

Clerk

**TOWN COUNCIL MEETING #5-2000  
MARCH 7, 2000 - 7:00 P.M.  
TOWN COUNCIL CHAMBERS**

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**SUMMARY AGENDA**

- ITEM #48-2000 To consider action relative to adopting the March 7, 2000 Consent Agenda, Items #40-2000 through #47-2000.
- ITEM #49-2000 To consider action relative to proposed amendments to the Zoning Ordinance concerning Performance Standards for Adult Businesses (Chapter 21). (Public Hearing).
- ITEM #50-2000 To consider action relative to proposed amendments to the Special Amusement Permits Ordinance concerning Live Entertainment Regulation (Chapter 50). (Public Hearing).
- ITEM #51-2000 To consider action relative to adopting a proposed ordinance Controlling Nudity in Businesses (Chapter 51). (Public Hearing).
- ITEM #52-2000 To consider action relative to proposed amendments to Administrative Code concerning the composition of the Winslow Park Commission and the Library Board of Directors (Chapter 2). (Public Hearing).
- ITEM #53-2000 To consider action relative to the proposed locating of Telecommunication Devices and Towers on or near Town Water Storage Tanks. (Public Hearing).
- ITEM #54-2000 To consider action relative to adoption of a Capital Improvements Program for Fiscal Year 2001 to 2005.

**OTHER BUSINESS:**

**COMMITTEE REPORTS:**

- Ordinance Committee.
- Municipal Facilities Committee.

Adjourn.

**AGENDA  
FREEPORT TOWN COUNCIL MEETING #5-2000  
TOWN HALL COUNCIL CHAMBERS  
MARCH 7, 2000 - 7:00 P.M.**

**SPECIAL NOTE:** This agenda is a working agenda that includes background information and is for distribution to Council members only.

**FROM:** Dale C. Olmstead, Jr.

**TO:** David Soley, Chairperson, Arnold Road  
John Arsenault, Vice Chairperson, Prout Road  
Genie Beaulieu, Larue Drive  
Edward Campbell, Gay Drive  
Kenneth Mann, Mann Road  
Gloria Fogg DeGrandpre, Wolf Neck Road  
Robert Stevens, Porters Landing

**FIRST ORDER OF BUSINESS:** To waive the reading of the Minutes of #4-2000, February 15, 2000 Meeting and accept the Minutes as printed.

**SECOND ORDER OF BUSINESS:** Public Comment Period - 30 Minutes  
(Non-Agenda Items Only)

**THIRD ORDER OF BUSINESS:** To take action on the following items of business as read by the Council Chairperson.

COUNCIL MEETING #5-2000  
MARCH 7, 2000

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**ITEM #48-2000** To consider action relative to adopting the March 7, 2000 Consent Agenda, Items #40-2000 through #47-2000.

**BE IT ORDERED:** That the March 7, 2000 Consent Agenda be adopted.

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**ITEM #49-2000** To consider action relative to proposed amendments to the Zoning Ordinance concerning Performance Standards for Adult Businesses (Chapter 21). (Public Hearing).

**MOTION:** That the Public Hearing be opened.

**MOTION:** That the Public Hearing be closed.

**BE IT ORDERED:** That the proposed amendments to the Zoning Ordinance be adopted.

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**ITEM #50-2000** To consider action relative to proposed amendments to the Special Amusement Permits Ordinance concerning Live Entertainment Regulation (Chapter 50). (Public Hearing).

**MOTION:** That the Public Hearing be opened.

**MOTION:** That the Public Hearing be closed.

**BE IT ORDERED:** That proposed amendments to the Special Amusement Permits Ordinance be adopted.

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**ITEM #51-2000** To consider action relative to adopting a proposed ordinance Controlling Nudity in Businesses (Chapter 51). (Public Hearing).

**MOTION:** That the Public Hearing be opened.

**MOTION:** That the Public Hearing be closed.

**BE IT ORDERED:** That the proposed ordinance Controlling Nudity in Businesses be adopted.

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**ITEM #52-2000** To consider action relative to proposed amendments to Administrative Code concerning the composition of the Winslow Park Commission and the Library Board of Directors (Chapter 2). (Public Hearing).

**MOTION:** That the Public Hearing be opened.

**MOTION:** That the Public Hearing be closed.

**BE IT ORDERED:** That the proposed amendments to the Administrative Code be adopted.

**COUNCIL MEETING #5-2000  
MARCH 7, 2000**

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**ITEM #53-2000** To consider action relative to the proposed locating of Telecommunication Devices and Towers on or near Town Water Storage Tanks. (Public Hearing).

**MOTION:** That the Public Hearing be opened.

**MOTION:** That the Public Hearing be closed.

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**ITEM #54-2000** To consider action relative to adoption of a Capital Improvement Program for Fiscal Years 2001 to 2005.

**BE IT ORDERED:** That a Public Hearing be scheduled for March 21, 2000 at 7:00 p.m. in the Town Hall Council Chambers to discuss the adoption of a Capital Improvements Program for Fiscal Years 2001 to 2005 including items that would require the approval of the voters of the Town of Freeport.

**BE IT FURTHER ORDERED:** That 30 copies be distributed equally between the Town Clerk's office and the Freeport Community Library for inspection by citizens.

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**OTHER BUSINESS:**

**COMMITTEE REPORTS:**

- Ordinance Committee.
- Municipal Facilities Committee.

Adjourn.

**TOWN COUNCIL  
CONSENT AGENDA  
MARCH 7, 2000**

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**ITEM #40-2000** To consider action relative to applications for victualer licenses for Jay Yilmaz, Thomas Huka, St. Viator and L. Lawrence, Richard Saoicolo, Cuong Ly, Liz Bell, Ann Long, Kaplan Vending, Michael J. Olsen, Herman Pettegrove and Mary Wilson.

**BE IT ORDERED:** That the applications issued to the following applicants be approved.

Jay Yilmaz d/b/a **Timberland Stand, Peddler, 42 Main Street (Private Property)**  
Jay Yilmaz d/b/a **Levi Stand, Peddler, 57 Main Street (Private Property)**  
Thomas Hudak d/b/a **Maple Hedge B & B, 22 Park Street**  
S. Viator & L. Lawrence d/b/a **Maple Hill B & B, 18 Maple Avenue**  
Richard Saoicolo d/b/a **Freeport Taco Bell, 49 Main Street**  
Cuong Ly d/b/a **China Rose Restaurant, 10 School Street**  
Liz Bell d/b/a **USM Stone House, 642 Wolfe's Neck Road**  
Ann Long d/b/a **Ann's Kitchen, 1 Bartol Island Road**  
Kaplan Vending d/b/a **Eastland Shoe, Park Street**  
Michael J. Olsen d/b/a **Freeport Country Club, 2 Old County Road**  
Herman Pettegrove d/b/a **Kendall Tavern B & B, 213 Main Street**  
Mary Wilson d/b/a **Whole Food Pantry, 96 Tenpenny Street**

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**ITEM #41-2000** To consider action relative to the re-issuance of a malt, spirituous and vinous license for Falcon Restaurant.

**MOTION:** That a malt, spirituous and vinous license be re-issued to the following:

Leona Smith d/b/a **Falcon Restaurant, 8 Bow Street**

**BE IT ORDERED:** That the application issued to the above named applicant be approved.

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**ITEM #42-2000** To consider action relative to the re-issuance of a malt, spirituous and vinous license for Freeport Country Club.

**MOTION:** That a malt, spirituous and vinous license be re-issued to the following:

Michael J. Olsen d/b/a **Freeport Country Club, 2 Old County Road**

**BE IT ORDERED:** That the application issued to the above named applicant be approved.

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**ITEM #43-2000** To consider action relative to awards from the Dr. Gould Trust Fund to provide for medical expenses.

**BE IT ORDERED:** That \$1,248.23 be expended from the Dr. Gould Trust Fund to provide medical expenses.

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**ITEM #44-2000** To consider action relative to awards from the Davis Trust Fund to provide for medical expenses.

**BE IT ORDERED:** That \$52.32 be expended from the Davis Trust Fund to provide for medical expenses.

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**ITEM #45-2000** To consider action relative to the acceptance of a grant from the Rural Community Fire Protection Program.

**BE IT ORDERED:** That a grant in the amount of \$1,300 from the Rural Community Fire Protection Program, to provide for 75 gallons of Fire Block and two foam delivery systems, be accepted.

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**ITEM #46-2000** To consider action relative to appointments or re-appointments to the followings boards or committees.

**BE IT ORDERED:** That the following individuals be appointed or re-appointed to the following boards or committees.

<u>Individual</u>	<u>Committee/Board</u>	<u>Term</u>
Carol Chipman	Coastal Waters Commission	April 1, 2003
Cynthia Berliner	Coastal Waters Commission	April 1, 2003
Wayne Hollingsworth	Community Education Advisory Board	March 1, 2003
Millard Pray	Traffic & Parking Committee	December 1, 2000

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**ITEM #47-2000** To consider action relative to adopting a Money Purchase Plan from the International City Managers Association Retirement Corporation.

Resolution of the Town of Freeport, Maine

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the Employer desires that its money purchase retirement plan be administered by the ICMA Retirement Corporation and that the funds held by such plan be invested in the ICMA Retirement Trust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans;

NOW THEREFORE BE IT RESOLVED that the Employer hereby establishes or has established a money purchase retirement plan (the "Plan") in the form of:

The ICMA Retirement Corporation Governmental Money Purchase & Trust, pursuant to the specific provisions of the Adoption Agreement.

The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

**BE IT FURTHER RESOLVED** that the Employer hereby executes the Declaration of Trust of the ICMA Retirement Trust, and attached hereto, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the ICMA Retirement Trust.

**BE IT FURTHER RESOLVED** that the Employer hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in the ICMA Retirement Trust; and

**BE IT FURTHER RESOLVED** that the Town Treasurer shall be the coordinator for the Plan; shall receive reports, notices, etc., from the ICMA Retirement Corporation or the ICMA Retirement Trust; shall cast, on behalf of the Employer, any required votes under the ICMA Retirement Trust; may delegate any administrative duties relating to the Plan to appropriate departments; and

**BE IT FURTHER RESOLVED** that the Employer hereby authorizes the Town Treasurer to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the Plan.

**NOTE:** ICMA has developed an additional investment option for its members. Offering this additional option will not increase the Town's current contributions to the retirement plan.

End of Consent Agenda.

**TOWN COUNCIL  
CONSENT AGENDA  
MARCH 7, 2000**

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**ITEM #40-2000** To consider action relative to applications for victualer licenses for Jay Yilmaz, Thomas Huka, St. Vietor and L. Lawrence, Richard Saoicolo, Cuong Ly, Liz Bell, Ann Long, Kaplan Vending, Michael J. Olsen, Herman Pettegrove and Mary Wilson.

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Cuong Ly d/b/a China Rose Restaurant, 10 School Street  
Liz Bell d/b/a USM Stone House, 642 Wolfe's Neck Road  
Ann Long d/b/a Ann's Kitchen, 1 Bartol Island Road  
Kaplan Vending d/b/a Eastland Shoe, Park Street  
Michael J. Olsen d/b/a Freeport Country Club, 2 Old County Road  
Herman Pettegrove d/b/a Kendall Tavern B & B, 213 Main Street  
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**ITEM #41-2000** To consider action relative to the re-issuance of a malt, spirituous and vinous license for Falcon Restaurant.

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**MOTION:** That a malt, spirituous and vinous license be re-issued to the following:

Michael J. Olsen d/b/a Freeport Country Club, 2 Old County Road

**BE IT ORDERED:** That the application issued to the above named applicant be approved.

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**ITEM #43-2000** To consider action relative to awards from the Dr. Gould Trust Fund to provide for medical expenses.

**BE IT ORDERED:** That \$1,248.23 be expended from the Dr. Gould Trust Fund to provide medical expenses.



**ITEM #44-2000** To consider action relative to awards from the Davis Trust Fund to provide for medical expenses.

**BE IT ORDERED:** That \$52.32 be expended from the Davis Trust Fund to provide for medical expenses.

**ITEM #45-2000** To consider action relative to the acceptance of a grant from the Rural Community Fire Protection Program.

**BE IT ORDERED:** That a grant in the amount of \$1,300 from the Rural Community Fire Protection Program, to provide for 75 gallons of Fire Block and two foam delivery systems, be accepted.

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**BE IT ORDERED:** That the following individuals be appointed or re-appointed to the following boards or committees.

<u>Individual</u>	<u>Committee/Board</u>	<u>Term</u>
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Cynthia Berliner	Coastal Waters Commission	April 1, 2003
Wayne Hollingsworth	Community Education Advisory Board	March 1, 2003
Millard Pray	Traffic & Parking Committee	December 1, 2000

**ITEM #47-2000** To consider action relative to adopting a Money Purchase Plan from the International City Managers Association Retirement Corporation.

*Km wanted to vote on this separately*

Resolution of the Town of Freeport, Maine

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the Employer desires that its money purchase retirement plan be administered by the ICMA Retirement Corporation and that the funds held by such plan be invested in the ICMA Retirement Trust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans;

NOW THEREFORE BE IT RESOLVED that the Employer hereby establishes or has established a money purchase retirement plan (the "Plan") in the form of:

The ICMA Retirement Corporation Governmental Money Purchase & Trust, pursuant to the specific provisions of the Adoption Agreement.

The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

**BE IT FURTHER RESOLVED** that the Employer hereby executes the Declaration of Trust of the ICMA Retirement Trust, and attached hereto, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the ICMA Retirement Trust.

**BE IT FURTHER RESOLVED** that the Employer hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in the ICMA Retirement Trust; and

**BE IT FURTHER RESOLVED** that the Town Treasurer shall be the coordinator for the Plan; shall receive reports, notices, etc., from the ICMA Retirement Corporation or the ICMA Retirement Trust; shall cast, on behalf of the Employer, any required votes under the ICMA Retirement Trust; may delegate any administrative duties relating to the Plan to appropriate departments; and

**BE IT FURTHER RESOLVED** that the Employer hereby authorizes the Town Treasurer to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the Plan.

**NOTE:** ICMA has developed an additional investment option for its members. Offering this additional option will not increase the Town's current contributions to the retirement plan.

**End of Consent Agenda.**

**MINUTES**  
**FREEPORT TOWN COUNCIL MEETING #5-2000**  
**March 7, 2000 – 7 P.M.**

<b><u>CHAIRPERSON'S CALL TO ORDER:</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>	<b><u>Excused</u></b>
Genie Beaulieu, Larue Drive	X		
David Soley, Chairperson Arnold Road	X		
Edward Campbell Gay Drive	X		
John Arsenault, Vice Chair Prout Road	X		
Kenneth Mann Mann Road	X		
Gloria DeGrandpre Wolf Neck Road	X (Arrived at 7:50 p.m.)		
Robert Stevens Porters Landing	X		

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**FIRST ORDER OF BUSINESS:** TO WAIVE THE READING OF THE MINUTES OF MEETING #4-2000 HELD ON FEBRUARY 15, 2000 AND ACCEPT THE MINUTES AS PRINTED.

**MOVED AND SECONDED:** TO WAIVE THE READING OF THE MINUTES OF MEETING #4-2000 HELD ON FEBRUARY 15, 2000 AND ACCEPT THE MINUTES AS PRINTED.(Councilors Campbell & Arsenault) (6 Ayes) (1 Excused—DeGrandpre).

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**SECOND ORDER OF BUSINESS:** Public Comment Period - 30 Minutes (Non-Agenda Items Only)

No Comments were made.

**MOVED AND SECONDED:** To close the Public Comment Period (Campbell & Arsenault) (6 Ayes) (1Excused—DeGrandpre).

**THIRD ORDER OF BUSINESS:** To take action on the following items of business as read by the Council Chairperson:

ITEM #48-2000 To consider action relative to adopting the March 7, 2000 Consent Agenda, Items #40-2000 through #46-2000.

**BE IT ORDERED:** That the March 7, 2000 Consent Agenda be adopted. (Councilors Campbell & Arsenault) ROLL CALL VOTE: (6 Ayes) (1 Excused-DeGrandpre).

---

ITEM #47-2000 To consider action relative to adopting a Money Purchase Plan from the International City Managers Association Retirement Corporation.

Resolution of the Town of Freeport, Maine

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the Employer desires that its money purchase retirement plan be administered by the ICMA Retirement Corporation and that the funds held by such plan be invested in the ICMA Retirement Trust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans;

NOW THEREFORE BE IT RESOLVED that the Employer hereby establishes or has established a money purchase retirement plan (the "Plan") in the form of:

The ICMA Retirement Corporation Governmental Money Purchase & Trust, pursuant to the specific provisions of the Adoption Agreement.

The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that the Employer hereby executes the Declaration of Trust of the ICMA Retirement Trust, and attached hereto, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the ICMA Retirement Trust.

BE IT FURTHER RESOLVED that the Employer hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in the ICMA Retirement Trust; and

BE IT FURTHER RESOLVED that the Town Treasurer shall be the coordinator for the Plan; shall receive reports, notices, etc., from the ICMA Retirement Corporation or the ICMA Retirement Trust; shall cast, on behalf of the Employer, any required votes under the ICMA Retirement Trust; may delegate any administrative duties relating to the Plan to appropriate departments; and

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**BE IT FURTHER RESOLVED** that the Employer hereby authorizes the Town Treasurer to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the Plan.

**NOTE:** ICMA has developed an additional investment option for its members. Offering this additional option will not increase the Town's current contributions to the retirement plan. (Councilors Beaulieu & Campbell)

Mr. Olmstead explained this program to Councilors.

**ROLL CALL VOTE:** (6 Ayes) (1 Excused-DeGrandpre).

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**ITEM #49-2000** To consider action relative to proposed amendments to the Zoning Ordinance concerning Performance Standards for Adult Businesses (Chapter 21). (Public Hearing).

**MOVED AND SECONDED:** That the Public Hearing be opened. (Councilors Arsenaault & Campbell) (6 Ayes) (1 Excused-DeGrandpre).

David A. Lourie, Attorney, advised that he wrote to the Chair explaining his concerns over the proposed definition of "adult business" and the breadth of the ordinance. He urged the Council to not adopt the amendments.

Councilor Beaulieu explained the letter received from the Freeport Economic Development Corporation and that all the zones should be looked at. She suggested that the amendments be looked at carefully since the moratorium is in effect until August.

Councilor Mann noted that he feels the Ordinance Committee should take a look at these amendments and if they are redrafted, another public hearing may be necessary. Councilor Campbell suggested tabling these items. Mr. Olmstead noted that he would ask the Town Planner to coordinate the meeting.

**MOVED AND SECONDED:** That Items 49-2000, 50-2000 and 51-2000 be tabled indefinitely so that they may be addressed. (Councilors Campbell & Stevens) (6 Ayes) (1 Excused-DeGrandpre).

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**ITEM #52-2000** To consider action relative to proposed amendments to Administrative Code concerning the composition of the Winslow Park Commission and the Library Board of Directors (Chapter 2). (Public Hearing).

**MOVED AND SECONDED:** That the Public Hearing be opened.(Councilors Stevens & Beaulieu) (6 Ayes) (1 Excused-DeGrandpre).

Councilor Beaulieu explained that these two committees have a lot of people that sign up and want to be on them as well as a lot of good people that have served and wish to continue to serve. They are considering increasing these committees to 9 people each. Winslow has two options for ways to structure it.

Jane Fox, Chair of the Library Board, noted that they would be delighted to have two additional members added to their Board.

Mary Sauer of the Conservation Commission noted that having a Conservation Commission member

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represented on the Winslow Park Commission would make sense and feels it would not be a problem asking anyone to serve on both committees.

Gail Sidies of the Freeport Community Education noted that she would like to see their position maintained on the Winslow Park Commission because they are such big users of the park. It has been a successful link in the past and she would like to see it maintained.

Marilyn Cortell asked who will be replacing Bill Kenney. Mr. Olmstead advised that Bart Carhart has been hired to replace Bill Kenney and will be starting his job on Monday.

Councilor Stevens noted that he has been impressed with the enthusiasm and good attendance that he has observed at Winslow Park Commission meetings. He mentioned that Clay Carkin of the Middle School asked Councilor Stevens to request that the Council do everything it can to help support educational efforts at Winslow Park. Councilor Stevens suggested increasing the size of the commission and supports Option I.

Councilor Beaulieu asked for a consensus that the Appointment Committee should adhere strictly to Enforcing the limiting of three terms. Councilors concurred that they should adhere to the three-term limit.

**MOVED AND SECONDED:** That the Public Hearing be closed. (Councilors Stevens & Campbell) (7 Ayes).

**BE IT ORDERED:** That the proposed amendments to the Administrative Code (Option I for Winslow Park) and the proposal with respect to the Library be adopted. (Councilors Stevens & Campbell) **ROLL CALL VOTE:** (7 Ayes).

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**ITEM #53-2000** To consider action relative to the proposed locating of Telecommunication Devices and Towers on or near Town Water Storage Tanks. (Public Hearing).

**MOVED & SECONDED:** That the Public Hearing be opened.(Councilors Mann & Campbell) (7 Ayes).

Chair Soley suggested taking the two issues up separately.

Mr. Olmstead advised that the Town has been approached by telecommunications companies concerning the placement of antennas on existing water tanks. New regulations are in place in Freeport concerning these types of requests. A consultant feels that the Town could add two companies per tank which could possibly generate \$80,000 for the Town.

Randall Thomas asked what the tallest antenna could be attached to a water tank. Mr. Olmstead was not positive but estimated that 64" may be the tallest. He also noted that the Ordinance prohibits lighting. He indicated that this would have to go to the Planning Board.

Mr. Olmstead advised that the Town has been approached by AT&T about the possibility of placing a stand alone tower next to the tank up on Winston Hill in South Freeport. The Ordinance says that if you are going to have a dual use, the piece of land has to be 5 acres in size. The land that the water tank in South Freeport sits on is 4.3 acres in size. It cannot accommodate a dual use at this site under the current zoning. Some Councilors have suggested asking the Planning Board to reduce the size of the property to 4 acres to permit a dual use. Discussion followed.

**MOVED AND SECONDED:** That the Public Hearing be closed. (Councilors Campbell & Beaulieu) (7 Ayes).

Greg Morton of OmniPoint explained the size of the proposed antennas and how they look for existing structures. They do not want to put up towers. He feels the revenue would be helpful to the Town.

**MOVED AND SECONDED:** To take up an item not on the printed agenda. (Councilors Arsenault & Beaulieu) (7 Ayes).

**MOVED AND SECONDED:** That the Council return this to the Planning Board for reconsideration of co-location of two structures on the same property. (Councilors Arsenault & Stevens) (6 Ayes) (1 Nay-Mann).

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ITEM #54-2000 To consider action relative to adoption of a Capital Improvement Program for Fiscal Years 2001 to 2005.

**BE IT ORDERED:** That a Public Hearing be scheduled for March 21, 2000 at 7:00 p.m. in the Town Hall Council Chambers to discuss the adoption of a Capital Improvements Program for Fiscal Years 2001 to 2005 including items that would require the approval of the voters of the Town of Freeport.

**BE IT FURTHER ORDERED:** That 30 copies be distributed equally between the Town Clerk's office and the Freeport Community Library for inspection by citizens. (Councilors DeGrandpre & Campbell).

Mr. Olmstead explained the items listed to Councilors and answered questions.

**ROLL CALL VOTE:** (7 Ayes).

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**OTHER BUSINESS:**

Dispatch – Chair Soley explained that he has been negotiating with the Sheriff concerning public safety dispatch services. Chief Scolfield reported on how many calls are received yearly on Freeport's emergency numbers. Closing down dispatch would mean that no one would be in the Public Safety Building nights and weekends. Discussion followed. Councilor Stevens asked the Chief to work closely with neighboring communities. Chief Fournier noted that the Fire Department has been communicating with neighboring communities and believes that regionalization needs to come from the leadership level of the Council. Mr. Olmstead noted that COG will be looking into this issue.

**MOVED AND SECONDED:** To take up an item not on the printed agenda. (Campbell & Beaulieu) (7 Ayes).

**MOVED AND SECONDED:** That the Council entertain a proposal of closing Dispatch. (Campbell & Beaulieu) **ROLL CALL VOTE:** 6 Nays, 1 Abstention (Soley)

Mr. Olmstead asked Mary Wescott for an election update.

Ms. Wescott reported that 24% of registered voters cast ballots today. The results were:

Bill Bradley	315
Al Gore	220
George Bush	375
John McCain	307

### **COMMITTEE REPORTS:**

**Ordinance Committee:** Councilor Campbell reported that there was one meeting on the Shotguns Only Ordinance. The room was full but there was no support in pursuing the issue. It was tabled.

**Municipal Facilities Committee:** Councilor Arsenault reported that the committee met and discussed tax acquired properties. There were two motions made. They recommend that the Town Council appropriate legal work to clear title and identify access to the Charles Morse property off Pownal Road.

They also recommend that the Town Council retain the Bartol Island property for potential future public access to the water.

They also discussed telecommunication towers and recommended to ask the Planning Board to reconsider the land area.

They also talked about the Town Hall Reception Area and recommend that a desk be built in to accommodate the receptionist who can direct members of the public.

They also discussed the key situation for the Town Hall and recommend that new locks be installed and keys provided to everyone that needs one.

**MOVED AND SECONDED:** To take up an item not on the printed agenda. (Councilors Arsenault & Campbell) (7 Ayes).

**MOVED AND SECONDED:** That the Council accept all of the recommendations of the Committee as outlined in Committee Notes dated March 1, 2000. (Councilors Arsenault & Campbell) (7 Ayes).

### **Marstaller Property**

Councilor Stevens noted that a letter has been drafted that the Marstallers would be reimbursed for the charges covering a title search. He has not had an opportunity to go out and walk around the property but hopes to be able to do this after the snow goes away.



**Bridge**

Councilor Mann noted that there will be a meeting tomorrow night.

**MOVED AND SECONDED:** To adjourn at 9:35 p.m. (Councilors Campbell & Beaulieu) (7 Ayes).

Respectfully Submitted,



Sharon Coffin  
Council Secretary

**DAVID A. LOURIE**  
*Attorney at Law*  
189 Spurwink Avenue  
Cape Elizabeth, ME 04107  
(207) 799-4922 - Fax 799-7865  
[dal@maine.rr.com](mailto:dal@maine.rr.com)

Advance copy via Fax  
February 25, 2000

David Soley, Esq.  
Bernstein, Shur. Sawyer & Nelson  
100 Middle Street  
Portland, ME 04101

Re: MCLU Comments on Freeport Zoning Ordinance "Adult Business" Amendment

Dear David:

I have reviewed the copy of the proposed zoning ordinance you provided at my request, and it was discussed at the 2/24/00 meeting of the Legal Panel of the Maine Civil Liberties Union. As a result of that research and discussion, the Legal Panel asked me to write to you as Chair of the Town Council to express our concern over the proposed definition of "adult business" and the breadth of the ordinance. Our concern stems from the apparent inclusion of all establishments in the Town where a "substantial" or "significant" portion consists of materials which appeal to the prurient interest, etc., including retail stores which are not necessarily "adult businesses" in nature, as is the case of video rental stores with "adult" sections, or "mom and pop" convenience stores with restricted magazine racks.

I am not aware of the origin of this particular definition provision, and it appears to have been discussed in only a few of the many court decisions which discuss the validity of such ordinances. These cases are not conclusive as to the constitutionality of this provision under the vagueness standard. See, e.g. Z.J. Gifts D-2, LLC. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998) where the district court granted summary judgment in favor of Z.J. Gifts invalidating a city zoning regulation requiring sexually oriented businesses to locate in industrially-zoned areas, but the Court of Appeals held it was not unconstitutionally vague as applied to Z.J. Gifts, which clearly came within the definition. As Freeport currently has no "adult businesses" the ordinance may well be void for vagueness if challenged by anything less than a business devoted exclusively to adult materials as did Z.J. Gifts. We therefore submit that a reasonable person reading the proposed zoning ordinance is not advised sufficiently as to what is meant by "significant" or "substantial", nor what the word "portion" refers to (floor area, stock in trade, or value.) These terms are normally specific enough for a zoning ordinance, but are considered too vague in the context of first amendment rights without a narrowing construction being placed on them. We believe that the proposed zoning ordinance could have a chilling effect on First Amendment rights as a convenience store owner would be reluctant to sell any materials of the type described for fear that such items could be determined to be significant.

David Soley, Chair of Town Council

Re: MCLU Comments on Freeport Zoning Ordinance "Adult Business" Amendment  
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The related "overbreadth" issue is even more troubling as such ordinances are often required to be "narrowly tailored", while your ordinance is not. You will find this issue discussed in World Wide Video v. Tukwila, 816 P.2d 18 (Supreme Court of Washington 1991) invalidating an ordinance similar to your proposed ordinance as to overbroad because it (like the proposed ordinance) goes beyond the 1986 United States Supreme Court ruling in Renton v. Playtime Theatres, Inc., 475 U.S. 41, 89 L.Ed.2d 29, 106 S.Ct. 925 (1986) where the Supreme Court found a "substantial governmental interest" in combating the undesirable secondary effects of adult theaters and bookstores.

In World Wide Video, the Supreme Court of Washington distinguished the Renton ordinance from the Tukwila ordinance which applied to all stores and was not:

"narrowly tailored" to affect only that category of theaters shown to produce the unwanted secondary effects, thus avoiding the flaw that proved fatal to the regulations in Schad v. Mount Ephraim, 452 U.S. 61[, 68 L.Ed.2d 671, 101 S.Ct. 2176] (1981), and Erznoznik v. City of Jacksonville, 422 U.S. 205[, 45 L.Ed.2d 125, 95 S.Ct. 2268] (1975)." Renton, 475 U.S. at 52. In contrast, Tukwila has not shown that adult businesses with predominantly "take-home" merchandise (which clearly are covered by the ordinance) have the same harmful secondary effects traditionally associated with adult movie theaters and peep shows; thus the "substantial governmental interest" portion of the test has not been met. Moreover, ordinance 1465 includes in its definition of adult bookstore, retail store, or video store any establishment in which:

(A.) Ten percent or more of the "stock-in-trade" consists of [merchandise] distinguished or characterized by an emphasis on . . . "specified sexual activities" or "specified anatomical areas"; and/or

(B.) Any person is excluded by virtue of age from all or part of the premises generally held open to the public where such [merchandise] is displayed or sold.

TMC 18.06.825(a)(2)(A), (B); see TMC 18.06.825(a)(6), (8). This definition would even include "mainstream" video stores that have restricted adult sections."

The World Wide Video Court noted that there was nothing to indicate that businesses like take out video stores, which have their stock in trade limited to ten and a half percent sexually explicit material caused the same type of adverse secondary effect as businesses which have one

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hundred percent sexually explicit material and invalidated the ordinance as not sufficiently narrowly tailored to meet federal constitutional standards. As the federal constitutional standards were violated, the Court did not need to analyze the ordinance under the even stronger free speech provisions of the Washington state constitution.

We therefore believe that you should not adopt the proposed zoning ordinance as the definition appears to be unconstitutionally vague, and the application of the ordinance to all businesses appears to be overbroad.

The MCLU has limited its comments to the proposed zoning ordinance and expresses no opinion with respect to the constitutionality of the other ordinances proposed.

Sincerely,



David A. Lourie

cc: MCLU  
Chris Vaniotis, Town Attorney

# TOWN OF FREEPORT

Municipal Offices  
(207) 865-4743  
FAX (207) 865-0929



MEMO

TO: Freeport Town Council  
FROM: Freeport Planning Board  
SUBJECT: ADULT BUSINESS REGULATIONS  
DATE: February 3, 2000

On February 2, 2000, the Planning held a public hearing on proposed amendments to the Freeport Zoning Ordinance, the Special Amusements Permits Ordinance and a new Ordinance, Ordinance Controlling Nudity in Businesses.

The Council adopted a moratorium on adult businesses after inquiries regarding them had been made to the Codes Enforcement Officer. The moratorium directed the Planning Board to develop the Ordinance regulations.

In the process of determining appropriate regulations, the Board reviewed past court cases dealing with the regulation of adult businesses and the Town Planner consulted with the Town Attorney. An area where adult business could be conducted and also meet proposed Ordinance requirements was located in the C-II District approximately 500' east of U.S. Route One South in the vicinity north and south of Stonewood Drive.

After hearing public comment supporting these regulations, the Board voted (4-0) to recommend to the Town Council the adoption of the following proposed amendments and new ordinance:

1. Proposed Amendments to the Freeport Zoning Ordinance, Chapter 21, Section 530.
2. Proposed Amendments to the Special Amusement Permit, Chapter 50, Article XIV.
3. Proposed Ordinance. Ordinance Controlling Nudity in Business, Chapter 51.

The reasons for adoption of all three items are listed below:

- a. The Town of Freeport currently has no zoning or licensing regulations governing the location of and imposing reasonable time, place and manner restrictions on the operation of so-called "adult" bookstores, video stores, movie theaters and similar businesses which sell, rent, exhibit, display or otherwise deal in sexually explicit materials; and
- b. The location of such businesses in certain neighborhoods and certain areas of the Town of Freeport, or in close proximity to incompatible uses such as residences, schools, parks, playgrounds, churches and public buildings would be detrimental to the public health, safety and welfare; and
- c. Such "adult" businesses have the potential to attract and encourage various types of criminal, illicit or unhealthful behaviors unless appropriately controlled as to the time, place and manner of their operation; and
- d. "Adult" businesses can, if not appropriately located and properly controlled, have a negative impact upon both residential and commercial property values; and
- e. "Adult" businesses can, unless properly controlled, provide a potential locus for illicit and undesirable activities by providing a place of contact for potential customers for prostitution, pandering, and other activities; and
- f. In combination with on-site or nearby alcoholic beverage service or other sexually oriented businesses, the concentration of such uses can increase the quantity of undesirable activities; and
- g. There is a strong tendency for inappropriate activities associated with "adult" businesses to seek nearby venues such as parks, parking lots, alleys and other public or semi-public spaces; and
- h. "Adult" businesses can, by their very presence set a context for interpreting pedestrian presence in the area as potentially related to the "adult" businesses, leading to propositioning of passers by the discouraging legitimate pedestrian activities; and
- i. It would be detrimental to the public health, safety and welfare to allow the location of such "adult" businesses without reasonable zoning and/or licensing regulations to ensure that any such "adult" businesses are conducted in a way which is not detrimental to the public health, safety and welfare;

*Tabled indefinitely at PH  
3/7/00 (Mtg. #5-00)*

PROPOSED AMENDMENTS  
FREEPORT ZONING ORDINANCE  
(Chapter 21)

**ARTICLE V - PERFORMANCE STANDARDS**

**Section 530. LOCATION OF ADULT BUSINESSES**

**1. DEFINITIONS**

a. "Adult business" means any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities.

b. "Specified sexual activities" means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy.
3. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

c. "Public Building" means a building owned, operated or funded in whole or in part by the Town of Freeport which members of the general public have occasion to visit, either regularly or occasionally, such as, but not limited to, the Town Hall, the Public Library, the Police Station and Fire Stations.

**2. LOCATION OF ADULT BUSINESSES RESTRICTED**

No adult business shall be located:

- a. In any zoning district other than the Commercial II District C-II.
- b. In any location where the customer entrance to the adult business would be closer than 1,000 feet, measured in a straight line without regard to

intervening structures or objects, to the nearest point on the boundary of any property which is:

i. Occupied by a residence, school, park, playground, religious institution or public building,

ii. Located in a residential zone, or

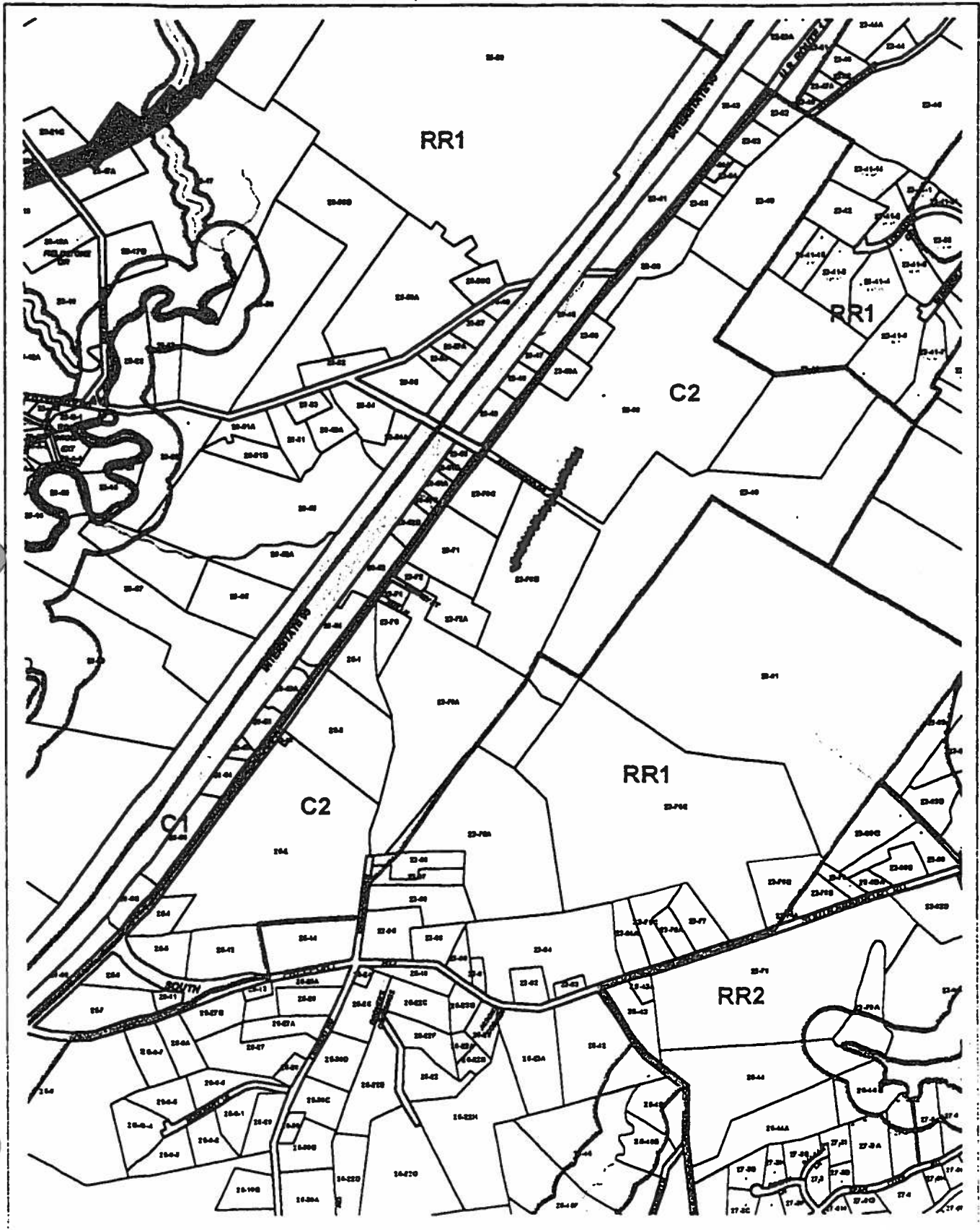
iii. Occupied by another adult business.

### 3. OUTSIDE DISPLAYS PROHIBITED

No materials or devices displaying or exhibiting specified sexual activities shall be visible from the exterior of the building in which the adult business is located.



# Town of Freeport C-II District Potential Adult Business Locations



Scale - 1" = 1100' (estimated)

*Tabled indefinitely at PH  
3/7/00 (mtg. #5-00)*

Adopted May, 1999

**PROPOSED AMENDMENTS  
SPECIAL AMUSEMENT PERMITS  
CHAPTER 50**

**Article I. Purpose.**

The purpose of this article is to regulate the issuance of special amusement permits for music, dancing, or entertainment in facilities licensed by the state to sell liquor as authorized by 28-A M.R.S.A. § 1054.

**Article II. Definition.**

For the purposes of this article, the word "entertainment" means any amusement, performance, exhibition, or diversion for customers of the licensed premises whether provided by professional entertainers or by employees of the operator of the licensed premises.

**Article III. Permit required.**

(a) A licensee for the sale of liquor to be consumed on the licensed premises shall not permit any live music, dancing, or entertainment of any kind on the premises until he has first obtained a special amusement permit issued by the Town Clerk.

(b) He must file a written application for the permit with the town council including the name, date and place of birth, and residence address of the applicant; the name, address and nature of the business; and any additional information required by the council necessary to the processing of the application.

**Article IV. Inspection.**

As soon as an application for a special amusement permit has been received by the town council, the codes enforcement officer shall inspect the licensed premises to determine whether they are in compliance with all pertinent law. He shall make a written report to the town council with his findings in that regard.

**Article V. Public hearing.**

Before granting a permit, and after seven (7) days notice published in a newspaper having general circulation in the town, the town council shall hold a public hearing to determine whether issuance of the permit would be detrimental to the health, safety, or general welfare of the public, or would be in violation of any provision of this Code or town ordinance. After the hearing, the council shall issue the permit unless it finds that to do so would be detrimental to the health, safety, or general welfare of the public, or would be in violation of a municipal ordinance.

Adopted May, 1999

**Article VI. Denial of permit.**

If the application for a special amusement permit is denied, the town council shall give the applicant a written statement of the reasons for the denial.

**Article VII. Conditional issuance.**

The town council may attach conditions to any special amusement permit which are necessary for the protection of the health, safety, or general welfare of the public.

**Article VIII. Permit fee.**

The fee for a special amusement application permit is one hundred dollars (\$100.00) which is nonrefundable if the application for the permit is denied.

**Article IX. Term of permit.**

The permit is valid for one year from the date of issuance.

**Article X. Periodic inspection.**

Whenever an inspection of the premises used for the operation of a business by the holder of a special amusement permit is provided for by law, or is reasonably necessary in order to determine whether there is compliance with any pertinent law, the licensee shall permit the health officer or any official or employee of the codes enforcement office to make the inspection at any reasonable time, on written request.

**Article XI. Suspension or revocation of a permit.**

After seven (7) days notice published in a newspaper having general circulation in the town, and public hearing, the town council may suspend or revoke a special amusement permit if it determines that the music, dancing, or entertainment being provided at the licensed premises constitutes a detriment to the public health, safety, or welfare; or violates any law; or if the health officer or any official or employee of the codes enforcement office has been refused admission to make an inspection of the premises after written request.

**Article XII. Penalty.**

A person who violates any of the provisions of this article shall be punished by a fine of not more than five hundred dollars (\$500.00).

**Article XIII. Qualifications.**

In order to be eligible for any license, an applicant shall meet any qualifications established by law and shall pay any arrearages for taxes, fees, or any other obligation to the town.

#### Article XIV. Live Entertainment Regulation

No licensee shall permit entertainment on the licensed premises, whether provided by professional entertainer(s), employees of the licensed premises, or any other person, when the entertainment involves:

- (a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
- (b) The actual or simulated touching, caressing, or fondling of breasts, buttocks, anus, or genitals;
- (c) The actual or simulated displaying of the genitals, pubic hair, buttocks, anus, or any portion of the female breasts at or below the areola thereof;
- (d) The permitting by any licensee of any person to remain in or upon the licensed premises who exposes to any public view any portion of his or her genitals or anus or female breasts below the areola thereof.

For purposes of this section, the words "displaying" and "exposes" shall mean being unclothed or uncostumed or not covered by fully opaque cloth or textile material, or employing any device or covering which is intended to give the appearance of or to simulate the genitals, pubic hair, buttocks, anus or the portions of the female breasts at or below the areola thereof.

Tabled indefinitely at PH- 3/7/00 (422g #5-00)

PROPOSED ORDINANCE

ORDINANCE CONTROLLING NUDITY IN BUSINESSES

CHAPTER 51

Article I. Purpose

Section 1.1 – Purpose. The purpose of this Ordinance is to regulate nudity as a form of commercial exploitation and to regulate dress as a form of conduct and not to impede the free exchange and expression of ideas. The conduct regulated is that which the community and Town Council in public meetings have clearly found to be offensive to the general welfare, public safety, order and morals of the Town of Freeport and its citizens.

Article II – Definitions

Section 2.1 – Theater. As used in this Ordinance, "theater" means (a) a building, playhouse, hall, or other place having a permanent stage upon which movable scenery and theatrical or vaudeville or similar performances are given and permanently affixed seats so arranged that a body of spectators can have an unobstructed view of the stage, or (b) a building, room, hall, or other place whose primary function is to present movies or motion pictures and which has a permanent movie screen and permanently affixed seats so arranged that a body of spectators can have an unobstructed view of said screen, or (c) an open-air or "drive-in" movie having a permanently affixed movie screen and permanently affixed devices for broadcasting the soundtracks of movies or motion pictures inside of the patrons' vehicles.

Section 2.2 – Sales Person, Waiter, Waitress and Entertainer. A person shall be deemed a sales person, waiter, waitress or entertainer if such person acts in that capacity, without regard to whether or not such person is paid any compensation by the management of the business in which the activity is performed.

Section 2.3 – Expose. "Expose" or "exposed" means unclothed or uncostumed or not covered by fully opaque cloth or textile material, or employing any device or covering which is intended to give the appearance of or to simulate the genitals, pubic hair, buttocks, perineum, anus or a portion of the female breasts at or below the areola thereof.

### Article III – Prohibitions

Section 3.1. It shall be unlawful for a person who, while acting as a sales person, waiter, waitress, entertainer or in any other capacity as an owner, manager, or employee in a business to expose his or her genitals, pubic hair, buttocks, perineum or anus or to expose any portion of the female breasts at or below the areola thereof.

Section 3.2. It shall be unlawful for a person to cause, permit, procure, counsel, or assist any person to expose himself or herself as prohibited by Section 3.1 of this Ordinance.

Section 3.3. It shall be unlawful for a person operating a business to, at said place of business, display or cause or permit the display of photographs, covers of magazines, newspapers or other printed matter which expose or show genitals, pubic hair, buttocks, perineum, anus, or female breasts at or below the areola thereof, in such manner that such

photographs, covers of magazines, newspapers or other printed matter are visible to children or unwilling adults using the sidewalks, streets or highways.

#### Article IV – Exceptions

Section 4.1. Sections 2.1 and 2.2 of this Ordinance do not apply to a theater or similar establishment which is primarily devoted to theatrical performances or the presentation of movies.

Section 4.2. This Ordinance does not apply to any act authorized or prohibited by any statute of the State of Maine.

#### Article V – Penalty

Section 5.1. Any act made unlawful by this Ordinance and any violation of this Ordinance shall be punishable by a fine of not more than \$500 (five hundred) for each offense. Each day that such unlawful act or violation continues shall be considered a separate offense.

Section 5.2. In addition to any other penalty provided by the law, the commission of acts prohibited by this Ordinance shall constitute a nuisance and may be abated by the town seeking an injunction to prohibit further and continued violation thereof.

**Article VI – Severability**

**Section 6.1. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.**



*Adopted - option 1 Winslow Park  
and Library*  
**PROPOSED**

**AMENDMENT TO THE ADMINISTRATIVE CODE  
(CHAPTER 2)**

**OPTION 1**

**SECTION 612 - WINSLOW PARK COMMISSION**

**612.1 Establishment**

The Winslow Park Commission shall consist of ~~seven (7)~~ nine (9) appointed members; one (1) from the Town Council, one (1) from the Conservation Commission, one (1) from the Community Education Advisory Committee and four (4) six (6) citizens at large.

**OPTION 2**

**SECTION 612 - WINSLOW PARK COMMISSION**

**612.1 Establishment**

~~The Winslow Park Commission shall consist of ~~seven (7)~~ nine (9) appointed members; ~~one (1)~~ from the Town Council, ~~one (1)~~ from the Conservation Commission, ~~one (1)~~ from the Community Education Advisory Committee and four (4) eight (8) citizens at large.~~

And

**SECTION 608 - B.H. BARTOL LIBRARY BOARD OF DIRECTORS**

**608.1 Establishment**

1. There shall continue to be a B.H. Bartol Library Board of Directors to be herein established as consisting of ~~seven (7)~~ nine (9) members who shall all be residents of the Town of Freeport.