CHAPTER 43 PUBLIC PEDDLERS' ORDINANCE

ARTICLE I, TITLE, PURPOSE AND DEFINITIONS

Section 43-101 Title

This Ordinance shall be known and may be cited as the Public Peddler's Ordinance of the Town of Freeport

Section 43-102 Purpose

The purpose of this Ordinance is to define, regulate and license peddlers.

Section 43-103 Definitions

1. The word "person" as used herein shall include the singular and the plural, and shall also mean and include any person, firm or corporation, association, club, partnership or society, excepting bonafide charitable, service, religious, municipal organizations or agencies, or organizations sponsored by the 4th of July committee or its successor.

2. The word "peddler" as used herein shall include any person selling or offering for sale tangible commodities from any public street or other public place within the Town of Freeport, and where delivery is made at the time of sale. The word "peddler" shall include the words "hawker" and "huckster".

3. The word "town" shall mean the Town of Freeport, Maine.

4. The word "resident" shall mean a person whose domicile is in Freeport.

5. The words "Licensing Board" shall mean the Town Council or its designee.

ARTICLE II GENERAL PROVISIONS

Section 43-201 License Required

It shall be unlawful for any person to engage in the business of peddler as defined in Article I of this Ordinance within the corporate limits of the Town of Freeport without first obtaining a license therefore as provided herein. Peddlers' licenses shall be issued for the sale of food items only and those food items shall be primarily intended to be consumed at the time of purchase. Any distribution of free product samples shall be limited to samples of food for sale at that cart. Peddlers' licenses shall be limited to one per person.

Section 43-202 Application Requirements and Licensing Procedures

1. Applications for peddler licenses shall be accepted only on municipal business days, within each category, according to the following schedule.

   Renewal applications by residents - January 2 through 7.
   Renewal applications by non-residents - January 8 through 15.
   New applications by residents - January 16 through 23.
   New applications by non-residents - January 24 through 31.

2. Applications for licenses under this Ordinance must be made by the owner or lessor of the cart. The applicant shall file with the Town Clerk a sworn application in writing on a form to be furnished by the Town Clerk, which shall require the following information:

   a. Name and description of the applicant including company, corporation, DBA, etc.;

   b. Address - local and legal address for receipt of notices. In the event of change of either address, the applicant is obligated to notify the Town Clerk so that the application may be revised;

   c. A brief description of the types of food and/or beverages to be sold;

   d. If a vehicle is to be used to transport the cart, a description of the same, together with license number or other means of identification;

e. A photograph of the applicant, taken within 60 days immediately prior to the date of the filing of the application, which picture shall by 2"x2" showing the head and shoulders of the applicant in a clear and distinguishing manner;

f. The names of at least two (2) reliable property owners of the Town who will certify as to the applicant's good character and business responsibility, or, in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to property evaluate such character and business responsibility;

g. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore;

h. A sketch, drawn to scale, and, if available, a photograph of the cart to be used in the operation of the business labeling all aspects including, but not limited to, materials, measurements, appurtenances, signs, awnings, umbrellas, fuel, refrigeration, off-cart items, water supply and colors to indicate compliance with the performance standards listed in Section 43-204 below. Specific measurements, designs and locations of the cart and all appurtenances, including all off-cart items, shall be submitted.

Following the assignment of the location, a sketch, drawn to scale, showing the proposed operations location and its measurements, the location of the cart and all appurtenances, all off-cart items, and the relationship of all of the above features to all site features of the immediate area including, but not limited to, sidewalks, driveways, buildings, landscaping, paths, signs and utilities, to show compliance with the requirements of this Ordinance shall be submitted to the Town Clerk.

3. A non-refundable application fee of Fifty-five Dollars ($55.00) for residents and One Hundred and Ten Dollars ($110.00) for non-residents shall accompany each application. A non-refundable license fee of Five Hundred Dollars ($500.00) for residents and Seven Hundred and Fifty Dollars ($750.00) for non-residents shall be paid at the time the license is issued;

4. a. Upon receipt of such application, the original shall be referred to the Chief of Police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.

b. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his recommendation for non-issuance and his reasons for same and return said application to the Town Clerk, who shall notify the applicant that his application is disapproved.

c. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his recommendation for approval and return said application to the Town Clerk, who shall forward the application to the Municipal Officers for final action.

5. a. At its first meeting after January 7, the Municipal Officers shall grant renewal licenses to qualified residents who have satisfied all provisions of this Ordinance.

b. At its first meeting after January 15, the Municipal Officers shall grant renewal licenses to qualified non-residents who have satisfied all provisions of this Ordinance.

c. At its first meeting after January 23, the Municipal Officers shall by lottery grant new licenses to qualified residents who have satisfied all provisions of this Ordinance.

d. At its first meeting after January 31, the Municipal Officers shall by lottery grant new licenses to qualified non-residents who have satisfied all provisions of this Ordinance.

e. After the commercial licenses have been granted, the Town Clerk may issue them but not until the licensee has submitted to the Town Clerk:

1. A copy of the required certificate of insurance required by Section 43-203(5);

2. The location of the parking space required by Section 43-203(4) and a copy of the lease agreement or other instrument under which the parking space will be available to the applicant.

3. A valid victualers license. The peddler cart may operate only while such license is in effect.

4. A valid license issued by the State of Maine Department of Human Services for food service. The peddler cart may operate only while such license is in effect.

f. After the Municipal Officers has granted all four licenses, the Officers or its designee shall conduct a lottery to assign peddler locations. At least 14 days before the lottery, the Municipal Officers or its designee shall mail written notice of the time and place of the lottery to each licensed peddler and shall post and publish public notice. Those licensed peddlers who are present at the lottery in person or by agent acting under written authority may select their own locations in the order in which their names are drawn. Licensed peddlers who are not so present will be assigned locations at random by the Municipal Officers or its designee. Issued licenses shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the kind of goods to be sold thereunder, the date of issuance, and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The Town Clerk shall keep a permanent record of all licenses issued.

g. Any person who has held a peddler's license under this Ordinance for four consecutive renewal terms shall not be issued a fifth renewal license but may apply as a new applicant. Renewals prior to January 1995 shall not be considered when calculating renewal terms.

Section 43-203 General Provisions

1. The number of peddler licenses issued annually shall not exceed four (4) commercial licenses and the two (2) non-commercial license provided in Section 43-203 (2 & 3). The Traffic and Parking Committee will designate commercial peddler locations for each calendar year no later than November 30 of the preceding year. Safety concerns shall be a major criteria when designating locations. The Traffic and Parking Committee shall have the authority to relocate existing commercial peddler locations if the Police Chief determines that they are safety hazards.

2. The Public Safety Building site located at 4 Main Street (Map 9 Lot 16) shall be reserved for use by the Freeport Fire and Rescue Companies. The Licensee must follow all provisions of the Ordinance except no fees or proof of insurance shall be required. No cart or related items may be placed in parking spaces or the park area on the corner of Main and West Streets.

3. The public lot (Map 11, Lot 27A) shall have one area reserved for use by the PORT Teen Center and FHS All Sports Boosters.

4. Parking: Each licensee must provide one parking space per care in compliance with the requirements of Section 5.14 A.5 of the Freeport Zoning Ordinance for retail trade operations. The licensee must have control and possession of the parking space for each month of operation of the cart by written lease agreement or other legal instrument. In lieu

of providing one additional parking space, a peddler may pay a per-month fee to the Town based on the highest rental of the Town owned Oak Street parking lot.

5. Peddlers shall maintain in full force and effect at all times a policy of comprehensive public liability insurance with limits of not less than $300,000, naming the Town of Freeport as additional insured. A certificate of insurance must be provided before a peddler's license is issued.

6. All Freeport municipal, school and public service groups using the locations described in Sections 2&3 above shall provide the Town Clerk's Office with a complete financial report of activities conducted at these locations by December 31 of each year. Failure to comply with this provision may result in forfeiture of the right to use wither location during the following calendar year.

7. Licenses for locations described in Sections 2&3 above for Memorial Day through Labor Day shall be granted by the Licensing Board at its first meeting in May of each year. Application for licenses must be submitted to the Town Clerk's Office no later than April 15. Should more than one application be received for one or both of the locations, the Licensing Board shall grant licenses based on the drawing of lots.

8. A license issued by the State of Maine Department of Human Services for food service and a victualers license issued by the Freeport Town Council must be obtained before peddler cart operation commences and the peddler cart may operate only while such licenses are in effect.

<u>Section 43-204 Performance Standards</u>

1. Location. The cart shall not be operated in a way that would restrict or interfere with ingress to or egress from any building, abutting parcel or public place or obstruct adequate access by fire, police or sanitation vehicles. The cart shall not interfere with pedestrian flow on the sidewalk.

2. All utility connections shall be secured and safe.

3. The operations area shall be kept clean and free of litter. At least one trash receptacle shall be provided. Public trash receptacles on the street shall not be used by the operation. All trash shall be disposed of in conformance with Town regulations.

4. Cart design shall conform to the following requirements except that permitted non-conforming carts existing before January 1, l995 shall be permitted to operate for a period of three years from January 1, 1995 to December 31, 1997. After December 31, 1997, all carts shall conform to these requirements.

   a. Materials: Carts may be commercial construction or individually constructed. All carts shall be made of solid, durable materials.

b. Color: Neon and fluorescent colors are prohibited. Permitted colors shall be shades of the following: red, white, gray, black, yellow, maroon, green, blue, brown, beige and stainless steel.

c. Shape: "Theme" cards, such as one in the shape of hot dogs are prohibited.

d. Size: Maximum dimensions of a peddler's care or unit shall be no greater than 38 inches in width and 8 feet in length and must be removed from sidewalks at the end of each day. Maximum height of the cart shall be six (6) feet from the top of the cart body, excluding umbrella or awning, to the bottom of the cart where it (or the wheels) touches the ground. Maximum height from the bottom of the cart (or the wheels) to the uppermost top of any umbrella or awning attached to the cart shall be eight (8) feet. The bottom of the canopy of the umbrella or awning shall be at least 80" off the ground.

5. Awnings and umbrellas shall be constructed of a non-rigid fabric such as, but not limited to, canvas, ripstop nylon or soft plastic.

6. The hitch shall be visually identified for safety purposes with a wrapper, bicycle type flag or other similar unobtrusive identifying device which does not obstruct the clear area and which meets the requirements of the Federal Americans with Disabilities Act.

7. Cart shall not be motorized.

8. Peddler carts are allowed the following signs subject to the following requirements.

a. No more than two (2) signs, excluding lettering on an umbrella or awning, are permitted on each cart. Lettering on an umbrella or awning is permitted in addition to the two signs. In addition, one menu board is permitted and shall be no larger than six (6) square feet. A menu board is not considered a sign.

b. Each sign shall be secured to the cart at a maximum height no higher than the bottom edge of the umbrella or awning material.

c. The maximum size of each sign shall be four (4) square feet.

d. Each sign face shall be counted as one sign.

e. Free standing signs are prohibited.

f. Sign design shall meet the following requirements:

1. One or both signs may be preprinted, movable letter signs or chalk boards;
2. Any other type of sign shall be included as part of the approval process.

9. Cart lighting shall conform to the following requirements:

   a. Lighting shall not increase the light level at the perimeter of the operations area by more than 5 foot candles above the ambient light level. However, total maximum lighting at the perimeter of the operations area shall not exceed fifteen (15) foot candles.

   b. Light sources shall be aimed or shielded so that the light projects downward and in no case shall the angle be less than 20 degrees below horizontal.

10. Generators are prohibited.

11. Cart operators shall dress in a neat and clean manner.

12. Off-cart items, except for ones located on the cart, are limited to the following items: one trash receptacle, one recycling receptacle, two coolers and one chair. These items shall be located immediately adjacent to or under the cart.

13. No animals shall be attached to the cart except for guide animals.

14. Amplified sound shall not exceed 75 decibels during the day and 55 decibels at night.

15. All applicable local, state and federal requirements shall be met.

16. A flame resistive shield surrounding the cooking elements shall be installed to protect the customer from open flame and hot surfaces. The cooking elements shall be approved listed (i.e., U.L. Factory Mutual, etc.) permanently attached to the cart and not in or on separate facilities. An ABC extinguisher shall be mounted to the cart. The peddler cart shall meet all local, state and national fire codes. Before a permit is issued, the peddler cart containing cooking elements shall be inspected by the Fire Department. An inspection fee in the amount set by the Town Council shall be paid to the Fire Department by the owner of the cart prior to its use.

17. Each cart shall display its valid State and local food service and victualers licenses in a visible location.

Section 43-205 Transfer

No license issued under the provisions of this Ordinance shall be used at any time by any person other than the one to whom it was issued.

Section 43-206 Exhibition of License

Peddlers are required to exhibit their licenses at the request of any citizen.

Section 43-207 Revocation of License

1. Licenses issued under the provisions of this Ordinance may be revoked by the Licensing Board after notice and hearing for any of the following causes:

   a. Fraud, misrepresentation or false statement contained in the application for license;

   b. Fraud, misrepresentation, or false statement made in the course of carrying on his business as a peddler;

   c. Any violation of this Ordinance;

   d. Conviction of any crime or misdemeanor involving moral turpitude;

   e. Conducting the business of peddling in any unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

2. Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of compliant and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at the licensee's legal address at least five (5) days prior to the date set for hearing.

Section 43-208 Expiration of License

All licenses issued under the provisions of this Ordinance shall expire at ll:59 p.m. on December 31 of the year of issuance.

Section 43-301 Appeal

Any person aggrieved by the action of the Chief of Police or the Town Clerk in the disapproval of an application as provided in Article II of this Ordinance shall have the right

of appeal to the Town Council. Such appeal shall be taken by filing with the Town Council within fourteen (14) days after notice of the action complained of has been mailed to such person's legal address, a written statement setting forth fully the grounds for the appeal. The Town Council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in Article II of this Ordinance for notice of hearing on revocation. The decision and order of the Town Council on such appeal shall be final and conclusive. Any person aggrieved by the action of the Licensing Board shall have the right to appeal to Superior Court.

ARTICLE IV ENFORCEMENT AND PENALTY

Section 43-401

1. This Ordinance shall be enforced by the Town's Codes Enforcement Officer.

2. Any person aggrieved by a decision of the Codes Enforcement Officer shall have the right to appeal that decision to the Board of Appeals. An appeal must be filed in writing with the CEO within ten (10) days after the "date of issuance" inscribed by the Codes Enforcement Officer on a written notice of decision sent to the alleged violator.

3. Any person violating this ordinance shall commit a civil violation, punished by:

    a. For the first offense, a civil penalty of $100 per day per occurrence;
    b. For the second violation, revocation of the license by the Licensing Board.