

**TOWN OF FREEPORT, MAINE**

Planning Department

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TO: Peter Joseph, Town Manager
FROM: Caroline Pelletier, Town Planner
RE: Business Reopening - Regulatory Considerations
DATE: Tuesday, May 12, 2020

It is expected that based upon the Governor's phased re-opening plan, many Freeport businesses, including restaurants and retail establishments, will have the opportunity to reopen on June 1, 2020. It appears that re-opening guidelines to be provided by the Governor will most likely include limitations on the number of customers at an establishment and proper social distancing requirements.

For rural communities, guidance was delivered in the form of the COVID-19 Prevention Checklists (which were developed by the Maine Department of Economic and Community Development). While there are multiple page checklists for businesses to consider based upon the type of establishment, some topics suggested in the guidance included curbside pickup/takeout, additional signage, distance markers outside of establishments, expanded outdoor seating for restaurants, and outdoor fitness classes for gyms. Although the additional guidance is expected for the Phase 2 reopening which starts June 1, it is assumed that some of these same suggestions will be incorporated into the re-opening guidance for Cumberland County.

As you are aware, in Freeport, if a business wanted to make some of these changes, it could require review and permitting from a Board and various Town departments. For example, expanding outdoor seating or adding an area of an outdoor exercise class, would most likely require a Site Plan Amendment and maybe additional parking. New signage could also require Site Plan Review; while temporary signs are not even permitted. Furthermore, in the downtown area, where our Design Review Districts are located, a Design Review Certificate from the Project Review Board would be required for any of these changes that would be visible from any public right-of-way. Freeport also has limits related to outdoor retail sales.

Although historically, some of these are things that Freeport has chosen to restrict, given the current pandemic and overall need to supporting our existing businesses, we have the opportunity to consider some simple changes that would help our businesses move forward and make this transition smoother for them. Sometimes change is good; if some of these ideas work and seem to better support the business community, while maintaining the values that are important to Freeport, we could later pursue Ordinance amendments to make them permanent.

This is not only a great opportunity for look at new ways to support our existing businesses, but at the same time will add some vibrancy and activity in Freeport, and in particular to the entire Route One corridor including the Village. It would be great to see Freeport emerge from the pandemic as a vibrant town, which supports its local business community while also providing a safe and welcoming environment for our residents and visitors to feel comfortable utilizing our existing businesses and community resources.

The following is a list of items that the Council could consider, with some recommended guidelines as noted:

- Allow businesses to install **temporary signs** to support the changes to their business operations as a result of the COVID-19 pandemic. This may also include additional signs needed for distance markers outside of establishments. Internally illuminated signs, signs with moving parts, and flag and/or feather style signs

would not be permitted. Signs would need to be located on private property and not project over the public right-of-way. No sign shall exceed 32 sf in size or 25 feet in height.

- Remove the limit for the number and length of time that **outdoor sidewalk or tent sales** are allowed. This should include a stipulation that product and items used for the outdoor set-up (ie: tables and tents) be brought inside when the business is not open if they cannot be safely secured. This provision for “outdoor sidewalks and tent sales” could also apply to outdoor setups for tourist information centers.
- Allow business that hold fitness classes to create **outdoor areas to hold classes** as long as new permanent impervious area is not created on the site.
- Allow the creation of **outdoor seating areas with chairs and tables** (and minimal required lighting for safety & ambiance) for restaurants as long as new permanent impervious area is not created on the site.
- Allow the use of **tents** with the understanding that all tents would need to comply with regulations of the State of Maine Fire Marshal’s Office and the Town of Freeport Fire Prevention Code. Business should be aware that in cases of inclement weather (such as severe storms) they could be contacted and asked to take tents down if there is a public safety concern.
- Allow the installation of **outdoor seating areas** to support the needs to other business (such as restaurant carry-out establishments serving items like coffee and ice cream).
- Public bathrooms and **restroom facilities** should remain available in accordance with State law and default to any directive included in the Governor’s orders.
- For properties in the Design Review Districts, a Design Review Certificate should not be required for any of these temporary changes as long as no permanent changes to the site or the building facades are proposed.
- These temporary modifications should not require the applicant to amend their existing site plan through the formal Site Plan Review process.

The suggestion would be that businesses looking to take advantage of these changes, apply for a Temporary Activity Permit from the Town of Freeport. No other land use permits would be required. In addition to any conditions noted above, the following would apply:

- No fee would be charged and one form could be completed for the entire time period unless the needs to the business changed, in which case the form on file would need to be updated.
- Applicants would be required to show proof of right, title and/or interests (deed or lease) and would need sign-off from the landlord (as applicable).
- Requests would be reviewed and approved by the Town Planner and the Codes Enforcement Officer and could be completed electronically.
- Any changes would need to ensure that safe and adequate pedestrian and vehicular circulation and adequate egress is being provided.
- No ADA parking may be displaced.
- The proposed changes would be entirely on private property, unless permission is otherwise granted by the Freeport Town Council.
- If a commercial property abuts a residential property, for the expansion of outdoor areas for classes and/or dining, or for the use of tents, setbacks would be applicable.
- Contact information for the business would be provided so there is a contact on file to reach in case of emergencies.
- Any changes authorized as part of this program would be permitted through Monday, October 12, 2020 (Columbus Day/Indigenous Peoples' Day), unless otherwise amended by the Town Council. *(Note: This could be done through enactment of an emergency ordinance (Freeport Town Charter, Article 2.14) which could be adopted immediately through a super-majority vote (5 members of the Town Council) and reenacted as necessary).*

Town of Freeport
Emergency Ordinance: Temporary Suspension of Certain Ordinance Standards
To Safely Accommodate Expanded Outdoor Business Activities due to COVID-19

Whereas, the Governor of the State of Maine declared a Civil State of Emergency due to the spread of the Coronavirus Disease (“COVID-19”) on March 15, 2020, which remains in effect, and

Whereas, COVID-19 is a communicable disease that is easily contracted through personal contact with infected individual in the community, and

Whereas, the Governor has announced a phased reopening plan intended to reduce the spread of COVID-19, which will likely include restrictions on indoor activities at many of Freeport’s businesses such as shops offices, and restaurants, and

Whereas, these businesses may find it beneficial to make temporary changes to their traditional operations to allow outdoor business activities, such as outdoor seating, outdoor sales areas, outdoor meeting areas, and additional outdoor signage to communicate business changes due to COVID-19, and

Whereas, the Town of Freeport expects significantly reduced numbers of visitors during the upcoming summer tourist season, which would create a corresponding economic hardship to many of its businesses, and which could be mitigated to some extent by allowing expanded outdoor business activities, and

Whereas, expanded outdoor business activities may also help to promote the public health and welfare, by allowing patrons of these businesses to observe social distancing guidelines by avoiding shopping or dining in close proximity to other patrons, and

Whereas, there are several sections within Freeport’s municipal ordinances that may prevent, restrict or delay some of these expanded outdoor business activities and modifications – including sections within the Sign Ordinance (Chap. 23), Design Review Ordinance (Chap. 22), and Zoning Ordinance (Chap. 21), and Building Code Ordinance (Chap. 11).

Whereas, Section 2.14 of the Freeport Town Charter authorizes the Town Council to adopt one or more emergency ordinances to meet a public emergency affecting the life, health, property or the public peace, and

Whereas, during this State of Emergency, the Town of Freeport must consider the welfare of its businesses while protecting the health and welfare of its citizens, and

Whereas, the temporary suspension of certain ordinance standards and restrictions governing outdoor business activities . is immediately necessary to protect the health, safety and welfare of businesses and their employees, and the patrons of those businesses, in light of the Governor’s current phased reopening plan which will allow a number of affected businesses .to reopen in a limited fashion on June 1st , 2020, and

Whereas, in light of the foregoing, the Town of Freeport Town Council deems it proper and necessary to temporarily suspend certain provisions of the Town’s code of ordinances relating to outdoor business activity for the purposes of allowing businesses to reopen or continue operating without undue hardship while also allowing for compliance with social distancing guidelines.

Now therefore BE IT ORDAINED:

That for the time period from June 03, 2020 until August 02, 2020, unless this ordinance is repealed by the Town Council prior to August 02, 2020, the following emergency exceptions to established ordinance provisions of the Town of Freeport shall be in effect, and shall apply to any existing business within the

Town of Freeport, that is otherwise operating in compliance with all municipal ordinances and regulations in effect.

I. Chapter 23 - Sign Ordinance

- A) Temporary signs to support changes to the operations of business as a result of the COVID-19 pandemic shall be exempt from regulation under Chapter 23. This may also include additional signs needed for distance markers outside of establishments. Internally illuminated signs, signs with moving parts, and flag and/or feather style signs are not exempted from the regulations of Chapter 23. Signs must be located on private property and not project over the public right-of-way; unless permission is otherwise granted from the Town Council. No sign shall exceed 32 sf in size or 25 feet in height.
- B) To be exempted as described in section I (A) above, all signs must obtain a temporary activity permit from the Codes Office/Planning Department.

II. Chapter 21 - Freeport Zoning Ordinance, Section 501 - Temporary Activity

- A) Limits on number and length of outdoor sidewalk or tent sales described in this section shall be suspended for the duration of this Ordinance. In order to be exempted as described above, all merchandise and items used for the outdoor set-up (including but not limited to tables, tents, and retail fixtures) must be brought inside when the business is not open if they cannot be safely secured. This exception also applies to outdoor setups for tourist information centers.
- B) To be exempted as described above, all businesses conducting temporary outdoor sales must obtain a temporary activity permit from the Codes Office/Planning Department. No other land use approvals beyond a temporary activity permit shall be required for these uses.

III. Chapter 21 - Freeport Zoning Ordinance, Section 602 - Site Plan Review

- A) Temporary modifications to an existing business site required to conduct outdoor business activities will not require an applicant to amend their existing site plan through the formal Site Plan Review process, so long as no new permanent impervious cover is created. Outdoor business activities for the purposes of this section shall include outdoor sales areas and tent sales, outdoor seating for existing restaurants, outdoor seating space for carryout establishments (such as coffee, ice cream, and carryout food), and outdoor meeting space for offices and exercise classes, along with minimal new lighting as required for safety and ambiance of these activities.
- B) Existing businesses may conduct any of the outdoor business activities described in section II(A) above on the property owned by another so long as: 1) the underlying outdoor business activity (restaurant, retail, office, etc.) is allowed in that zone and, 2) the applicant for a temporary activity permit described in section II (C) below shall provide written authorization for any proposed activities from the property owner. Any use of public property (including sidewalks and streets) for outdoor business activities shall require prior approval of the Freeport Town Council.
- C) To be exempted as described above, all businesses conducting temporary outdoor business activities described in section II(A) and II(B) must obtain a temporary activity permit from the Codes Office/Planning Department. No other land use approvals beyond a temporary activity permit shall be required for these uses.
- D) Any outdoor business activities conducted on a site abutting a residential site shall observe all building setbacks as required by the underlying zoning district.
- E) Any tents, awnings, or temporary shelters utilized for purposes described in section II (A) and II (B) shall comply with applicable regulations of the State of Maine Fire Marshall's Office and the Town of Freeport's Fire Prevention Code.
- F) The exemptions described in sections II (A) and II (B) shall apply to existing Freeport businesses only. New business locations must undergo all applicable land use reviews,

including but not limited to site plan review, design review, building permit review, and sign permit review.

IV. Chapter 11 - Building Code Ordinance

- A) In the event of any conflict between the Freeport Building Code Ordinance and directives issued under executive order by the Governor regarding the requirement or availability of public restroom facilities, the requirements issued by executive order of the Governor shall prevail.

V. Chapter 22 - Design Review Ordinance

- A) A Design Review Certificate shall not be required for any of the temporary outdoor business activities described in Sections I, II, or III of this ordinance, so long as no permanent changes to the site or the building facades are proposed.