



Cape Elizabeth Town Council Agenda

Monday, August 10, 2020 – Zoom Online

6:30 p.m. Executive Session

7:00 p.m. (Following executive session, the remainder of the meeting will begin but not before 7pm.)

Valerie A. Adams, Chairman
Valerie J. Deveraux
Jeremy A. Gabrielson
James M. "Jamie" Garvin
Caitlin R. Jordan
Penelope A. Jordan
Christopher M. Straw

6:30 p.m. Zoom Meeting Link (Another link for the remainder of the meeting is listed below on page 2.)

Join Zoom Meeting

<https://zoom.us/j/94120658218>

Meeting ID: 941 2065 8218

One tap mobile

+16468769923,,94120658218# US (New York)

COVID-19 Update

In response to the recent outbreak of Coronavirus Disease 2019 (COVID-19) the Governor signed [LD 2167, An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency](#), which is now PL 2019, c. 617.

Part G enacts Title 1, section 403-A, Public proceedings through remote access during declaration of state of emergency due to COVID-19. It authorizes conducting public proceedings through telephonic, video, electronic or other similar means of remote participation with specific conditions. The section is repealed 30 days after the termination of the state of emergency

Public Participation at Town Council Meetings

After an item has been introduced, any person wishing to address the council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. All remarks should be addressed to the Town Council. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of councilors present. For agenda items that are not formally advertised public hearings, the time for public comments is limited to 15 minutes per agenda item. This time may be extended by a majority of the Town Council. The chairman may decline to recognize any person who has already spoken on the same agenda item and may call on speakers in a manner so as to balance debate. Once the Council has begun its deliberations on an item, no person shall be permitted to address the Council on such item.

Speaking at the meeting on topics not on the agenda at regular Council meetings

Persons wishing to address the Council on an issue or concern local in nature not appearing on the agenda may do so at a regular Town Council meeting before the town manager's report and/or after the disposition of all items appearing on the agenda. Any person wishing to address the Council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation if the local affiliation is pertinent. Comments in each comment period shall be limited to three minutes per person and 15 minutes total; however, the time may be extended by majority vote of councilors present.

Decorum

Persons present at Council meetings shall not applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting. Persons at Council meetings may only address the Town Council after being recognized by the chairman.

Convening of the Meeting by the Chairman at 6:30 p.m.

Roll Call by the Town Clerk

The Pledge of Allegiance to the Flag

Item #107-2020 Executive Session Relating to Surfside Avenue Paper Streets Lawsuit

The town council will convene at 6:30 p.m. to enter into executive session with the town's attorney Durward Parkinson regarding an update to paper street sections of Surfside Avenue and the recent decision from the Maine Supreme Judicial Court Pilot Point, LLC et al. v. Town of Cape Elizabeth. There will be an opportunity for public comment, see rules below, prior to the council going into executive session.

It is anticipated the town council will take no action.

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council enters executive session pursuant to 1 M.R.S. §405 6 E to receive an update from the town's attorney Durward Parkinson relating to paper street sections of Surfside Avenue and the recent decision from the Maine Supreme Judicial Court Pilot Point, LLC et al. v. Town of Cape Elizabeth.

Following the executive session, the town council will reenter public session for the remainder of the agenda but not before 7:00 p.m.

7:00 p.m. Zoom Meeting Link

Please click the link below to join the webinar:

<https://zoom.us/j/91806369727>

Or iPhone one-tap :

US: +16468769923,,91806369727# or +13017158592,,91806369727#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 646 876 9923 or +1 301 715 8592 or +1 312 626 6799 or +1 346 248 7799 or
+1 408 638 0968 or +1 669 900 6833 or +1 253 215 8782

Webinar ID: 918 0636 9727

International numbers available: <https://zoom.us/u/acrpnxbWBF>

Town Council Reports and Correspondence

Finance Committee Report

Dashboard and Financial Reports as of July 31, 2020

[Appropriation Control](#)

[Expense Distribution](#)

[Revenue Control](#)

[Revenue Distribution](#)

Citizen Opportunity for Discussion of Items Not on the Agenda (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Town Manager's Report

Review of Draft Minutes of the Following Virtual Meetings-

- [July 13, 2020](#)
- [July 20, 2020](#) Special Meeting

Item #108-2020 The Well at Jordan's Farm Renewal Liquor [License](#)

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Well, LLC, Jason Williams DBA The Well at Jordan's Farm located at 19 Wells Road is seeking renewal of the malt liquor (beer), wine and spirits licenses.

No concerns have been reported by the code enforcement office, police and fire departments.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council approves the renewal malt liquor (beer), wine and spirits licenses for Well, LLC, Jason Williams DBA The Well at Jordan's Farm located at 19 Wells Road as presented.

Item #109-2020 Grant [Authorization](#) – Shore Road Rehabilitation Preliminary Design

[Link](#) – Shore Road Rehabilitation Study Dated August 23, 2019

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

At a workshop held on September 4, 2019 the town council was provided an overview of the Shore Road Rehabilitation Study prepared by Town Engineer Stephen Harding.

Town Planner Maureen O'Meara has provided a memorandum to the town council relating to the next step of the project for funding of the preliminary design.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council authorizes a grant application to PACTS for the preliminary engineering design for the Shore Road Rehabilitation Project in the amount of \$172,000 with a 25% match provided by the town in the amount of \$43,000.

Item #110-2020 Referral to the Planning Board – Review of 2019 Comprehensive Plan Recommendation #86

[Link](#) – Memo to the Planning Board

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

At the July 20, 2020 special town council meeting, the town council voted to forward proposed amendments to the zoning ordinance related to short-term rental to the planning board. The council discussed a possible amendment to the 2019 Comprehensive Plan Recommendation #86 resulting from the proposed amendment to limit STR operations to primary residents. The council will consider formally requesting review from the planning board.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council refers to the planning board for review an amendment to the 2019 Comprehensive Plan Recommendation #86 to reflect the proposed amendments to limit short-term rental operations to primary residents.

Item #111-2020 Village Green Flagpole [Donations](#)

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

The village green under construction to the south of town hall includes the installation of a flagpole. As part of the village green design the developer is responsible for purchasing and installing a flagpole. On July 20, 2020 the town council authorized the relocation of the War Veteran's Monument to the village green. The monument is now located near the flagpole.

Town resident John Mitchell approached the town about upgrading the approved flagpole that includes a yardarm.

The town has received three donations for the cost difference for the flagpole upgrade.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council accepts the generous donations in the amount of \$1,134.00 each from Thomas Egan, Jeffrey Holden and James Huebener for the village green flagpole upgrade. On behalf of the Town of Cape Elizabeth, the Town Council thanks Mr. Egan, Mr. Holden and Mr. Huebener for their donations and acknowledges their community-spirit in upgrading the flagpole for the public to enjoy.

Item #112-2020 Consideration of Referring Ordinances Relating to the Fences to the Ordinance Committee

[Link](#) – Correspondence

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Recently the town council received correspondence from Rich West, 821 Shore Road requesting the town council review of fence heights. A subsequent email was received by Cynthia Talbot, 825 Shore Road.

Chairman Adams requests the town council consider Mr. West's request. There is no permit or local ordinance regulating fence height or location. If the council would like further review it would be in order to refer to the ordinance committee.

Item #113-2020 FY 2020 CIP Interproject Budget [Transfers](#)

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Finance Director John Quartararo has provided a memo outlining suggested fiscal year 2020 interproject budget transfers.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council authorizes the FY 2020 budgetary transfer of \$82,003.13 from CIP project 0715-4005 PW Paving & Drainage Improvements; \$7,048.93 from 0715-4009 PW Roadway & Drainage Repair, \$114,086.61 PW Sidewalk Improvements; and \$48,002.55 from 0715-5325 PW Hill Way/Scott Dyer Road Phase 2 for a total transfer out of \$251,141.22 into CIP projects 0715-4006 PW Spurwink School Improvements \$1,000.00; 0715-4014 PW Sidewalk Repair and Pedestrian Improvements \$114,086.61; 0715-4036 Hemlock Hill Drainage Improvements \$51,117.45; 0715-5251 CC Rental Building Repairs \$3,746.12; 0715-5276 MS Athletic Field ADA Access \$31,624.56; 0715-5308 PW Rotary Mower Replacement \$1,563.93; and 0715-5339 PW Scott Dyer Road Improvements Phase 3 \$48,002.55 for a total transfer in of \$251,141.22.

Item #114-2020 Award Lease-Purchase Agreement with TD Equipment Finance for FY 2021 CIP Projects

[Link](#) – Memorandum – Finance Director John Quartararo

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Finance Director John Quartararo has provided a memo outlining the lease-purchase borrowing of \$1,035,100 in capital improvements projects approved in the fiscal year 2021 budget for the replacement of Hannaford Field, a replacement tool carrier for the public works department, 22 radios for the police department and a communications tower.

Following a request for proposals process, TD Equipment Finance is the recommended award of bid.

James Saffian, Bond Counsel has prepared an order in the next agenda item.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council awards a bid in the amount of \$1,035,100 for a lease-purchase contract to TD Equipment Finance, Inc. at a rate of 1.296% for fiscal year 2021 capital improvement projects; replacement of Hannaford Field, a replacement tool carrier for the public works department, 22 radios for the police department and a communications tower.

Item #115-2020 Authorization of the Order for the Lease-Purchase Agreement with TD Equipment Finance for FY 2021 CIP Projects

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Anticipating an approval of Item #111-2020, it is recommended the town council authorize the following order as prepared by Bond Counsel James Saffian.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council authorizes the following order as presented.

TOWN OF CAPE ELIZABETH, MAINE
Vote Authorizing Lease Purchase Agreement
with TD Equipment Finance, Inc.

Be it hereby voted by the Cape Elizabeth Town Council as follows:

VOTED: That the Town Council hereby authorizes the Town Manager, in the name of and on behalf of the Town, to execute and deliver a municipal lease purchase agreement with TD Equipment Finance, Inc. in the amount of \$1,035,100, and bearing interest at the rate of 1.296% per annum, with a term of not more than 5 years (the “Lease Agreement”) to finance the following improvements (the “Projects”):

	<u>Total Costs</u>	<u>Lease Financed Costs</u>
Hannaford Field Replacement	\$600,000	\$325,100
Tool Carrier Replacement (Public Works)	\$180,000	\$180,000
Police Radios (22)	\$166,000	\$160,000
Communications Tower	\$370,000	\$370,000
Total:	\$1,316,000	\$1,035,100

which Lease Agreement shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Town Manager, such approval to be conclusively evidenced by his execution thereof; provided that any obligation of the Town to make lease payments pursuant to such agreement shall be subject to annual appropriation approved by the Town as part of its annual budget.

VOTED: That the Town Manager is authorized to negotiate, execute, and deliver such other documents and certificates as may be necessary or appropriate in connection with the Lease Agreement which documents and certificates shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Town Manager, such approval to be conclusively evidenced by his or her execution thereof.

VOTED: That the Town Manager be and hereby is authorized and directed to covenant and certify on behalf of the Town that no part of the proceeds of the Lease Agreement, or the vehicles leased thereunder, shall be used directly or indirectly in any manner that would cause such Lease Agreement to be a “private activity bond” or an “arbitrage bond” within the meaning of Section 141 or Section 148 of the Internal Revenue Code of 1986, as amended.

VOTED: That to the extent available under Section 265(b)(2) of the Code, with the advice of Bond Counsel, the Lease Agreement may be designated by the Town Manager as a “qualified tax exempt obligation”.

VOTED: That if the actual cost of any Project differs from the estimated cost, whether due to completion, delay or abandonment of the Project or for any other reason, the Town Manager is authorized, in his discretion, to reallocate proceeds of the Lease Agreement to any other listed Project.

VOTED: That the Town Manager and the other proper officials of the Town (the “Authorized Representatives”) be and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things as may be necessary or desirable in order to effect the execution and delivery of the Lease Agreement in accordance with these votes.

VOTED: That all prior actions of the Town in effectuating the Lease Agreement are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Lease Agreement.

Item #116-2020 Carry Forward Balances from Fiscal Year 2020

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Finance Director John Quartararo has prepared a memorandum relating to recommended carry forward balances from fiscal year 2020.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council authorizes the following carry forward balances as presented.

A. Authorize the following General Fund departmental balances be carried forward from FY 2020 into FY 2021:

1. Administration (0110)	\$ 3,000
2. ACP (0120)	18,884
3. Elections (0140)	35,000
4. Police (0210)	25,000
5. Library (0510)	6,000
6. Public Information (0530)	4,000
7. Parks (0640)	5,440
8. Fort Williams Park (0645)	33,000
9. Trees (0660)	<u>6,552</u>

Total General Fund Balances \$ 136,876

B. Authorize Fort Williams Park CIP Fund account balances of \$197,000 be carried forward from FY 2020 into FY 2021.

C. Authorize Portland Head Light Fund account balance of \$26,235.66 be carried forward from FY 2020 into FY 2021.

Item #117-2020 **Maine Municipal Association Annual [Ballot](#)**

Opportunity for Public Comment (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

The Maine Municipal Association's annual ballot has been distributed to members. It is recommended the town council authorize the town manager to vote on behalf of the town council the slate of officers as presented by the MMA Nominating Committee.

Draft Motion:

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council authorizes the town manager to vote on behalf of the town council the slate of officers for the 2021 Executive Committee as presented by the Maine Municipal Association's Nominating Committee:

Vice-President – 1 Year Term (Vote for One)

James Bennett, City Manager, City of Biddeford

Executive Committee Members – 3 Year Term (Vote for Three)

Robert Butler, Chair of Selectboard, Town of Waldoboro

Terry Helms, Selectperson, Town of Grand Isle

Diane Hines, Town Manager, Town of Ludlow & Reed Plantation

Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government. (Limited to 15 minutes; 3 minutes per person. Time may be extended by a majority of the town council.) Persons wishing to address the council shall indicate their desire using the Raise Hand function of the Zoom meeting. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

Adjournment