



## TOWN OF FREEPORT, MAINE

ITEM # 58-22

Town Manager's Office  
30 Main Street  
Freeport, ME 04032

Phone: 207-865-4743

Email: [pjoseph@freeportmaine.com](mailto:pjoseph@freeportmaine.com)

---

### MEMORANDUM

TO: Freeport Town Council  
FROM: Peter Joseph, Town Manager  
DATE: 03/10/22  
RE: Ordinance Chapter 30 - Victualers Licensing Ordinance – follow-up from last discussion

During the most recent discussion of the potential repeal of the Victualers Licensing Ordinance, a question was raised by Councilors regarding whether the Town would be giving up any of its potential regulatory authority over the inspection of restaurants or other food establishments if we were to repeal Chapter 30. Town Staff was tasked with providing more information to the Council on this question. As a result, the Codes Officer and I spent some time reviewing the state regulations surrounding health inspections. We found the following:

- For a municipality to be permitted to conduct food safety inspections, the municipality must have delegated authority from the State of Maine under the Health Inspection Program, operated by the Maine Department of Health and Human Services (DHHS).
- Once a municipality receives delegated authority under the Health Inspection Program, that municipality is responsible for performing 100% of all health inspections within the municipality, including on-call investigations during night and weekend times. In other words, the delegated authority is an “all or nothing” type of authority. This explains why so few municipalities outside of the State’s largest cities pursue this type of delegated authority.
- Freeport does not currently have delegated authority from the State for health inspections. Based on the current “more than satisfactory” performance by our assigned health inspectors from DHHS, I do not recommend that we pursue this authority at this time.
- Although I do not anticipate recommending that the Town pursue delegated authority under the Health Inspection Program in the future, the repeal of our Victualers Licensing Ordinance would not significantly impact our ability to request this authority, should the Town choose to pursue that avenue in the future.

**VICTUALERS LICENSING ORDINANCE**  
**CHAPTER 30**

1. PURPOSE

The purpose of the Victualers Licensing Ordinance is to insure that establishments serving food or drink intended for consumption by the public prepare their food and drink in a safe and sanitary environment.

2. LICENSE REQUIRED

Any establishment that serves food or drink prepared for consumption by the public within the corporate boundaries of the Town of Freeport shall be required to annually apply for and be granted a Victualers License. A license shall be specific to the premises and entity which is requesting the license. For example, a facility which is owned or operated at more than one location, or in the same location and is operated by different parties or personnel or which are physically separated shall require separate permits.

Food Trucks as defined by Chapter 21 Freeport Zoning Ordinance, Section 104. Definitions, must have a valid Victualer's License from the Town of Freeport if they will be permitted for more than 9 events and/or days in Freeport per calendar year. This does not include food trucks for private catering events when the food truck is parked entirely on private property and serves the private guests of the host and all payments are made by the host, not the guests.

3. EXEMPTIONS

A Public or Private School, Public Service Organization, Private Club, Church Organization, Fire Department, or any other non-profit organization selling food or drink on an infrequent basis to solely raise money for a charitable cause shall be exempt from the requirements of this license. Grocery stores, except those selling food items prepared on the premises, shall be exempt. Establishments selling food and drink only through vending machines shall also be exempt. The local exemption does not relieve an organization of state requirements.

The Municipal Officers shall have the authority to decide if an establishment is exempt or not.

4. APPLICATIONS

A. Applicant: For the purposes of this ordinance, the applicant shall be the principal owner of the establishment. If the owner is a corporation the applicant shall be the principal stock holder of that corporation. If the principal owner of the establishment, or the principal stockholder of the corporation owning the establishment, is not the person primarily responsible for the actual operation of the establishment, then the person(s) primarily responsible for the actual operation of the establishment, as well as the owner, shall be reviewed as co-applicant(s) together with the owner.

~~B. Renewals: The Municipal Officers shall annually review all renewal applications for the purpose of determining the status of the applicant's previous conformance to this ordinance and at such time make a decision as to (1) approve the renewal request, (2) table the renewal request, setting a date for the applicant to come before the Officers to answer questions affecting consideration of the renewal request, or (3) for reason(s) noted, disapprove the request. Applicants for renewal shall submit a completed application with fees annually to the Town Clerk at least 30 days prior to the expiration date.~~

~~C. New Applications: New applicants may apply to the Town Clerk at any time during the year.~~

~~D. License Term: A license, when granted, shall be valid immediately following said granting of license for a period of one year.~~

#### ~~5. ISSUANCE OR DENIAL OF A LICENSE~~

~~The Municipal Officers may deny the application for a license for one or more of the reasons described as follows:~~

- ~~1. If the applicant fails any part of a state inspection or local health inspection.~~
- ~~2. If the applicant is not of good moral character. In determining good moral character the Town Council shall consider all evidence presented but shall, in addition, check the applicant's police record, if any. Conviction of a class D or more serious crime may be considered as evidence that the applicant lacks good moral character.~~
- ~~3. Failure to pay an outstanding fine, penalty or tax owed to the Town of Freeport by the individual, corporation or principal stockholder of the corporation that is applying for the license.~~

#### ~~6. REQUIREMENTS AND CONDITIONS~~

~~The Municipal Officers may place conditions and requirements on the license. These conditions and requirements must be reasonably designed to promote the health, safety or welfare of the Public. Examples of possible conditions include, but are not limited to, specific opening and closing times, and measures designed to reduce noise.~~

#### ~~7. FEES~~

~~The fees for a License shall be as follows:~~

~~New or Renewal — \$135.00~~

~~If an applicant also requires a Liquor License, there shall be an additional \$15.00 (or such additional amount as authorized by state law) for the liquor license.~~

~~8. REVOCATION OF LICENSE; DETERMINATION OF VIOLATIONS~~

~~If after investigation and hearing, the Municipal Officers concludes that the Licensee is unfit to hold a license, it may revoke the license at any time. The Municipal Officers, for any cause which it considers satisfactory, may suspend a license for any period of time that it considers proper. The Municipal Officers may determine that an establishment which has not obtained a license is required to obtain a license, or that a licensed establishment has violated conditions and restrictions applicable to its license. The Municipal Officers shall provide the Licensee, at least three days prior to the hearing date, with notice of the time and place of the hearing at which any of these issues will be considered.~~

~~9. A. Compliance Certification: An establishment requesting a Victualers License or renewal of same, shall certify to the Municipal Officers and prove to said Officer's satisfaction that it is not in violation of any Municipal Ordinance, including Zoning, or State or Federal law, Statute or Regulation. The applicant shall also certify that all taxes, fines or penalty assessed by the Town of Freeport on the establishment or equipment and fixtures contained therein are fully paid, as of the date of the application. The Municipal Officers shall deny any application which fails to meet these requirements.~~

~~B. Inspection: An establishment requesting a license for the first time shall be inspected by the Codes Enforcement Officer and Fire Chief prior to any action being taken on the license application. Any alterations or changes to an establishment will require additional inspections.~~

~~C. Application Form: An establishment shall apply for a Victualers License or renewal on a form designed for that purpose by the Town of Freeport. Failure of an applicant to fill out the form completely, or any misstatements on said form shall result in the denial of the license.~~

~~E. Health: An establishment licensed as a Victualer, and providing for on premises food consumption, shall provide with its renewal application a copy of its current state "Eating License" issued by the Department of Health Services. A new application shall be granted by the Municipal Officers only under the condition that the Victualer License becomes effective after the Department of Health Services has issued a current state "Eating License."~~

~~10. PENALTY~~

~~Penalty: Any act made unlawful by this Ordinance and any violation of this Ordinance shall be punishable by a fine of not more than \$100.00 for each offense. Each day that such unlawful act or violation continues shall be considered a separate offense.~~

~~11. SEVERABILITY~~

~~If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not effect the validity of the remaining portions of this Ordinance.~~