

MINUTES
FREEPORT TOWN COUNCIL MEETING #16-21
FREEPORT TOWN HALL COUNCIL CHAMBERS
TUESDAY, JULY 6, 2021
6:30 p.m.

<u>ROLL CALL OF MEMBERS:</u>	PRESENT	EXCUSED	ABSENT
Edward Bradley, 242 Flying Point Road	x		
Jake Daniele, 264 Pownal Road	x		
John Egan, 38 Curtis Road (Chair)		x	
Henry Lawrence, 93 Hunter Road	x		
Daniel Piltch, 25 Quarry Lane	x		
Douglas Reighley, 2 Harbor Ridge Road	x		
Tawni Whitney, 56 Baldwin Road (Vice Chair)	x		

Vice Chair Whitney called the meeting to order at 6:34 p.m. and welcomed everyone. She took attendance and noted that Chair Egan is excused this evening but all other Councilors are here as well as the Town Manager.

FIRST ORDER OF BUSINESS: Pledge of Allegiance

Viewing the flag, everyone stood and recited the pledge.

SECOND ORDER OF BUSINESS: To waive the reading of the minutes of Meeting #15-21 held on June 15, 2021 and to accept the minutes as printed.

MOVED AND SECONDED: To waive the reading of the minutes of Meeting #15-21 held on June 15, 2021 and to accept the minutes as printed. (Reighley & Piltch) **VOTE:** (6 Ayes) (1 Excused-Egan)

THIRD ORDER OF BUSINESS: Announcements

Vice Chair Whitney announced:

The Appointments Committee will be meeting soon to consider applications for:

Openings on the newly established **Police Advisory Committee**
Vacancies on the **Library Board of Trustees and Sustainability Advisory Board.**
Expiring terms on the **Appeals Board, Board of Assessment Review, Complete Streets, Conservation Commission, Shellfish Conservation Commission and the sustainability Advisory Board.**

Applications and more information on committees are available at the Town Office or on the Town's website at www.freeportmaine.com. Please return completed applications as soon as possible to the Town Manager's office or e-mail Jhanselman@freeportmaine.com.

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- Nomination Papers for the November 2021 Municipal Election will be available on July 26th for the following offices in the Town of Freeport:
Town Council: At-Large and District 4 for 3-year terms
Sewer District: 3 seats for 3-year terms
Water District: 1 seat for 3-year term
RSU: 2 seats for 3-year terms

Papers are due back to the Town Clerk September 8th.

- Discounted and Free Passes are available at the Freeport Community Library – Freeport Conservation Trust and Friends of the Freeport Community Library have donated passes to the State Park Passes, Portland Museum of Art, the Children's Museum & Theatre of Maine, The Maine Wildlife Park and the Maine Maritime Museum. FMI stop by the Front Desk.
- The Winslow Park Summer Concert Series is back! The first concert will take place on Thursday, July 8th at 6:30 p.m. and will feature the Coastal Winds. Pack a picnic dinner, grab a blanket and enjoy a lovely evening at the Park with the whole family.

FOURTH ORDER OF BUSINESS: Information Exchange

Councilor Bradley introduced Dana Legawiec who is the new Executive Director of the Arts and Cultural Alliance of Freeport. He explained that the Alliance commissioned a Cultural Plan and knew that the creative economy was important and that they had silos full of artists in this town. Something came out of the Cultural Plan process that surprised a lot of them. While they were focused on a creative economy, artists and how the exchange of practice between artists and the community would create value for everyone, the people that responded to the Cultural Plan said what is really important is kids and education. It stunned them because here they were members of the community involved in the Arts and involved in the downtown and hadn't really focused on the connection to kids. He mentioned that it is not surprising because when you think about it, kids bring together the balance of arts in communities. When you are thinking about kids, you don't ask is this too much to bring to a kid? No, it is never too much. Is the participation of that kid through their art in your community ever too little? No, it is never too little. What stunned him again and surprised and delighted him when he first met Dana through her resume, (he had nothing to do with choosing her) was her emphasis on arts and education. She has an amazing set of credentials and education that would put most of us to shame. Her experience would as well but her focus in her arts practice is children's education.

Ms. Legawiec wanted to say that in addition to being an arts professional and an arts educator as well as a teaching artist who has worked in schools to create partnerships, she is really interested in the arts in service to fill in the blank. She looks forward to hearing from everyone in terms of what the arts can do for them, what needs they assess the arts could possibly fill and she does a lot of work in schools with children but what she is really interested in are filling those school/community partnerships and weaving a tapestry through the arts engagement between children and youth in our schools and the community at large. She thanked the Council and noted she is looking forward to working with them.

Councilor Bradley added that he feels that ACAF and the Town are at a critical stage in the development of arts in this community. Meeting House Arts is a reality. There are a few things left before they can open the event stage. The Arts Gallery is already open and has had its first show and by all account is successful. Now is the implementation of the concepts and they have hired someone who brings to them all the abilities it is going to take to go from a volunteer organization to a professionally run accountable organization for the arts. They are all delighted with Dana. They feel she is a valuable choice.

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Councilor Reighley advised that our Sister Cities Program which Freeport is part of, is asking if we would consider the possibility of when we design our gardens out here in front of Town Hall, if we could name one of those gardens as a tribute garden to our relationship with the City of Arkangelsk. That is one consideration to go before the Council, not today but it is a request.

Councilor Reighley noted the Ordinance Committee has met and they are awaiting now the approval of language by the Town Attorney for a new Noise Ordinance. A public hearing is next and then the adoption of the new Noise Ordinance which will be more friendly to Freeport residents and more definitive. They have other projects coming before them in the Ordinance Committee that he feels will be exciting.

Councilor Bradley asked if this is about airboats and was told that it is not. Councilor Reighley did add that airboats were part of the discussion but it is a marine regulation and we can't regulate it. Councilor Bradley explained that the only reason he asked is because at least a meeting ago there was an approach made to the Council with two ideas. One was we would deal with noise through regulating access to places close to where noise could be heard and the other was information that came out of the Shellfish Committee that thought a reasonable discussion with airboat operators could lead to reduced noise by cooperation with the Town. It was an idea that Peter had talked to people about a while ago. He hopes we are following through on that for the residents and the airboat operators. Councilor Reighley mentioned that one of our constituents brought up the fact that if we restricted launching of boats after 7 o'clock in the morning, that would be a great benefit in this situation. It is an on-going situation but conversation has not yet started. Mr. Joseph added that he had a conversation with Chair Egan and there was some work ongoing from the residents group that will come forward. Councilor Bradley noted he is the liaison to the Shellfish Commission and they said it is the wrong way to go. The right way to go is to talk to the airboat operators and get them to reduce their noise. He does not know what the right way to go is but thinks those two ideas ought to be on par to start and then as they work their way through the system, people can choose. He hopes we don't end up because we have a good lawyer representing well-positioned residents, we don't ignore the fact that people are making a living in the flats and they operate airboats to do it. Yes, they have created an issue but there may be a way to deal with it without doing something punitive and that is what he would like to see the Council explore at the same time. Mr. Joseph felt it would be coming from us from the Town side. He does not know if the residents group is interested in pursuing that avenue. He suggested the Council pursue it from the Council's level if that is the direction the Council wants to go. He thinks they can both happen at the same time and the residents group is probably focusing on the restriction side. Councilor Bradley pointed out that we all know things can take on a life of their own and a momentum that gets somewhere before someone else gets to speak about it. He has no idea what the right way to go on this is. He knows there are legitimate interests on both sides and he would like to see them come forward in the same forum before the Council grabs on to one way or the other. Mr. Joseph explained that neither of those are on the agenda for the next meeting. He will make sure to have a conversation with Chair Egan when he is back in town because it appears to be a fair discussion to have with both interests at the same time.

Councilor Piltch reminded everyone that in addition to all the events going on at L.L. Bean, we have free drive-in movies at Freeport Community Services in conjunction with the RSU Community Programs. Even though it is free, you have to reserve a spot on the Freeport Community Services website or the RSU5community programs website. They will be shown every other week throughout the summer.

Councilor Daniele mentioned that the last time we talked about bridges, there was concern about MDOT changing the plans. The Bridge Committee has been meeting with them and the good news is that they made some positive changes and reverted a few things back. The 12-foot path extends a little bit further like we originally thought so he wanted to put everyone's mind at ease a little bit. He advised that the

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Active Living Committee had their final meeting. It was fun and exciting because they have transitioned over to a Connect Freeport Work Group. He publicly recognized Andy the Chair, Todd, and the new energy from Liz and the rest of the team. He feels they really just grabbed it and ran with it and now Connect Freeport has already started to do things. They had a site walk from Pine Tree Academy down to the highway to figure out once you cross the bridge, how does the rest of the East/West loop work out? He gave a shout out to Adam Bliss, the Town Engineer because he was insurmountable in getting that done.

Councilor Bradley mentioned he had a budget item he wanted to talk to the Council about. We have been through our budget. We worked hard and resolved our philosophical value emphasis in a way that he felt was very positive and produced for the Municipal side a budget that increased by less than \$100,000. He feels the Council was proud with the amount of give and take that went into it and the amount of consideration. It has come to his attention that the overall increase in the Town budget is 4.43%. It is one of the highest increases in our budget in recent history. The reason for that is not us predominantly but the increase in the RSU Budget. He wanted to say at the start that nothing he is saying here raises any objection or concern about any expenditure in the RSU Budget but just to note from the beginning that the increase in the budget is significantly high. He also heard as everybody else did in the last week or so that our State Government has produced a huge amount of aid for education which was designed to prevent those kinds of increases in communities like ours. Putting those two things together, he started asking questions about how much money was that, how much money came to us, how much money that came to us was used to reduce the RSU Budget so that our 4.43% increase was reduced to that level? The amount of money the RSU got for its educational support was \$430,000 and the answer to how much of it was used to reduce the tax impact was none. That caused him to ask more questions and what concerns him, as he is sure concerns everybody, RSU or Town Councilor, is that these are tough times for everybody. COVID has not helped anybody. The acceleration of property values in town is not helping anybody that wants to stay in their house and pay less tax. That \$430,000 was supposed to help and it hasn't. If you ask the question why, you get a very rational answer: the timing of our budget was different than the State's time so we didn't have anything in our warrant that would have allowed us to apply any extra money we got from the State to reduce property taxes although that is what we would have done and by the way, that is what we will do in the future with that money. That is the context.

Councilor Bradley's concern is that even though the RSU wants to use that money and would want to use it right away if they could, they don't see yet a mechanism for doing that and if they wait to do it, it may be just a reserve account he fears just as his fear is for our reserve accounts that fund spending but do not have to be disciplined. He has said that but more to the point it will delay the benefit of that money that came to the population this year for two years. The guy that needs help will not get any from the State because of what has happened. So, what do you do about it? He called Superintendent Foley because it seemed fair to ask these questions of the source. He hopes what he has to say doesn't misrepresent it but she is open to a discussion about another warrant, one that would put to the voter, do you want to take the \$430,000 and apply it for property tax relief? His view is that we should ask the RSU if they would be willing to do that but it won't happen by virtue of him being on the phone with Superintendent Foley. He would like to suggest that the Council with all due respect to the RSU and their enormous responsibility to educate our kids and use the money that we raise through taxes in a responsible way, ask them whether since it was a timing issue which they would have done differently, if they would consider another warrant to the people to ask whether some of that money, which the government gave to towns for property tax relief, and apply it to property tax relief in this tax year rather than two years from now? If other Councilors agree, he suggests that we accept Superintendent Foley's openness to a meeting between this Council, the Durham and Pownal government officials to talk to the RSU Board to see if there is a way we can provide this tax relief in the timeframe that the Legislature provided it for. That is his question to the Council. If we thought that this was worth doing, we should ask Mr. Joseph and Chair

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Egan to call the superintendent and say, Ed made this, it may be right, it may be wrong, presentation about this. If you are open to this, we would like to have it.

Mr. Joseph advised that the Council usually meets jointly with the Select Boards from both of those towns and the School Board from RSU5. We didn't do it this year because it usually happens in January, February and March and we didn't do it since nobody was meeting in person. He feels there is no reason we couldn't have a 4-way meeting of those 4 boards, notice it and have a meeting soon if that is something the Council wants to do. If the Council does want to meet, he suggested doing it soon because of the tax commitment. September and October are too late. It makes sense to do it soon.

As a taxpayer, Mr. Joseph agrees with everything Councilor Bradley just said but he wanted to point out that there is a cost to holding an election. It is not huge, approximately a few thousand dollars but we need to take that into consideration. The amount, when you add Freeport, Durham and Pownal altogether, is more than \$400,000. He does not know what it is.

Councilor Bradley added that he sat down with our Finance Director today to go through the numbers to get a feeling for what the magnitude of this would be. It would drop our Municipal tax rate from 4.43% to 2.76% and the difference for a median house is \$165 a year for a \$300,000 house. If you put \$165 against \$300,000, it is not a lot of money but when you think about the person trying to make money to pay for that \$300,000 house, in many cases it is. He has heard in District 2 when he went around in those Town meetings, from this quiet group, "What are you going to do about taxes? They are killing me." It doesn't kill everybody but it kills the people that have been here the longest. The ones that watched the value of their houses grow while their income stayed stable and stagnant. Those are the people he is asking the Council to think about when they make their judgment about this.

Councilor Lawrence advised that he agrees with Councilor Bradley. It is worth asking the question. Mr. Joseph added that he will see how quickly he can set up a meeting noting it is summer. Councilor Reighley mentioned that if the Council is not going to Bustin's, that would be a good time for a meeting.

Vice Chair Whitney advised that on July 17th we are having a beautiful tethered hot air balloon coming to Freeport. Thank you to Casco Bay Ford, Brunswick Dental and AARP for greatly offsetting the cost so there be very low-priced tickets charged if anyone would like to attend. The first hour will be free to our local Elders so they will have an opportunity to experience what it is like in the high and friendly sky above Freeport.

With our Downtown Revisioning work, Vice Chair Whitney advised that they would love the involvement of any residents who would like to jump in and grab a paintbrush or roll up their sleeves or do anything they would like to be a part of some of our downtown work. This project is to make downtown better for everybody so if anyone wants to jump on board, they would love to have them.

Vice Chair Whitney announced that we have two new stores downtown. The Maine Organic Market Place is located at the Bartol Library and Coastal Carvings has moved into 42 Main Street. Please stop by and visit those businesses.

FIFTH ORDER OF BUSINESS: Town Manager's Report

Mr. Joseph advised that the final budget that was approved by the Legislature and signed by the Governor did include the 4.5% revenue sharing we were predicting so he is reporting that back. The good news is that it is scheduled to go up to 5% next year. It would take a positive action of the Legislature to change

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that at this point. We will see another couple of hundred thousand dollars increase from that against the Municipal tax already. It was a huge commitment by the Legislature. He has been talking to our State Representative that the Council knows was our Council Chair for a few years and was on the Council 7 or 8 years ago when we first started seeing Revenue Sharing cuts that happened under the previous administration and previous Legislature. The way to balance the State Budget in a lot of instances was to cut aid to Municipalities. A lot of the officials that were Town officials at that time and had to deal with that trickle down effect from the State cuts have now moved up the food chain and ran for office and are now Legislators and there is a large strong Municipal caucus of officials in the Legislature so it is a very receptive Legislature to Municipal needs which was shown in this last session. It is a really good sign but of course, we should not get complacent because it could change someday. It always swings one way or another but we are feeling good now and for the next year but who knows how long it will last.

LD32 is remote participation in governmental meetings. It was approved in this session and allows remote participation. Before, someone like Chair Egan could phone into a meeting if he had a WIFI connection in the airplane but he could not count towards a quorum and could never vote. He could be part of a discussion like someone in the audience but he could never vote. LD32 changed that but under a very narrow set of circumstances. So, illness, weather, geographical distance so people who make up a government board like on Bustin's Island don't have to drive to Maine for a meeting in December, January or February when they are not on the island. We need to set a policy. We have asked for some of the model policies that are out there. We need to establish a policy that defines very clearly the set of circumstances when the Town will allow participation both by members of Boards and the audience. Our remote participation by audience members has always been wide open and he does not see that changing. He explained that we have been installing some hardware that will allow people to Zoom into Council meetings from the audience. It is not ready yet but it may be ready by our next meeting but definitely by the meeting after that. There will actually be a laptop in there and people will be able to see all Councilors and the Council will be able to see the person on the screen with speakers and be able to talk. A resident in Florida will be able to Zoom into a meeting in the middle of December and it is a two-way sword. It will work both for us and against us but it is right for the public to have that happen. We don't need a Council action for that but he will talk with Chair Egan and Vice Chair Whitney and set it on the July 20th agenda. We will need to have a public hearing on that date as well. He asked if there is anybody opposed to them taking it up? He feels we need to take it up as soon as possible. No one voiced any concern so Mr. Joseph will draft something for the Council to look at and debate whether it is the right policy or not. He can't imagine it will be long and it will be set up for a public hearing on the 20th.

Councilor Daniele asked about commuting to work so you are not able to make a meeting at the normal time because you have to commute an hour? Would that be an acceptable circumstance? Mr. Joseph explained that if you are physically out of the geographical area it is really vague. The intent in the deliberations on why this almost did not pass is because people don't want this to be the norm. They are concerned about people hiding in controversial items from their constituents. They want there to be real circumstances. The Council will be able to set what the standard is so he suggested that Councilors give this some thought before the 20th. Perhaps the Council would want to set a distance limit or something like that. It is just a policy and can change at any time after a public hearing to get feedback.

Mr. Joseph mentioned the new Maine Organic Country Store which has opened. Everyone should stop and check it out. They are still expanding. They are only using a part of the building right now but will move it up. We have a new ambulance in town. We are doing a phased changeover of the fleet from van-based Ford Econoline version fronts to actual pick-up fronts with chassis. We have had a couple of problems with transmissions and frames so they went the next step up to a heavy truck. It is 4-wheel drive on demand which will give us better traction. They are white. Mustard colored ambulances tend to sit with a For Sale sign on them behind the Public Works Garage for years. All the small vehicles are moving

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to white with a little bit better visibility in an emergency scenario as well. The big apparatus will stay yellow. Councilor Reighley added that one of the new Public Works trucks is white.

Councilor Bradley advised that the Meeting House Arts is open. There is a gallery show at Meeting House Arts and it has been open since the Fourth. It is a spectacular way to see the Meeting House but is also great art from all our local artists. It is all within our ability to acquire and hang art in our own spaces. It is great stuff. He encouraged the Council to go and look at it and be supportive of it.

Mr. Joseph advised Vice Chair Whitney that her enthusiasm about some of the replacements that are going on in town is really cool to see. A lot of vitality popping up is good.

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

MOVED AND SECONDED: To open the Public Comment Period. (Reighley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

There were no public comments provided.

MOVED AND SECONDED: To close the Public Comment Period. (Reighley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

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

ITEM # 112-21 To consider action relative to adopting the July 6, 2021 Consent Agenda.

BE IT ORDERED: That the July 6, 2021 Consent Agenda be adopted.
(Whitney & Reighley) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

ITEM # 113-21 To consider action relative to Special Amusement Permit renewals. Public Hearing.

MOVED AND SECONDED: To open the public hearing. (Piltch & Reighley)
VOTE: (6 Ayes) (1 Excused-Egan) (0 Nays)

There were no public comments provided.

Councilor Bradley asked if this has something to do with liquor? Mr. Joseph explained that the Special Amusement Permit is required because of alcohol and fun happening in the same location at the same time whether it is music, dancing or bands served alongside a liquor license.

MOVED AND SECONDED: To close the public hearing. (Piltch & Reighley)
VOTE: (6 Ayes) (1 Excused-Egan) (0 Nays)

BE IT ORDERED: That the following Special Amusement Permit be renewed pending Code Enforcement and Fire Chief approval and payment of all applicable fees.

1. Cadenza, 5 Depot Street

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2. Stars and Stripes Brewing, 8 Varney Road
 3. Harraseeket Inn Inc., 162 Main Street
 4. Athena's Cantina, 491 US Route 1, Unit 10
 5. Hilton Garden Inn, 5 Park Street
- (Piltch & Reighley) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

ITEM # 114-21 To consider action relative to a new liquor license for Mast Landing Brewing Company. Public Hearing

MOVED AND SECONDED: To open the public hearing. (Bradley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

There were no public comments provided.

MOVED AND SECONDED: To close the public hearing. (Reighley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

BE IT ORDERED: That a new liquor license for Mast Landing Brewing Company located at 200 Lower Main Street, Suite A-120 be approved. (Reighley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

ITEM # 115-21 To consider action relative to the reenactment of Freeport Ordinance Chapter 60, Emergency Ordinance: Temporary Suspension of Certain Ordinance Standards to Safely Accommodate Expanded Outdoor Business Activities due to COVID-19 to be effective July 6, 2021 until September 4, 2021, pursuant to the Freeport Town Charter, Section 2.14 "Emergency Ordinance",

Councilor Bradley asked why the Council has to do this why all of a sudden everything is out and open? Why do we need this anymore?

BE IT ORDAINED: That Chapter 60, Emergency Ordinance: Temporary Suspension of Certain Ordinance Standards to Safely Accommodate Expanded Outdoor Business Activities due to COVID-19 to be effective July 6, 2021 until September 4, 2021, pursuant to the Freeport Town Charter, Section 2.14 "Emergency Ordinance" be re-enacted without amendments as stated in the agenda. (Lawrence & Piltch)

Councilor Daniele to Councilor Bradley's point, asked at what point do we make this permanent or to what point does it change or stop doing it? What are we gaining from this and if we are gaining, why don't we make this permanent?

Vice Chair Whitney advised that she discussed this with Mr. Joseph earlier and they felt that the right thing to do would be to put this to the Planning Board to go through it and their hope is to be able to adopt this in September and make it permanent but felt it should go through the Planning Board for them to tease anything that might possibly did not work but most everything has really worked well not only for the businesses but also for Town Staff. Mr. Joseph explained that it has to by law to make any zoning amendment other than an emergency ordinance change which is revocable either on the Council's say so

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or a petition by the public to make any permanent change to the Zoning Ordinance. Items like outdoor dining actually has to be recommended through the Planning Board process to the Council.

Councilor Lawrence clarified that this is to continue allowing outdoor dining and those kinds of activities since we haven't changed our Ordinances yet as well as signage. Mr. Joseph thinks it has been on the Planning Board's agenda but they have a backlog of things to get done and they haven't gotten to this yet. He mentioned food trucks and that some of these things would not be allowable under our current ordinances. He mentioned that the Maine Beer Company has rented a big tent for a summer that they are not permitted to have otherwise. He doesn't think the Town would go out tomorrow with enforcement but they can't do that.

Councilor Reighley mentioned that with great logic this gives us a chance for experimental time so we can see what works and what doesn't work and then we can make those changes. He thinks this is a great way to do this but it is tedious to do it every two months. Councilor Piltch added that he thought there was some talk about the Planning Board and the Project Review Board getting together with representation from the Council and Complete Streets to talk about the larger issues of what else needs to change in the Ordinance because there is overlay upon overlay upon overlay and it is getting pretty tedious so they are asking for an overhaul of the Ordinances so the Council should think about that as well as just saying limit the changes to the Emergency Ordinance.

Councilor Bradley noted he was not here when it happened and did not hear the arguments in the discussion. It seems to him that because of COVID we have relaxed standards in our community and it made sense. We didn't go through any process to vet any of those changes so anybody that had concerns about what that did to the character of the town never got to say anything. Now we are continuing to do that under the Downtown Revisioning. Which is let's try things and see what works which is a little different rationale and we could go on and on. The lawyer in him is saying at some point we have to reckon with the fact that none of this has been put into law. This is special and is an exceptional situation and we are going to run out of exceptional moments maybe. That is why he asked the question.

Councilor Lawrence thinks this just extends it because of the way the whole process of opening the economy happened so quickly with COVID, we didn't have time to get what we needed done. We need to do this.

Councilor Reighley advised that he volunteered the Ordinance Committee to do anything that is necessary to go through them to be done as well. Mr. Joseph advised that this is not where it is at because of lack of action on the Council's part. It isn't that we haven't done anything. There is a list of Planning Board items and since it was not a pressing need, it was at the bottom. Now after the elimination of all the restrictions, it is at the top of the list. It is not to say they are not working. There is a lot going on and it is not the Planning Board's fault. He feels we can give the Planning Board direction if that is what he is hearing from the Council. Councilors were in agreement.

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

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

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WHEREAS, the Town of Freeport may continue to have a reduced number of visitors, which would create a corresponding economic hardship to many of its businesses, and which could be mitigated to some extent by allowing expanded outdoor business activities, and

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

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

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

WHEREAS, the temporary suspension of certain ordinance standards and restrictions governing outdoor business activities is immediately necessary to protect the health, safety and welfare of businesses and their employees, and the patrons of those businesses, and

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

NOW THEREFORE BE IT ORDAINED:

That for the time period from July 7, 2021 until September 5, 2021, unless this ordinance is repealed by the Town Council prior to September 5, 2021, the following emergency exceptions to established ordinance provisions of the Town of Freeport shall be in effect, and shall apply to any existing business within the Town of Freeport, that is otherwise operating in compliance with all municipal ordinances and regulations in effect.

I. Chapter 23 - Sign Ordinance

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

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

- A) Limits on number and length of outdoor sidewalk or tent sales described in this section shall be suspended for the duration of this Ordinance. In order to be exempted as described above,

all merchandise and items used for the outdoor set-up (including but not limited to tables, tents, and retail fixtures) must be brought inside when the business is not open if they cannot be safely secured. This exception also applies to outdoor setups for tourist information centers.

- B) To be exempted as described above, all businesses conducting temporary outdoor sales must obtain a temporary activity permit from the Codes Office/Planning Department. No other land use approvals beyond a temporary activity permit shall be required for these uses.
- C) Section 501(D) shall be replaced with the following language for the duration of time while this ordinance is in effect: "Peddler activities and food trucks during events held by a Freeport business or organization, in compliance with current guidance from the Maine and US Centers for Disease Control, and which are reasonably expected to draw additional visitors to Freeport, are considered a temporary activity subject to the requirements of section 501(A)(2-4), section 526, and section 526A of this ordinance. Said events are not required to obtain a Special Event Permit unless they meet the criteria listed in Freeport Ordinance Chapter 10. Up to four temporary activity permits may be issued under this section per day, and shall be issued on a first-come, first-served basis."

III. Chapter 21 – Freeport Zoning Ordinance, Section 526-A – Food Trucks

- A) Section 526-A (B)(11) shall be replaced with the following language for the duration of time while this ordinance is in effect: "not have any furniture, umbrellas, or other objects or structures outside of the food truck. Generators may be used when the food truck is located on a parcel that does not abut a parcel with a current residential use."

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

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

- E) Any tents, awnings, or temporary shelters utilized for purposes described in section III (A) and III (B) shall comply with applicable regulations of the State of Maine Fire Marshall's Office and the Town of Freeport's Fire Prevention Code.
- F) The exemptions described in sections III (A) and III (B) shall apply to existing Freeport businesses/educational facilities only. New business locations and/or educational facilities must undergo all applicable land use reviews, including but not limited to site plan review, design review, building permit review, and sign permit review.

V. Chapter 11 - Building Code Ordinance

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

VI. Chapter 22 - Design Review Ordinance

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

VOTE: (6 Ayes) (1 Excused-Egan) (0 Nays)

ITEM # 116-21 To consider action relative to the approval of a Notice of Proposed Vacation, proposing to vacate a 40' wide unnamed road running parallel to Lower Flying Point Road shown upon a Subdivision plan named "Plan of Flying Point Shores-Section III", dated October 1949 and recorded in the Cumberland County Registry of Deeds in Plan Book 34, Page 44.

BE IT ORDERED: That the notice of proposed vacation be approved.
(Reighley & Piltch)

Mr. Joseph explained that this is the pre-action vote. He pointed out on a tax map where the strip runs. This would vacate the Town's right to ever accept it and the Town has no intention of ever using it because it runs across people's properties and never goes anywhere. This was brought by a resident. It is actually a petition and the resident is exposed to any claims that are made as a result of the petition. He has not heard anything from residents that are concerned about this going away. He has heard from several residents that are in favor.

Councilor Daniele asked why this was voted down in 2017 and several times before that? He read that the Town Council voted to continue the Town's interest in this paper street multiple times. Mr. Joseph explained that the Town voted for blanket approval of all the paper streets. There was no interest by the town in keeping this one but there was no appetite to go through them one by one. Back in 1997 they got 12 paper streets in and then decided they couldn't figure it out. They couldn't get agreement from anybody so they never took any action and carried over the full slate 20 more years. The Council in 2017 did the same exact thing. There were 3 or 4 that were taken out but it took Council meetings from December until May or June. It was a 6-month process where the Council met repeatedly. There were

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public hearings and then the Town took those streets off the list that included all the other paper streets that included this one here and discontinued everything minus 3 or 4.

Councilor Reighley believed the only Councilor on the Council at that time was Chair Egan. Councilor Bradley noted he did not know much about this but it gives rights to potentially everyone in Town to travel on that street. Mr. Joseph disagreed and advised that this came up because it is a future potential Town road. We have the right to accept it and turn it into a Town road. Councilor Bradley asked if anybody asked anybody if they would want to do that for any reason that lives in this district that happens to be his? Mr. Joseph advised that that is the purpose of sending out the notice. It gets sent to everybody on that subdivision plan. Notices are not sent to everybody on the Lower Flying Point Road because it is not what the State Law says. Councilor Bradley noted that if he wants to let his district know, he should do it. Mr. Joseph added that these become contentious when they access the waterfront or access something but this doesn't have an in point on a public road so it doesn't continue over Lot 33.

Councilor Daniele asked if this would impact property taxes for these individuals because they now have more buildable space on the shoreline? Mr. Joseph advised that it could go up because they would have the right to build on other parts of their lot that they don't right now so they could choose to do something that would increase their property tax.

VOTE: (6 Ayes) (1 Excused-Egan) (0 Nays)

ITEM # 117-21 To consider action relative to awarding a bid for a new Street Sweeper.

BE IT ORDERED: That the bid for a new Street Sweeper be awarded to Alta Environmental Solutions of Lewiston, Me in the amount of \$237,400.(Daniele & Reighley)

Note: \$280,000.00 was included in the FY21-22 Public Works Capital Budget for the purchase of a new Street Sweeper. The total bid price with trade-in included is \$237,400.00.

Public Works Director, Earl Gibson offered to answer questions. He noted he received four bids and demo'd two machines. It is white and he advised that all public works vehicles will be white.

VOTE: (6 Ayes) (1 Excused-Egan) (0 Nays)

ITEM# 118-21 To consider action relative to awarding a bid for a new Oil/Water Separator for Public Works Garage, 7 Hunter Rd.

BE IT ORDERED: That the bid for a new Oil/Water Separator be awarded to Precision Tanks of Jay, Maine in the amount of \$59,680. (Bradley & Reighley)

Note: \$60,000.00 was included in the FY21 Capital Budget for this replacement.

Public Works Director, Earl Gibson advised that they have to contain everything in their building and everything goes into a Separator.

VOTE: (6 Ayes) (1 Excused-Egan) (0 Nays)

OTHER BUSINESS:

1. Discussion of request to waive civil penalty and administrative costs associated with Consent Agreement at 250 Wolfes Neck Road.

Mr. Joseph advised that this is in front of the Council for feedback purposes but there is a possibility the Council could issue an order as a result of this if it feels it is appropriate. He explained that the actual action does not require Council approval but Staff felt it was appropriate because we got a request from the property owner for Council consideration of the dollar amount in question and there has never been a Town policy or decision on this type of thing that the current Staff is aware of. We have had several discussions of these recently so A) we want to be consistent and B) want to be consistent with recent Council decisions and discussions. If the Council felt this was an inappropriate direction we were going, and if the Council thought the request from the property owner was correct and wanted to get that input at Staff level, we could take that back. If it continues down this road, it would be a Staff process to resolution with the property owner which we are already kind of well down that road. Other than the proposed Consent Agreement, there is one point that is really sticking which is the cost.

He explained that the amount is \$25,000 with all but \$10,000 held if the conditions of the Consent Agreement are completed. It would essentially be that the re-plantings are maintained over a period of time and or future plantings are done to make sure a certain number of trees live beyond a certain amount of time.

That is a typical condition in plantings approved by DEP. This number was chosen from a previous Consent Agreement agreed to by a property owner where a timber harvester went in and was told that they couldn't cut in a particular area by the DEP and the Town but went and cut it anyway and the property owner and contractor agreed to a similarly structured Consent Agreement. We are trying to be consistent with that but it doesn't really legally affect the people here in front of the Council but that is where Staff got that number. We also got feedback from the Town Attorney that it was consistent and it is important to note that DEP has co-equal enforcement authority here. They don't always get involved with these but they have the ability to go over our heads and pursue a separate citation or take action against the Town if we do something that is not up to their standards. No action is really needed by the Council tonight but the property owner would appreciate some kind of direction but it does not need to happen tonight. It could take place at a future meeting or the Council could decide something tonight.

Councilor Bradley understands that this is not a fine that would have to be paid currently. It is a potential provision if the planting agreed to is not carried out in accordance with the Consent Agreement. Mr. Joseph advised there is a \$10,000 fee. Of the \$10,000 proposed, \$2,500 is a cost that is between the Codes Officer's costs and the Attorney's cost and there is no disagreement about that. The property owner is in agreement that that is fair. The \$7,500 is the civil penalty on top of that to get to \$10,000. \$15,000 would be held assuming that everything is done and it usually is. Councilor Bradley noted that the money we are talking about tonight is \$10,000 you are proposing the landowner pay regardless of whether he does the planting or not. It is another penalty. Attorney Gordon Smith agreed. Councilor Bradley added that the reason Mr. Joseph feels it should be done is to be consistent with a prior practice regarding an earlier one where there was clearly a violation of a standard that was identified and ignored. He mentioned that this one doesn't appear to have any blame to it. It was a misunderstanding and it was not like a violation or ignorance of an order so he asked why was Staff thinking that an equivalent penalty should be assessed?

Mr. Joseph was not sure since he was not the Staff that was involved with the assessment and he is not sure they would agree that there was no knowledge of it. He knows there was a Coastal Waters' denial of

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a permit for the work that was constructed. Councilor Bradley noted there was a pre-application to do this that was denied and then they went ahead and did it anyway? Mr. Joseph advised that they did something but he didn't think it was what was proposed.

Attorney Gordon Smith advised that he is representing Jeff Davis, the landowner, at 250 Wolfe's Neck Road. Mr. Davis and his neighbor applied to build a permanent pier with pilings several years ago. The stretcher in the water that he actually put in there was 16 inches wide. It was 2 by on top of milk crates that you would take in and out in the summer. It is not acceptable and you still need a permit to do that but he did not have one. The Codes Officer is saying he was denied a permit and went out and built it anyway but that does not jive with the facts. Mr. Davis was mistaken putting those 2 bys out there on the mudflats without a permit but the idea that he was willfully doing what he was told not to do is not suggestive of what was done. There is nothing there now and this applies to this boardwalk as well as a couple of other things like a stone patio and a deck that was 5 feet wide instead of 4 feet wide. Everything is in compliance now. It is either not there or it is sized appropriately and a permit has been obtained. Mr. Davis advised Councilor Bradley that this is a punitive fine that is being assessed in the \$7,500 amount of it in excess of the Town's attorney's fees and that does not seem appropriate. These were unknowing violations and when they were brought to Mr. Davis' attention, he has worked diligently with the Town up to now to correct them. At the end of this process without a fine being discussed during this year-long negotiation, the Town came back and said "we are going to assess a \$25,000 fine with \$10,000 of it payable right now. We will keep \$15,000 in advance as an enforcement mechanism.

Councilor Bradley noted that the \$15,000 is to make sure Mr. Davis complies with the replanting that is part of the deal but \$10,000 is a straight fine. Mr. Joseph added that there are specifically survival plantings and it is what that money is usually used for. 80% of them have to survive beyond a certain period and they would obviously have the ability to correct it.

Councilor Reighley asked if it went before the Board of Appeals and Attorney Smith advised that they filed a place holder appeal at the beginning of this process but instead of going that route, Mr. Davis tried to work with the Town and tried to fix all problems.

Councilor Piltch clarified that the deck, patio and boardwalk have all been removed and are in compliance but now the only issue is the trees. It is hard to undue once they are cut and that is what is involved in the fines here. Attorney Smith advised that the fines are being levied for the violations as a whole. Mr. Joseph did not think it was one part. He is correct that it is for the whole case. Attorney Smith mentioned that Nick Adams e-mailed to the Town Manager saying, "You asked me to support why we are asking this number." It is part of the packet that was sent to the Council. In the last paragraph he said that "Given there are over 50 violations on this property, the Town enters into these Administrative Consent Agreements to ensure that the violations get corrected. Based on DEP and my experience \$500 per these types of violations is justified and has been used for years." Attorney Smith noted that even assuming a punitive fine is appropriate, which he does not feel any punitive fine is appropriate because Mr. Davis has been working with the Town since this came to light. Even if it is, the Codes Officer saying \$500 for a violation fine is sort of the standard and he does not know where the 50 violations came from. In looking at the notice for the Consent Agreement, there are 4 or 5 so that \$25,000 total number that the Town came up with is based on the calculation of 50 violations at \$500 per violation.

Mr. Joseph did not have good information on the 50 but tree cutting was one but he felt Mr. Adams was not counting every tree or it would be 200.

Councilor Daniele asked Attorney Smith how many violations he and his client feel there were? Attorney Smith suggested looking at the Consent Agreement that the Town has proposed, there are maybe 5

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essential violations. Councilor Daniele asked if they would be willing to accept the \$1,500 for the lawyer fees and \$500 times 5 which would be \$5,000? Attorney Smith mentioned it would obviously be better but he does not feel a punitive fine is appropriate. If the Town wants to impose a punitive fine, that seems like a correct mathematical formula. Councilor Reighley asked if Councilors feel it is fair that we only assess the \$2,500? Mr. Joseph added that the main thing he is concerned about is correcting the violation with the \$25,000 guillotine hanging out there he thinks is far sufficient. Anything we don't assess as a penalty; he would like that held aside assuming that full compliance happens. Councilor Bradley asked if \$15,000 is enough to make sure full compliance happens which is what they agreed to? Mr. Joseph noted it is a lot and is actually less than the actual work that they will pay. Councilor Piltch noted that they said the cost of implementing the plan is estimated to be \$12,000 to \$15,000 and we are not collecting the \$15,000, we are just reserving the right to collect it later if the plan doesn't go through. Mr. Joseph added that they agreed with us in a contractual agreement that that would be payable. Councilor Reighley advised that we do wish to recover our \$2,500 in legal fees and Mr. Joseph advised there is no dispute that that is a reasonable amount.

Councilor Piltch asked if the tree cutter was a professional forester? Attorney Smith advised that Mr. Davis went out and cleared a bunch of trees after a storm and had someone else come in and cut it up and haul it out or chip it up. Councilor Piltch noted it looks like some of the trees were dead and some were not dead. Attorney Smith advised that most of them were dead or damaged but it is impossible to tell exactly which ones were not dead. There are still some trees there so it was cleared but not clear cut. Councilor Piltch wanted to clarify that the professional forester that was there did not cut down any trees but only cut up the trees that Mr. Davis cut down. Attorney Smith advised that it was not the professional forester that did that. He was the one that developed the new replanting plan that they have been working with the Town on and will be reimplemented and Mr. Davis will spend \$12,000 to \$15,000. The person that cut the trees up was a contractor.

Mr. Joseph noted that Vice Chair Whitney just asked him what happens if the Council does something versus does nothing? He feels he should set that up. If the Council gives direction, he will take it and go on with it and both sides keep talking. If the Council decides to do nothing, the ball is in the property owner's court about whether they want to go forward with the \$10,000 Consent Agreement or pursue a couple of other avenues. The Zoning Board is obvious one of them or they could challenge the ruling. It would be up to the property owner on how to proceed at that time. Both Mr. Joseph and Mr. Adams felt that the amount was significant enough and something that will come up again and we want to get some legislative feedback from the legislative body. He feels there is not a place for the Council to vote on it but they welcome the feedback and he would like 7 Ayes on it, not just his.

Councilor Bradley doesn't hear that there was a blatant violation of an order not to do something. There was a mistake made based on assumptions of what could be done, probably ignorance but not something that was a direct violation of the law. He has no problem with the \$2,500 and he has no problem with \$15,000 being written into the Consent Agreement to hold as a guarantee against the planting. He sees nothing punitive in this situation and added that he sees a pattern of aggressive action on the part of our Codes Enforcement Office with respect to these things that we are then asked to address as political leaders of the Town. Time after time we have said, "We think you went a little far." He thinks this is a little far for his taste as the person that represents this District. He would not vote for it but that is how he feels as far as terms of direction.

Councilor Lawrence noted he feels there doesn't seem to be any mal intent here. He does not feel the punitive part needs to be part of this. He could go with the \$15,000 and the \$2,500. Councilor Reighley is happy that the property owner is willing to cover the Town's legal costs on this and he does not see any

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reason for any other collection of moneys. He is happy there was no clear cutting which is the sense of violation on any of our shoreland properties.

Councilor Piltch asked if this hinders us in the future if somebody else on a shorefront property says, "I am just going to pretend I didn't know and cut down a bunch of trees because it looks like the Town is only handling out \$2,500 fines and it is worth it for me to have a better view or some other reason." Do they have any leg to stand on this case and say in this case you only charged this so you are misusing your power if you charge a different amount to someone else? Mr. Joseph added that is the feedback from the State that eventually things can't be just consented away without some financial penalty. He is not sure if the State will decide to take action on this or not. Councilor Piltch asked if Freeport assesses a lower fine, if the State could come and assess a different fine. Mr. Joseph added they could come after us.

Councilor Daniele asked if it would change anything if the Council tables this for two weeks so we could think about it and have a body of seven? Is there a timetable that needs to be done at any certain time? Mr. Joseph advised that if the Council wants more time, no one from the Town's end will push this.

Councilor Bradley advised that Councilor Piltch said that if we were to drop the penalty to \$2,500, the penalty is in the replanting of the entire property which is a \$15,000 or \$20,000 penalty so it is not like oh, here is \$2,500 and we have a clear view. They have \$2,500 and whatever the planting cost and no view. Councilor Piltch pointed out that that is for the remediation to undue what was done.

Councilor Lawrence advised that the property owner is trying to correct the situation. He does not feel the punitive part needs to be part of this. Councilor Piltch mentioned his concern about the future and he doesn't know enough to know if he has that answer. He agrees with Councilor Daniele and would prefer another two weeks. Attorney Smith advised that the only drawback waiting two more weeks is that his client would have to pay him to come back. He wanted to address the point if this binds the Town in the future. He feels the Town will look to past practice in taking enforcement action but it has unfettered discretion in its enforcement decisions. When it is looking at specific facts in a situation, it can decide if a situation does merit a punitive fine and, in this instance, he does not feel it does merit a punitive fine.

Mr. Joseph advised that he would like more time to research and talk to the head of the DEP to determine what action they are prepared to take if we don't do something. They could come after us for not enforcing the Shoreland Zoning Law.

Councilor Bradley feels that if DEP has a standard that we should be enforcing to get \$10,000 more out of the situation, they should show us the standard. Mr. Joseph wants to confirm to the best extent that we can that it isn't something that is going to come back on us.

Councilor Daniele requested that the Codes Officer be here next time because if we are going to have these discussions, it would be nice to say, "Why did you say these things?" Others agreed.

Councilor Bradley advised that he would not have a problem having the Consent Agreement make it clear that if the mitigation is not done according to the plan, \$15,000 is punitive on top of making sure it was done. That is the risk he is taking. He suggested waiting and take the two weeks.

Mr. Joseph does not think that if Staff was 100% opposed to the request, both he and the Codes Officer would not have it here in front of the Council. They would say go ahead and take your other option. They are both looking for feedback. Councilor Bradley feels it is time for Mr. Adams to come in here and hear what a tough position it puts the Council in if he has a hard-nosed recommendation that we think is not appropriate. We care.

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Vice Chair Whitney explained that this will be tabled for two weeks. She thanked Attorney Smith and Mr. Davis for coming in this evening.

EXECUTIVE SESSION

ITEM # 123-21 To consider action relative to an Executive Session pursuant to 1 M.R.S.A. § 405(6)(D) to discuss labor contracts.

MOVED AND SECONDED: That the Town Council enter Executive Session. pursuant to 1 M.R.S.A. § 405(6)(D) to discuss labor contracts. (Reighley & Piltch) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

MOVED AND SECONDED That the Town Council exit Executive Session. (Reighley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

MOVED AND SECONDED To adjourn at 8:24 p.m. (Reighley & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Egan) (0 Nays)

Respectfully submitted,

Sharon Coffin, Council Secretary