of required improvements, the subdivider or builder shall:
 - 1. Notify the Town Engineer in writing of the time when (s)he proposes to commence construction of such improvements, so that the Engineer can schedule a preconstruction meeting and arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.
 - 2. Deposit with the Town an inspection fee in the amount of two percent (2%) of the estimated costs of the required improvements. If, upon satisfactory completion of construction and cleanup, there are funds remaining, the surplus shall be refunded to the subdivider or builder as appropriate.
- B. All construction operations must follow the rules and regulations of the Town of Freeport Noise Ordinance Section 39-103 and Zoning Ordinance Section (534?).
- ~~B~~ C. No construction of site improvements, including clearing and grubbing, shall be started until a preconstruction meeting is held. The Town Engineer shall hold the preconstruction meeting with the applicant and his/her contractor to review the construction process, conditions of approval, and procedures for inspection of any improvements. This meeting shall include the Town's inspecting engineer, Public Works Director, and road foreman.

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11.9 Conformance with Zoning Ordinance and Other ~~Land-Use~~ Ordinances

B. Performance Standards

The proposed subdivision shall meet all applicable performance standards or design criteria from this Ordinance, the Zoning Ordinance, the Floodplain Management Ordinance, and all other applicable land use or construction regulations. If there is a conflict between the requirements of this ordinance and any other ordinance or between the requirements of other ordinances, the more stringent requirement shall apply.

**TOWN OF
FREEPORT**

**ZONING ORDINANCE
May 2008**

(this is what the Ordinance currently states):

Section 509. Extraction (pg 148)

A. Purpose: The purpose of this section is to regulate both new and existing excavations and their accessory uses. Excavations are unique uses because they must be located where the desired natural resources exist and because they generally must expand if the use is to continue. Existing and **proposed excavations, therefore, are and may be adjacent to or within residential districts and may have adverse impacts on surrounding uses due to their potential for producing noise, dust, vibration,** traffic and groundwater contamination. These regulations are intended to protect the quality and quantity of ground and surface waters, prevent erosion and sedimentation, provide for the reclamation and rehabilitation of new and existing excavations, **minimize any adverse impact of such excavations on adjacent and nearby properties, and insure minimum standards of safety during and after active operations.**

2. Submission Requirements. The following shall be submitted: (pg 151)

(8) If the operation will include blasting, a blasting plan prepared by a qualified professional which includes, but is not limited to, an assessment of the potential impact on surrounding areas.

(10) Location and description of all processing operations.

G. Standards for Operation of Existing Excavations, Expansion of Existing Excavations and New Excavations. (pg 154)

All excavations shall meet the following requirements:

15. Vibrations. The requirements of Sec. 519 shall be met. Any blasting shall require Project Review Board review under Sec. 509.F. A plan shall be submitted showing locations and a monitoring plan. Certificates of liability insurance covering the blasting activity in an amount approved by the Town Manager as sufficient to cover any damage reasonably likely to occur shall be submitted. (pg156)

Section 519. Vibrations (pg 173)

No activity shall, as a result of normal operations, cause or create a vibration on a lot line or a boundary line which is in excess of that indicated in the table below:

Frequency(cps.)	Vibration Steady State	Displacement (in.) Impact
Under 10	.0005	.0010
10 – 19	.0004	.0008
20 – 29	.0003	.0006
30 – 39	.0002	.0004
40 and over	.0001	.0002

Buildings shall not be subject to a velocity from blasting in excess of two inches per second at the building. Violations of this standard shall be considered as public nuisances.

(currently there is no requirement for a blasting permit: we are proposing that there should be, and following is a proposed example of one) :



TOWN OF FREEPORT
 30 MAIN STREET
 FREEPORT, ME 04032
 PH: (207) 865-4743 EXT. 102
 FAX: (207) 865-0929
 WEBSITE: www.freeportmaine.com

CODE OFFICE HOURS
 MONDAY-THURSDAY
 7:30 AM – 6:00 PM

BLASTING/PROCESSING PERMIT APPLICATION

DATE RECEIVED: _____

APPLICANT: _____ PHONE: _____ EMAIL: _____

APPLICANT MAILING ADDRESS: _____

PROPERTY OWNER: _____ PHONE: _____ EMAIL: _____

PROPERTY OWNER MAILING ADDRESS: _____

CONTRACTOR: _____ PHONE: _____ EMAIL: _____

CONTRACTOR MAILING ADDRESS: _____

CONTRACTOR LIC #: _____ EXP DATE: _____ EST. COST OF CONSTRUCTION: _____

LOCATION/PROPERTY ADDRESS: _____

TAX MAP & LOT NUMBER: _____ COUNTY REGISTRY BOOK & PAGE: _____

SUBDIVISION NAME: _____

PROJECT DESCRIPTION: PLEASE INCLUDE THE FOLLOWING ITEMS:

- A COPY OF THE NAMES OF ALL ABUTTERS WITHIN 500 FEET
- CONTRACTOR’S PROOF OF INSURANCE (MUST BE IN THE AMOUNT OF NOT LESS THAN \$1,000,000.00)

THE APPLICANT CERTIFIES THAT THE ABUTTERS WITHIN 500 FEET OF THE SITE HAVE BEEN NOTIFIED OF THE DATE AND APPROXIMATE TIME OF THE ACTIVITY.

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IS COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

 APPLICANT SIGNATURE

DATE

 CEO SIGNATURE

DATE

CONDITIONS OF APPROVAL: _____

PERMIT NUMBER: _____ **PERMIT FEE AMOUNT \$50.00 PAID BY CHECK/CASH/C/C:** _____