




TOWN OF FREEPORT, MAINE

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

Phone: 207-865-4743
Email: pjoseph@freeportmaine.com

OB # 2 NOISE ORDINANCE

MEMORANDUM

TO: Freeport Town Council
FROM: Peter Joseph, Town Manager 
DATE: 06/11/20
RE: Resident proposals regarding amendments to Loitering, Curfew, and Noise Ordinance, Subdivision Ordinance and Zoning Ordinance

Attached to my memo you will find resident requests for amendments to the Loitering, Curfew, and Noise Ordinance (Chapter 39), the Subdivision Ordinance (Chapter 25) and the Zoning Ordinance (Chapter 21).

Procedurally, the proposed amendments to Chapter 39 fall completely within the authority of the Town Council to act upon. This is typically done through referral to the Ordinance Committee for review, development, and recommendation back to the Town Council.

The proposed amendments to Chapters 21 and 25 will require review and recommendation from the Planning Board prior to Council action on the Planning Board's recommendation. The Town Council can vote to refer the proposals to the Planning Board for review, development, public hearing, and recommendation back to the Council. Alternately, if the Town Council does not vote to refer these proposals to the Planning Board, individuals are still free to make application to the Planning Board for review, however there would be a fee of approximately \$385 to do so.

Timing wise, the Council will should also decide whether to review the proposed changes to Chapter 39 separately from the changes to Chapter 21 and 25, or whether to wait for the Planning Board to make recommendations on their two charges first.

Also, if the Council decides to refer the proposed changes for Chapters 21 and 25 to the Planning Board, it would be helpful if the Council provides guidance on the urgency of this referral, as there are several pending ordinance amendments that they are reviewing.

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 #1 for amendment to Noise Ordinance Chapter 39 Section 103

We are writing this proposal to request an amendment to the Town of Freeport's Noise Ordinance, Chapter 39 Section 103 as it relates to the working hours allowed for construction activity.

Currently, the Ordinance allows for "daytime hours" of 6:00 a.m. to 9:00 p.m. Monday through Thursday; 6:00 a.m. to 10 p.m. Friday through Saturday and; 9:00 a.m. to 9:00 p.m. on Sunday. These time frames conflict with the Town's Street Regulation Ordinance which only allows construction equipment to operate from 7:00am to 6:00pm Monday through Friday and prohibits construction on the weekends and holidays. There are no defined construction hours in either the Zoning Ordinance or the Subdivision Ordinance. Since the Street Regulation Ordinance applies to public roads, the only Ordinance that applies to private roads and private subdivision construction is the Noise Ordinance.

By applying the current Noise Ordinance as it is written to **private** construction activity, the Town is allowing more extensive hours of construction noise to occur in **residential** neighborhoods – as early as 6:00am and as late as 10:00pm, with no restrictions for weekends or holidays. Yet work that is done on **public** roads is restricted to a 7:00am start time and a 6:00pm end time, with no weekends or holidays allowed.

It seems that the public road restrictions are there to mitigate public inconveniences. It is our belief that the private roads should be equally protected from noise and construction. Public road construction has only temporary inconveniences, such as one-lane road closures. Private road and subdivision construction, where we live and spend family time, affects our health and well-being.

We have experienced such construction noise during the course of the building of a subdivision adjacent to our backyards on weekends and holidays, at all hours. As we suspected from the planning stages of this project, it has affected the lives of our families and neighbors. While none of us could have predicted a stay at home order would force us to endure this disruption on a daily basis, it has made the lack of construction restrictions in the Ordinances all the more evident and problematic. More than half of our neighbors either work from home (regardless of the pandemic) or are retired, and now we have school children studying remotely from home. Our families cannot enjoy being out in our yards, not even to barbecue during a normal dinner hour. Once the pandemic is over, we cannot even feel comfortable about being able to host a family gathering on a weekend or holiday.

Freeport is experiencing a boom in subdivision construction. There are not adequate restrictions in place to protect residents who live in residential neighborhoods from the relentless noise and disruption of construction noise that can occur for up to 16 hours a day during the week and up to 12 hours per day on the weekends. Regular construction noise in residential neighborhoods should be carefully considered and **should not** be subject to the very lenient Noise Ordinance. We are requesting language be added to both the Zoning Ordinance and the Subdivision Ordinance that restricts normal construction activities to a shorter time frame. We are also requesting that these Ordinances be revised so they are consistent with the Town's Street Regulation Ordinance.

Attached is our proposal for the amendments to this Ordinance.

Thank you in advance for your consideration.

Amended 05/21/2019

CHAPTER 39
LOITERING, CURFEW AND NOISE
ARTICLE I LOITERING, CURFEW AND NOISE ORDINANCE

SECTION 39-103 NOISE

B. This ordinance shall not apply to noise emitted by or related to:

6. Timber harvesting (felling trees and removing logs from the woods) during ~~daytime hours~~, the following hours only: Mon-Fri 7:00am-6:00pm. Such work on the weekends and federal/state holidays is prohibited.

7. Noise generated by any construction, excavation or demolition equipment which is operated during ~~daytime hours~~, the following hours only: Mon-Fri 7:00am-6:00pm. Such work on the weekends and federal/state holidays is prohibited. Exceptions: Emergency construction or repair work by public utilities shall ~~also be exempted~~. Construction during non-daytime hours may be exempted from the provisions of this ordinance by order of the Chief of Police, if it is demonstrated that extenuating circumstances disallow construction during daytime hours.

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.

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 Zoning Ordinance.
- 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.

09/03/19

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**TOWN OF
FREEPORT**

ZONING ORDINANCE

May 2008

Section 509. Extraction

B. Definitions:

6. Processing Operations: 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. 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.

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G. Standards for Operation of Existing Excavations, Expansion of Existing Excavations and New Excavations.

All excavations shall meet the following requirements:

4. Excavation shall be limited to ~~6~~7:00 a.m. to 6:00 p.m., Monday through Friday, ~~and 8:00 a.m. to 2:00 p.m. Saturday.~~ No excavation is allowed on weekends or state/federal holidays. 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 excavated material, the hours of extraction may exceed those approved by the Project Review Board on no more than two days in any calendar year. Any excavation operations to exceed the approved hours for more than two days require a Temporary Activity Permit pursuant to Section 501 of this Ordinance.

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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.

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Our Ordinance Amendment Proposals are based on the following history of facts & violations:

Justin Fletcher of Fletcher Property Group hauled in 5500 yd.³ of ledge from one of his properties in Yarmouth to Youngs Lane in Freeport in August 2018. This amount of ledge was more than 27 times the allowable amount without a permit; a violation of the **Zoning Ordinance Sec 525. Filling of Lands**. *"No materials in excess of 200 cubic yards during a calendar year may be used for filling of lands... unless a special permit for such operation has been approved by the Staff Review Board or the Project Review Board and subsequently issued by the Codes Enforcement Officer."*

The ledge was hauled in prior to submitting his subdivision plans to the Board; a violation of the **Subdivision Ordinance Article 10.2.E**. *"Development of a subdivision without Project Review Board approval or in violation of any terms or conditions of Project Review Board approval shall be a violation of this Ordinance. Development includes, but is not limited to, grading or construction of roads, grading of land or lots, or construction of buildings."*

Mr. Fletcher admitted in an Oct. 2018 letter to the abutters that he hauled the ledge to this location to make the subdivision project more monetarily feasible. He admits in his letter that after purchasing the property he discovered "the only way I am able to feasibly develop the land is because I recently purchased another piece of land (in Yarmouth) that had enough material (ledge) on site which will allow the construction of the road (Youngs Lane in Freeport) for a REDUCED COST."

Mr. Fletcher further mentions in this letter to the abutters that he had not "realized the volume that was being trucked in". (Yet he admitted he needed this material to build a 1500+' road).

When we first brought the hauling in of the ledge to the Town's attention, we were told by the Town Planner that the Project Review Board had to make a determination on the violation of the rock before they could vote on the subdivision. However, the Board reviewed and voted to accept the preliminary plans and determined the rock was a "Town Staff" issue to deal with. Subsequently, we brought the matter to the Town Manager who told us he would talk to the Town Planner and Codes Enforcement Officer, as well as the Town Attorney, and get back to us. We did not receive a timely response back. The Town Manager had also told us that it is the Town Council's responsibility to oversee the Project Review Board, so we may want to reach out to the Council to address our concerns. We did – and when our District Councilor never responded to our attempts to reach him via phone, email and a hand-delivered letter, we then wrote to the Council Chair & Vice Chair and the Chair told us in an email letter dated May 15, 2019, "It is not appropriate for the Council to become involved in a pending matter before the Project Review Board and to do so would be contrary to Town Council practice. If you disagree with the Project Review Board's ultimate decision, there is a process for appealing that decision and you should consult with legal counsel to determine your rights.". Consequently, the Project Review Board meetings continued to take place and the Board continued to maintain the rock was not their responsibility and moved the project forward.

We feel compelled to insist that the ordinances be consistent, clear and in the best interest of residents. Part of the reason we feel this way is because during our 2-year struggle to protect ourselves, we have been bounced around from one person to the next within the Town offices. It is our feeling that no one, from the Town Planner, to the Project Review Board, to the Codes Enforcement Officer, to the Town Manager, to the Council, took the responsibility to correct this

violation. The reason for this is there were conflicting interpretations of the ordinances. There were parts of some ordinances that applied to parts of the project in question but for the most part, nothing seemed to fit. Ultimately, it felt as if the Town officers were cherry picking what worked and what didn't just to move the project along.

Following is what the Town's Zoning and Subdivision Ordinances currently state about excavation, rock processing, and associated regulations:

Zoning Ordinance:

Sec 509 B.7. "... a Short Term Excavation shall be subject to the same requirements as a New Excavation, except that a Short Term Excavation does not require the creation of a Mining and Extraction Overlay District by the Town Council. Processing shall not be permitted."

Sec 509 G.6. "Rock and stone crushing, or other processing activities... may be prohibited or further restricted by the Project Review Board if it will unreasonably interfere with existing and/or future residential uses. On an annual basis, no more than thirty-three percent (33%) of all aggregate crushed or otherwise processed on the property of such excavation operation may be brought in from a location outside the property."

Sec 509 D.2. Exemptions: "Excavation necessarily incidental to construction..." Processing is not an excavation activity nor was it necessary – the fill material could have been brought in already processed. Processing is not listed as an exemption from the rules & regulations of the Ordinance.

It was of the Town's opinion that section 509 did not apply in this situation because this site isn't a rock quarry and this wasn't a mining operation. However, there are NO specific items in the Subdivision Ordinance that allow for the processing of rock of this magnitude in a residential neighborhood. According to this interpretation, the CEO and Attorney have determined that if 5500 yd.³ of material were to be brought into a quarry, only 33% could be processed there. However, if 5500 yd.³ are brought into a residential neighborhood, 100% of the material can be processed there. We reject this determination and ask that the Ordinance Committee do the same. It is illogical and unethical that there are more restrictions in place for rock processing in a rock quarry than there are in a neighborhood. At no time had we been offered assurances that the noise and dust pollution from rock processing of this caliber would not affect the health and well-being of nearby residents or their properties.

Sec 515. Noise Regulation

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	55 – 45

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."

We asked Mr. Fletcher what the decibel reading was on the rock crusher he was planning on using and he could not provide us with that. If the decibel reading on the crusher itself is not known, then how do we know what the decibel level is on the machine when it is running at peak capacity? How do we know, then, whether or not it meets the average maximum dba level as set forth by the Ordinance?

E. *"For activities of a temporary nature unable to meet these requirements, a special permit must be obtained from the Codes Enforcement Officer (we were told NO special permit was required). The noise standards shall not apply to the temporary use of such machinery as chain saws, lawn mowers and snowmobiles."* (rock crushers are not noted as such an exemption to the noise regulation).

Sec 518. Smoke and Particulate Matter *"In all cases, air pollution control and abatement shall comply with applicable minimum Federal, State and local requirements, including receipt of all required permits, and detailed plans shall be submitted to the Codes Enforcement Officer for approval before the permit is granted. (again, we were told NO special permit was required). The maximum permitted density of smoke, dust and other particulate emissions during normal operations of any activity shall not exceed the maximum allowable under the regulations of the Maine Department of Environmental Protection. In case of doubt, the Codes Enforcement Officer may employ such independent, recognized consultant necessary, at the expense of the applicant, to assure compliance with performance standards and all other requirements of this Ordinance related to the public health, safety and welfare and the abatement of nuisances. Violations of this standard shall be considered as public nuisances."*

Sec 604. Conflict with Other Ordinances *"Where this Ordinance imposes a greater restriction upon the use of land, buildings or structures, the provisions of this Ordinance shall control."*

Subdivision Ordinance: Sec 11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

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 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."*

The purpose of having Ordinances is for them to be followed and enforced as written in black and white – not to be manipulated and applied based on the "interpretation" of items in the Ordinances as they were in this case by the Codes Enforcement Officer and the Town Attorney. The Ordinances are not consistent, and in order to eliminate confusion and misinterpretation, they need to be amended. To do otherwise, is setting an unfortunate precedent for future projects where the health and welfare of the residents of this Town and their properties will not be protected.

Respectfully,

Tammy Morrissey

Sarah Cronin

Residents of Granite Farm Homeowners Association