

**AGENDA**  
**FREEPORT TOWN COUNCIL MEETING #2-2001**  
**TOWN HALL COUNCIL CHAMBERS**  
**January 16, 2001 - 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:** John Arsenault, Chairperson, Prout Road  
Robert Stevens, Vice Chairperson, Porters Landing  
David Soley, Arnold Road  
Genie Beaulieu, Larue Drive  
Kenneth Mann, Mann Road  
Karen Bricklemeyer, Bears Run  
Eileen Lowell, South Freeport Road

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**FIRST ORDER OF BUSINESS:** To waive the reading of the Minutes of #1-2001, January 2, 2001 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.

**MEETING #2-01**  
**JANUARY 16, 2001**

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**Item #20-01** To consider action relative to adopting the January 16, 2001 Consent Agenda Items #14-01 to #19-01.

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**BE IT ORDERED:** That the January 16, 2001 Consent Agenda be adopted.

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**Item #21-01** To consider action relative to adopting a proposed ordinance banning the sale of mercury thermometers. (Chapter 42) **Public Hearing**

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

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

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**MOTION:** That the proposed ordinance banning the sale of mercury thermometers be adopted.

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**Item #22-01** To consider action relative to proposed amendments to the Shellfish Conservation Ordinance concerning licensing. (Chapter 32) **Public Hearing**

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

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

**MOTION:** That the proposed ordinance to the Shellfish Conservation Ordinance be approved.

**MEETING #2-01  
JANUARY 16, 2001**

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**Item #23-01** To consider action to amending the Zoning Ordinance adopting a Retirement Community Overlay District. (Chapter 21)

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**BE IT ORDERED:** That a Public Hearing be scheduled for February 6, 2001 at 7:00 PM in the Town Hall Council Chambers to discuss proposed amendments to the Zoning Ordinance.

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

**OTHER BUSINESS:**

1. Discussion on meeting format for the January 30, 2001 meeting with the Residential Growth Committee.

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**Item #24-01** To consider action relative to an executive session to discuss a proposed Non-Emergency Transportation Contract.

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**MOTION:** That the Council enter into Executive Session to discuss Contract negotiations.

**MOTION:** That the Council reconvene.

**END OF AGENDA**

**FREEPORT TOWN COUNCIL  
SUMMARY AGENDA  
MEETING #2-01  
JANUARY 16, 2001**

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**Item #20-01** To consider action relative to adopting the January 16, 2001 Consent Agenda Items #14-01 to #19-01.

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**Item #21-01** To consider action relative to adopting a proposed ordinance banning the sale of mercury thermometers. (Chapter 42) **Public Hearing**

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**Item #22-01** To consider action relative to proposed amendments to the Shellfish Conservation Ordinance concerning licensing. (Chapter 32) **Public Hearing**

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**Item #23-01** To consider action to amending the Zoning Ordinance adopting a Retirement Community Overlay District. (Chapter 21)

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**OTHER BUSINESS:**

1. Discussion on meeting format for the January 30, 2001 meeting with the Residential Growth Committee.

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**Item #24-01** To consider action relative to an executive session to discuss a proposed Non-Emergency Transportation Contract.

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**END OF AGENDA**

**FREEPORT TOWN COUNCIL  
SUMMARY CONSENT AGENDA  
JANUARY 16, 2001 – 7:00 PM  
COUNCIL CHAMBERS**

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**Item #14-01** To consider action relative to the acceptance of donations for the purchase of Automatic External Defibrillators for the Rescue Department.

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**Item #15-01** To consider action relative to an appointment to the Solid Waste/Recycling Committee.

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**Item #16-01** To consider action relative to the approval of a request from L.L. Bean to use Bow Street Park for the July 4<sup>th</sup> Road Race.

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**Item #17-01** To consider action relative to the approval of Victualer Licenses.

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**Item #18-01** To consider action relative to the approval of a Public Peddlers Application.

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**Item #19-01** To consider action relative to the approval of a "Going Out of Business Sale" for Maxwell's Pottery.

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**MINUTES**  
**FREEPORT TOWN COUNCIL MEETING #2-2001**  
**TOWN HALL COUNCIL CHAMBERS**  
**January 16, 2001 – 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>
John Arsenault, Chairperson Prout Road	X		
Robert Stevens, Vice Chairperson Porters Landing			X
Genie Beaulieu, Larue Drive			X
David Soley Arnold Road	X		
Kenneth Mann Mann Road	X		
Karen Brickleyer Bears Run	X		
Eileen Lowell South Freeport Road	X		

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**FIRST ORDER OF BUSINESS:** TO WAIVE THE READING OF THE MINUTES OF MEETING #1-2001 HELD ON JANUARY 2, 2001 AND ACCEPT THE MINUTES AS PRINTED.

**MOVED AND SECONDED:** TO WAIVE THE READING OF THE MINUTES OF MEETING #1-2001 HELD ON JANUARY 2, 2001 AND ACCEPT THE MINUTES AS PRINTED. (Councilors Soley & Mann) (5 Ayes) (2 Excused—Beaulieu & Stevens).

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

Chief Fournier and Chief Connelly awarded a Life Saving Award to Michelle Gurney, an employee of Harraseeket Inn, who performed CPR on a guest at the inn. Inn owners, Nancy Gray and Chip Gray were also recognized for training their employees in life-saving skills.

Chair Arsenault pointed out that there are openings on the Winslow Park, Coastal Waters and Library Boards and that anyone interested should fill out an application.

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Councilor Soley advised that the Town closed on the 96 acre Keith property and acknowledged the fine work done by the Conservation Commission in lining this property up. He noted how helpful the Town Manager was in this deal. Councilor Mann thanked Councilor Soley for all the time he spent in closing this deal and acknowledged that he is excellent at contract negotiations.

**MOVED AND SECONDED:** To close the Public Comment Period (Councilors Soley & Bricklemyer) (5Ayes) (2 Excused—Beaulieu & Stevens).

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

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Item #20-01 To consider action relative to adopting the January 16, 2001 Consent Agenda Items #14-01 to #19-01.

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**MOVED AND SECONDED:** To delete 19-01 for Maxwell's Pottery from the Consent Agenda. (Councilors Mann & Bricklemyer) (5Ayes) (2 Excused—Beaulieu & Stevens).

**BE IT ORDERED:** That the January 16, 2001 Consent Agenda be adopted as amended. (Councilors Soley & Mann) **ROLL CALL VOTE:** (5Ayes) (2 Excused—Beaulieu & Stevens).

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Item #21-01 To consider action relative to adopting a proposed ordinance banning the sale of mercury thermometers. (Chapter 42) **Public Hearing**

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**MOVED AND SECONDED:** That the Public Hearing be opened. (Councilors Lowell & Bricklemyer) (5Ayes) (2 Excused—Beaulieu & Stevens)

Councilor Soley explained this Ordinance and noted that there are several people who wish to speak to this issue tonight. Will Everett of the Toxics Action Center, Jerie Weiss of the Federal EPA, Tiffany Scodstrom of Healthcare Without Harm in Lawrence, Massachusetts and Amanda Sears of the Natural Resources Council spoke in support of this ban.

Chair Arsenault thanked Councilor Soley and everyone who spoke to this issue.

**MOVED AND SECONDED:** That the Public Hearing be closed.  
(Councilors Lowell & Bricklemyer) (5Ayes) (2 Excused—Beaulieu & Stevens).

Councilor Soley advised that he personally spoke to Councilors Beaulieu and Stevens and learned that they are both in favor of this ban. Councilor Beaulieu indicated that she would like this Ordinance altered so that it goes into effect within 30 days of enactment. Councilor Soley requested that all the handouts provided by the speakers be put into the record. He noted that Brenda White is also in attendance showing her support for this ban.

Councilor Mann mentioned that new businesses in Freeport may not be aware of this Ordinance and asked if a notice could be displayed in the Town Hall to help get the word out. Mr. Olmstead noted that this would be possible. Councilor Soley mentioned that he did not check items for sale at local antique shops. Discussion followed on how to dispose of fluorescent bulbs and mercury thermometers at the Freeport Landfill. Mr. Olmstead advised that citizens should bring these items to the operators of the Landfill where they will be disposed of properly.

**MOVED AND SECONDED:** That the proposed ordinance banning the sale of mercury thermometers be adopted. (Councilors Lowell & Soley)

**MOVED AND SECONDED:** That we amend this ordinance, Section 5, to provide that this Ordinance is effective 30 days from the date of enactment. (Councilors Soley & Mann) (5Ayes) (2 Excused—Beaulieu & Stevens).

**ROLL CALL VOTE:** (5Ayes) (2 Excused—Beaulieu & Stevens).

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Item #22-01 To consider action relative to proposed amendments to the Shellfish Conservation Ordinance concerning licensing. (Chapter 32) **Public Hearing**

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**MOVED AND SECONDED:** That the Public Hearing be opened.  
(Councilors Mann & Bricklemyer) (5Ayes) (2 Excused—Beaulieu & Stevens).

Garrett Simmons, Chair of the Shellfish Commission explained that they have worked closely with the Town Attorney on the proposed amendments.

Councilor Mann noted that he has concerns with the Misrepresentation Section on pg. 2. where after the issuing person determines there is misrepresentation and triggers a Police Chief investigation, the appeal goes back to the same person that denied the license. He would prefer to see that the appeal go to a more independent body such as the Board of



Appeals, The Town Council, etc. Discussion followed. Mr. Olmstead suggested passing this Ordinance tonight but that the Shellfish Commission should look at this specific issue. Mr. Simmons agreed that it would make sense to have the Board of Appeals look at these types of issues but Mr. Olmstead advised that they should first check with the Board of Appeals. Councilor Mann noted that the Commission should work closely with the Town Manager and perhaps get an opinion from the Town Attorney within 90 days. Mr. Olmstead suggested that the Commission look at how other towns handle this issue.

**MOVED AND SECONDED:** That the Public Hearing be closed.  
(Councilors Bricklemyer & Soley) (5Ayes) (2 Excused—Beaulieu & Stevens).

**MOVED AND SECONDED:** That the proposed ordinance to the Shellfish Conservation Ordinance be approved. (Councilors Mann & Soley ) **ROLL CALL VOTE:** (5Ayes) (2 Excused—Beaulieu & Stevens).

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Item #23-01 To consider action to amending the Zoning Ordinance adopting a Retirement Community Overlay District. (Chapter 21)

---

**BE IT ORDERED:** That a Public Hearing be scheduled for February 6, 2001 at 7:00 PM in the Town Hall Council Chambers to discuss proposed amendments to the Zoning Ordinance.

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

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**MOVED AND SECONDED:** To introduce an item not on the printed agenda. (Councilors Mann & Bricklemyer) **ROLL CALL VOTE:** (5Ayes) (2 Excused—Beaulieu & Stevens).

ITEM #25-01 To consider action relative to holding a Public Hearing on an Application for the Community Planning Grant Program.

**BE IT ORDERED:** That a Public hearing be scheduled for February 6, 2001 at 7:00 p.m. to discuss an application for the Community Planning Grant Program.

**BE IT FURTHER ORDERED:** That 30 copies be made and distributed equally between the Town Clerk's Office and the Freeport Community Library for inspection by citizens. (Councilors Mann & Soley) **ROLL CALL VOTE:** (5 Ayes) (2 Excused—Beaulieu & Stevens).

**OTHER BUSINESS:**

1. Discussion on meeting format for the January 30, 2001 meeting with the Residential Growth Committee.

Mr. Olmstead and the Town Planner put together the notice for the meeting and wanted assurance that this is the format the Council wants to follow. Councilor Mann agreed that this is the proper format and the public will be permitted to participate. He suggested that copies of the proposals should be made available to the public.

Chair Arsenault noted that this meeting will be in a workshop format. No action will be taken. The next step will be to digest the information and go over it on a line item basis. The Council may have to schedule an additional workshop or make this issue part of the Council's regular meeting.

The meeting will take place at Mast Landing School on January 30 at 7 p.m. Public comments will be encouraged and welcomed. It will be well advertised. Councilor Mann asked Chair Arsenault to speak to the Committee about the length of their presentation.

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Item #24-01 To consider action relative to an executive session to discuss a proposed Non-Emergency Transportation Contract.

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**MOVED AND SECONDED:** That the Council enter into Executive Session to discuss Contract negotiations at 8:15 P.M. (Councilors Soley & Bricklemeyer) (5 Ayes) (2 Excused—Beaulieu & Stevens).

**MOVED AND SECONDED:** That the Council reconvene. (Councilors Soley & Mann) (5 Ayes) (2 Excused—Beaulieu & Stevens).

**Natural Gas Line**

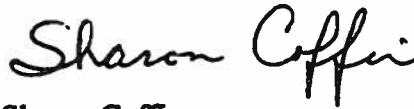
Councilor Mann had questions on whether the natural gas line would be coming through Freeport. Mr. Olmstead clarified that Freeport will not be getting natural gas anytime soon. Commitments from businesses could change this but there are no plans to connect to the Brunswick lines.

Mr. Olmstead asked if members of the Municipal Facilities Committee could meet after the meeting to schedule a meeting with the Community Coalition Commission.

**ADJOURNMENT:**

**MOVED AND SECONDED:** To adjourn at 9:15 p.m. (Councilors  
Bricklemyer & Lowell) (5 Ayes) (2 Excused—Beaulieu & Stevens).

Respectfully Submitted,

A handwritten signature in cursive script that reads "Sharon Coffin". The signature is written in dark ink and is positioned above the printed name.

Sharon Coffin  
Council Secretary

Meeting # 2-2001  
Jan. 16, 2001  
Item # 21-01

*Adopted*

**MERCURY THERMOMETER ORDINANCE**  
**CHAPTER 42**

**Section 1. Definitions**

- A. Town means the Town of Freeport**
- B. Mercury thermometer means a mercury-containing product that is used to measure body temperature. A mercury-containing product is a product, device, instrument or equipment into which elemental mercury or mercury compounds are intentionally added during its formulation or manufacture and in which the continued presence of mercury is desired to provide a specific characteristic or to permit a specific function.**
- C. Health care facility means any hospital, nursing home, extended care facility, long-term facility, clinic or medical laboratory, state or private health or mental institution, clinic, physician's office or health maintenance organization.**
- D. Manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that produces a mercury fever thermometer. If the mercury thermometer is produced in a foreign country, the manufacturer is the importer if domestic distributor.**

**Section 2. Retail Sale Prohibited. A person shall not sell or supply (including online retail) mercury fever thermometers to consumers and patients, except by prescription. The manufacturers of mercury fever thermometers shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur with all mercury fever thermometers sold through prescriptions.**

**Section 3. Manufacturing Prohibited. It is unlawful for any person to manufacture a mercury thermometer in the Town.**

**Section 4. Importation Prohibited. It shall be unlawful for any facility to import, purchase, or distribute a mercury thermometer in the Town, except in the case of medical necessity as determined by a licensed physician.**

**Section 5. Restriction on the Sale of Mercury Thermometers. Six months after the adoption of this ordinance, a person may not sell or supply mercury fever thermometers to consumers and patients.**

**Section 6. Penalty. Any person who violates this ordinance shall be guilty of a misdemeanor, punishable by a fine of not more than \$500.00 per unit sold.**

**SHELLFISH CONSERVATION ORDINANCE  
TOWN OF FREEPORT  
CHAPTER 32**

1. **AUTHORITY:** This Ordinance is enacted in accordance with 12 M.R.S.A., Section 6671.
2. **PURPOSE:** To establish a Shellfish Conservation Program for the Town of Freeport which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of clams taken;
- E. Limiting the amount of clams taken daily by a harvester.
- F. Enhancing the clam resources by the various recognized means;  
e.g. reseedling, etc.

3. **EFFECTIVE DATE, DURATION, AND AMENDMENT:**

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A. Effective Date: This Ordinance which has been approved by the Commissioner of Marine Resources shall become effective after its adoption by the Municipality. A certified copy of the Ordinance is filed with the Commissioner within twenty (20) days of its adoption.

B. Duration: This Ordinance shall remain in effect for three (3) years from its adoption. It shall be repealed by operation of law at that time. Should the Town desire to continue with a Municipal Conservation Program, the Ordinance must be replaced on or before the time of repeal by this or a similar ordinance.

C. Amendment: This Ordinance may be amended from time to time by the Town Council. Prior to adopting an amendment, the written approval of the amendment by the Commissioner of Marine Resources shall be filed with the Town Clerk. A certified copy of any amendment adopted by the Town Council shall be filed with the Commissioner of Marine Resources with twenty (20) days of its adoption.

4. **SHELLFISH CONSERVATION COMMISSION:** The Shellfish Conservation Program for the Town of Freeport will be administered by the Shellfish Conservation Commission consisting of seven (7) members to be appointed by the Freeport Town Council for terms of three (3) years. The Commission's responsibilities include:

A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued;

B. Surveying the clam flats to maintain current information on shellfish resources;

C. Submitting to the Freeport Town Council proposals for the expenditures of funds for the purpose of shellfish conservation;

D. Keeping this Ordinance under review and making recommendations for its amendments;

E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;

F. Recommending conservation closures and openings with the Area Biologists of the Department of Marine Resources;

G. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other Commission activities;

H. Identifying conservation projects which qualify an applicant for Renewal or New License status under subsection 6 (d) (3). The Shellfish Program Coordinator shall record the names and hours worked by individuals on a conservation project and submit them to the Shellfish Conservation Commission.

**5. DEFINITIONS:**

A. Resident: For the purpose of this Ordinance, the term "Resident" shall mean a person who owns or rents real estate within the Town of Freeport which is his or her permanent, fixed place of abode and principal place of residence. If a person claiming to be a resident neither owns nor rents real estate, they shall be required to produce such other evidence of municipal residency as may be required by the Town Clerk. A person shall not qualify as a resident of this Municipality unless he or she has maintained a permanent, fixed place of abode and principal place of residence within the Town of Freeport for twelve (12) months prior to the date his/her claim of municipal residence is made. A person shall cease to be a resident of this Municipality on the date he/she acquires a permanent fixed place of abode and principal place of residence in any other Municipality or moves from the Town of Freeport.

B. Nonresident: The word "Nonresident" means anyone not qualified as a resident under this Ordinance.

C. Shellfish, Clams: When used in the context of this Ordinance, the words "shellfish" and "clams" means soft-shell clams, *Mya Arenaria*.

D. Municipality: Refers to the Town of Freeport, Maine.

E. All flats bordering the Wolf's Neck State Park as of December 8, 1983 are now under the jurisdiction of the Freeport Shellfish Conservation Ordinance. Recreational digging in Wolf's Neck State Park will not require a recreational license.

**6. LICENSING:**

Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this Municipality without having a current license issued by this Municipality as provided by this Ordinance.

A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

Shellfish licenses are not required in order to dig and take no more than one peck in the State Park areas where and when it is lawful to do so.

**A. Designation, Scope, and Qualification:**

(1) **Resident Commercial Shellfish License:** The license is available to residents of the Town of Freeport and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality and reciprocating municipalities;

(2) **Nonresident Commercial Shellfish License:** The license is available to nonresidents of this Municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality;

(3) **Resident Recreational Shellfish License:** The license is available to residents and real estate taxpayers of Freeport. A resident-recreational shellfish license entitles the holder to dig and take no more than one peck of shellfish in any one day.

(4) **Nonresident Recreational Shellfish License:** This license is available to nonresidents of this Municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day.

(5) **License Must Be Signed:** The licensee must sign the license to make it valid.

**B. Applications for Commercial Licenses:**

(1) Applications for renewal commercial licenses and new commercial licenses shall be submitted to the Town Clerk at the times specified in Section 6(E) and 6(I), respectively.

(2) **Contents of Application:** The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature, and whatever other information the Municipality may require.

**(3) Misrepresentation:**

- a) Application void. If at any time prior to the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the applicant has given false information on the license application, the Town Clerk shall request the Police Chief or his designee to investigate those circumstances and any other circumstances relevant to the license application and report to the Clerk. If the results of the investigation continue to suggest that the applicant has given material false information on the license application, the Clerk shall communicate the results of the investigation to the applicant and provide the applicant with an opportunity to respond in writing. If, after reviewing the applicant's response, the Clerk concludes that the applicant gave material false information on the license application, the Clerk shall void the application. A pending investigation under this subparagraph (a) shall not preclude an otherwise qualified applicant from participating in the drawing pursuant to Section 6(I), but no license shall be issued to such applicant until the Clerk has made a determination on the results of the investigation. In the event the Clerk determines to void the application, the Clerk shall award the license to the next qualified applicant on the list prepared pursuant to Section 6(I). An applicant whose application is voided shall not be entitled to any refund of license fees.
- b) If, after the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the licensee gave false information on the license application, the Town Clerk shall request the Police Chief or his designee to investigate those circumstances and any other circumstances related to the license application. If the results of the investigation continue to suggest that the licensee gave false information on the license application, the Town Clerk shall give the licensee a minimum of seven (7) days notice of a hearing before the Town Clerk to determine whether or not the licensee gave false information on the license application. The Police Chief shall present the evidence suggesting that false



information was given. The licensee shall have the right to present evidence to show that false information was not given. If, after hearing, the Town Clerk determines that material false information was given, the Town Clerk shall revoke the license and give the licensee written Notice of Revocation. A licensee whose license is revoked shall not be entitled to any refund of license fees.

**C. Applications for Recreational Licenses:**

- (1) Resident and Nonresident Recreational Licenses** will be available beginning in June. Licenses are effective July 1 through June 30. Recreational licenses purchased in year 2000 will be valid until June 30, 2001.
- (2) Contents of Application:** The application will be in the form of an affidavit and must contain the applicant's name, current address, mailing address, birth date, height, weight, signature, and whatever other information the Municipality may require.
- (3) Misrepresentation:**
  - a) **Application void.** If at any time prior to the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the applicant has given false information on the license application, the Town Clerk shall request the Police chief or his designee to investigate those circumstances and any other circumstances relevant to the license application and report to the clerk. If the results of the investigation continue to suggest that the applicant has given material false information on the license application, the Clerk shall communicate the results of the investigation to the applicant and provide the applicant with an opportunity to respond in writing. If, after reviewing the applicant's response, the Clerk concludes that the applicant gave material false information on the license application, the Clerk shall void the application. An applicant whose application is voided shall not be entitled to any refund of license fees.
  - b) If after the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the licensee gave false information on the license application, the Town Clerk shall request the Police Chief or his designee to investigate those circumstances and any other circumstances related to the license application. If the results of the investigation continue to suggest that the licensee gave false information on the license application, the Town Clerk shall give the licensee a minimum of seven (7) days notice of a hearing before the Town Clerk to determine whether or not the licensee gave false information on the license application. The Police Chief shall present the evidence suggesting that false information was given. The licensee shall have the right to present

evidence to show that false information was not given. If, after hearing, the Town Clerk determines that material false information was given, the Town Clerk shall revoke the license and give the licensee written Notice of Revocation. A licensee whose license is revoked shall not be entitled to any refund of license fees.

- (4) Any person who holds a State Shellfish License is not eligible for a Recreational License. A Recreational Shellfish Licensee may not engage in the wholesale or retail sale of any shellfish harvested under this license.

**D. Fees: Effective January 1, 1999** The fees for the licenses are as stated below and must accompany in full the application for the respective license. Fees received from shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

- (1) Resident Commercial: Two Hundred Dollars (\$200.00)
- (2) Nonresident Commercial: Four Hundred Dollars (\$400.00)
- (3) Resident Recreational: Ten Dollars (\$10.00)  
Total Licenses available: 200
- (4) Nonresident Recreational: Twenty Dollars (\$20.00)  
Total Licenses available: 20
- (5) A recreational license is not required for a digger under 12 years of age to engage in recreational clam harvesting.
- (6) License Fees will be waived for residents 65 years or older for recreational licenses only.
- (7) No fees (commercial or recreational) are refundable at any time.

**E. Limitation of Diggers:** Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

- (1) Prior to May 15 the Freeport Shellfish Conservation Commission with the approval of the Commissioner of Marine Resources will establish the number of commercial and recreational licenses to be issued. The Shellfish Commission may adjust the number of Recreational Licenses by up to 10% during the license year (July 1 to June 30).
- (2) The Shellfish conservation Commission will notify the Town Clerk in writing prior to June 1 of the number of licenses to be issued. No reservation will be accepted by telephone.
- (3) The Town Clerk shall issue commercial renewal and new licenses to residents and non-resident according to the following priority: Ten percent

of the renewal and new commercial licenses shall be retained for non-residents during the period of issuance.

The Shellfish Conservation Commission shall waive all or part of the requirement for conservation time for an applicant who provides the Commission with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled conservation time due to incapacitation by illness or injury. At the request of an applicant, made at a regular monthly meeting of the Commission, the Commission may arrange on an hour-for-hour basis:

- a. Another time to complete conservation work for an applicant who demonstrates to the Commission that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled conservation time: or
- b. Alternate less strenuous work for an applicant who provides the Commission with a written statement from a physician indicating that the applicant is not physically able to participate in regular conservation work.

**Renewal Commercial License:** An application for a renewal commercial license must be made at the Town Clerk's office during a regular business day during the month of April and must be accompanied by payment of 50% of the required license fee. The remainder of the fee must be paid no later than the last business day in May. Renewal licenses will then be issued at the Town Clerk's office during regular business days in June. Such licenses shall be valid from July 1 through June 30. To be eligible to purchase a renewal license, a person must have been licensed for the previous year; and must have completed eight (8) hours of conservation work as determined by the Shellfish Conservation Commission. In the event that the number of qualifying applications exceeds the number of available licenses, licenses shall be awarded pursuant to the procedure set forth in Section 6 (I) of this Ordinance.

Of the eight (8) hours of conservation work one must complete for license renewal, at least four (4) hours of the conservation time must be used to do clam flat survey. If a survey is not needed in a particular year, license holders must still complete eight (8) hours of conservation time as determined by the Shellfish Commission. No person may perform conservation work as a surrogate for the applicant. The Shellfish Commission shall waive all or part of the requirement for conservation time for an applicant who provides the Commission with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled conservation time due to incapacitation by illness or injury. The Shellfish Commission may substitute other types of conservation work for the clam-survey work for those commercial harvesters age 60 and over. Any commercial harvester who removes clams from the flats for

personal use or sale while engaged in conservation work will not receive credit for that conservation work.

**New Commercial License:** New Commercial licenses procedures are set forth in Section 6 (I) of this Ordinance.

**F. License Expiration Date:** Each license issued under authority of this Ordinance expires at midnight on the thirtieth (30th) day of June.

**G.. Reciprocal Harvesting Privileges:** Freeport does not currently participate in a reciprocal harvesting agreement with any other municipality.

**H . Suspension:** If the Police Chief or Shellfish Warden presents to the Town Clerk evidence that any licensee has been convicted of two violations of this Ordinance within the license (July 1 to June 30) year, the Town Clerk shall give the licensee seven (7) days notice of the suspension of the license for thirty (30) days, stating the reason for the suspension. The licensee has the right to meet with the Town Clerk during that seven (7) day period to review the evidence of convictions in the Town Clerk's possession, and to present any evidence showing the licensee does not have the convictions. A third conviction of violations of this Ordinance in the same licensed year will result in forfeiture of the license for the remainder of the licensed year. This suspension/forfeiture rule applies to commercial licensees. A commercial harvester whose license has been suspended or forfeited may still be eligible for a renewal license in the subsequent year, provided he/she has fulfilled conservation -work requirements. See Section 11 for recreation license violations.

**I. New Commercial Licenses:** New Commercial licenses, when available, will be advertised in the local newspaper(s) during the first week of June in the year in which the license(s) become available (hereinafter called the new-license year). Applications for these licenses must be received by the Town Clerk no later than June 15 of the new-license year and must comply with the provisions of Section 6.B of this Ordinance. Any licenses(s) available for the new-license year will be issued by June 30 in accordance with the following procedure:

(1) The Town Clerk shall designate an assistant, who may be any appointed municipal official or municipal employee who is disinterested in the outcome of the procedure. "Disinterested" means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure. No elected municipal official and no member of the Shellfish Conservation Commission shall serve as the Clerk's assistant in carrying out this procedure.

(2) The Clerk shall prepare a list of the names of the qualifying applicants; the list need not be in any particular order. Next to each name on the list, the Clerk shall enter a unique three digit number, selected at random, and shall write each such number on an index card. All the index cards shall be of uniform size, color and texture.

(3) The Clerk's assistant shall then place all the numbered index cards in a box or other container capable of being closed and sufficiently large that the index cards can be mixed by shaking the container.

(4) The Clerk's assistant shall shake the container in order to mix the contents, and shall then place or hold the container at a location above the Clerk's eye level so that the Clerk can reach into the container and withdraw cards without seeing the numbers on the cards.

(5) The Clerk shall withdraw the cards one-by-one, reading each number drawn out loud. The Clerk's assistant shall make a list of each of the numbers so drawn in the order in which they are drawn. Then, using the list prepared under subparagraph 2 above, the Clerk shall place the corresponding applicant's name next to each number.

(6) The Clerk shall then issue the available licenses to the qualifying applicants, first to residents and then to non-residents, in the order in which their names appear on the list prepared under subparagraph (5).

(7) The procedure set forth in this Section 6 (I) shall be a public proceeding, open to the public pursuant to 1 M.R.S.A. Section 403, but no applicant or any member of the public has any right to participate in the procedure. Applicants are not required to be present at the time the licenses are issued. The procedure shall be conducted at the Freeport Town Office on the dates designated in Section 6 (E) (3) for each category of license, at a time to be set by the Clerk. The Clerk shall announce the exact time for the procedure by posting a notice in the Freeport Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide such notice shall not invalidate the results of the procedure.

**J. No Night Harvesting:** It is unlawful for any person to dig or take shellfish from the shores or flats of Freeport at night. For the purposes of this paragraph, the term "night" means that period of time beginning one hour after sunset and ending one hour before sunrise.

7. **OPENING AND CLOSING OF FLATS:** The Municipal Officers, with the approval of the Commissioner of Marine Resources, may open and close areas for

shellfish harvest. Upon recommendation of the Shellfish Conservation Commission and concurrence of the Department of Marine Resources Area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on ten-day's notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after hearing shall be based on findings of fact.

8. **FINES:** Any person harvesting shellfish in an area closed for conservation shall be subject to the following: violating any provision of this Ordinance shall be subject to, but not limited by, the penalties established by State Law, Title 12 M.R.S.A., Section 6671.
9. **MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:** It is unlawful to possess soft shell clams that are less than two (2) inches in length. The tolerance is listed below:
  - A. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if, beginning on the effective date of this article, they comprise less than 10% of any bulk pile; and beginning in calendar year 1986, they comprise less than 10% of any bulk pile. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the bulk pile or by count of the entire pile if it contains less than one (1) peck.
  - B. Method of Determining Tolerance: The tolerance is determined by a one (1) peck measure of a "LOT". The word "LOT" as used in this Ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel or container constitute a separate "LOT".
10. **EFFECTIVE DATE:** This Ordinance which has been approved by the Commissioner of Marine Resources shall become effective after its adoption by the Municipality provided a certified copy of the Ordinance is filed with the Commissioner within twenty (20) days of its adoption.
11. The possession of more than one (1) peck of clams by anyone not possessing valid State and Town - issued Commercial Licenses constitutes a court summons; and if the violator is found to be in violation in a court of law, he/she will automatically forfeit said Recreational license for the remainder of the license year.