



## Regular Town Council Meeting

Monday, May 10, 2021 at 7:00 pm

Please click the link below to join the webinar:

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### 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 The section is repealed 30 days after the termination of the state of emergency.

#### 1. Convening of the Meeting

Town Council Chairman James M. "Jamie" Garvin

#### 2. Roll Call by the Town Clerk

James M. "Jamie" Garvin, Chairman  
Nicole Boucher  
Valerie J. Deveraux  
Jeremy A. Gabrielson  
Caitlin R. Jordan  
Penelope A. Jordan  
Gretchen R. Noonan

**3. The Pledge of Allegiance to the Flag**

**4. Town Council Reports and Correspondence**

**5. Finance Committee Report**

**6. 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.

**7. Town Manager's Monthly Report**

**8. Review of Draft Minutes of the Meetings Held on April 12, 2021 and Special Meeting on April 27, 2021**

**9. Consent Calendar Item #76-2021 - Item #80-2021**

The consent calendar provides for Item #76-2021 - Item #80-2021 to be considered en bloc. Any town councilor may ask for any item to be considered separately. At the discretion of the chairman, any item removed from the consent calendar may be considered before or after the consideration of the items remaining on the consent calendar.

Opportunity for Public Comment Item #76-2021 - Item #80-2021. (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:

ORDERED, the Cape Elizabeth Town Council approves Item #76-2021 - Item #80-2021 as presented.

**10. Item #76-2021 Renewal Liquor License & Special Amusement Permit - Inn By The Sea**

Upon review by the police chief, fire chief and code enforcement officer there are no concerns to report.

### **Draft Motion**

ORDERED, the Cape Elizabeth Town Council approves the renewal malt liquor, wine, and spirits liquor license and special amusement permit for the Inn By The Sea located at 40 Bowery Beach Road.

### **11. Item #77-2021 Acceptance of Donation to the Thomas Memorial Library - In Memory of Peter G. Rich**

The Rich Family would like to provide a one-time donation to the Thomas Memorial Library in memory of Peter G. Rich in the amount of \$10,000. The family is asking that a bench be installed on the library grounds in memory of Mr. Rich and George W. Morse. Mr. Rich and Mr. Morse were residents and patrons of the library. The balance of funds would be available to meet the needs of the library.

Finance Director John Quartararo has prepared a draft motion.

### **Draft Motion**

ORDERED, the Cape Elizabeth Town Council authorizes the establishment of the Peter G. Rich Memorial Fund within Fund 46 - Library Fund, and gratefully accepts a donation of \$10,000 from the Rich Family and any future donations from the family or the public. In addition, the Town Council directs the Town Librarian to purchase and install two engraved benches on the library grounds as requested by the Rich family.

### **12. Item #78-2021 Kettle Cove Road Watercraft Launch Grant Authorization**

One of the recommendations of the Harbors Committee Report dated 4/30/2018 was to: Resolve Kettle Cove/Crescent Beach area access and circulation issues and implement other related changes (Section 4.4, Page 15).

At the February 10, 2021 workshop, Stephen Harding, Town Engineer summarized a public meeting on January 14, presented a revised preliminary plan depicting the proposed watercraft launch which is proposed to replace the nearby existing town launch, discussed the grant application and approximate construction date starting in 2022.

### **Draft Motion**

ORDERED, the Cape Elizabeth Town Council authorizes the town manager to sign the application to the Land and Water Conservation Fund for grant funding and project certification for the Kettle Cove Road Watercraft Launch. The total cost estimate is \$111,932.50. The grant request is \$55,312.50 with a cash match provided by the Town in the amount of \$56,620 (50.58%).

### **Project Certification**

**This is to certify** that the Cape Elizabeth Town Council hereby authorizes Town Manager Matthew Sturgis to make application for financial assistance under the provisions of the Land and Water Conservation Fund Act, Public Law 88-578 for development of Kettle Cove Road Watercraft Launch.

**This further certifies** that the Town of Cape Elizabeth, Maine is familiar with the terms and conditions of the Land and Water Conservation Fund Project Agreement, revision dated March 1995 and hereby authorizes Matthew Sturgis, Town Manager, to enter into said agreement between the Town of Cape Elizabeth, Maine and the State of Maine upon federal approval of the above identified project.

**This further certifies** that the Town of Cape Elizabeth, Maine has been legally constituted and is responsible for planning and carrying out the municipal recreation program, and the continued operation and maintenance of this completed project in accordance with the terms and conditions of the Land and Water Conservation Fund Project Agreement to be executed for the Kettle Cove Road Watercraft Launch.

**And this further certifies** that except for the financial assistance requested by this project application, no financial assistance has been applied for, given or promised under any other State or Federal Program, except for a Shore and Harbor Planning Grant (contract # 20191024\*1395) issued in June, 2019 for the amount of \$13,750 plus a town cash match of \$6,000.

Date \_\_\_\_\_ At \_\_\_\_\_

Signed by: \_\_\_\_\_

**13. Item #79-2021 Consideration of Short-Term Financing of Bonded Capital Projects Policy**

On April 12, 2021 the town council referred to workshop a recommended policy relating to short-term general fund borrowing to further review the policy answering questions such as criteria, maturity dates, duration of loan, authority of town manager, amount of capital available in the general fund.

The workshop held on May 5, 2021 provided an opportunity for additional review and comment.

Based on the discussion, Finance Director John Quartararo has provided a draft for consideration for adoption.

**Draft Motion**

ORDERED, the Cape Elizabeth Town Council adopts the Short-Term Financing of Bonded Capital Projects Policy as presented.

**14. Item #80-2021 Consideration of Amendments to the Fund Balance Policy**

Staff has taken the opportunity throughout this year's budget review process to review finance-related documents and policies including the fund balance policy.

On May 5, 2021 the town council, in workshop session, reviewed the recommended changes to the fund balance policy as presented by Finance Director John Quartararo. The primary change is a target balance equal to 12.50% (increased from 8.33%) of annual general fund operating revenues for the most recent fiscal year.

Following workshop discussion, there was one minor change to the draft in the Museum at Portland Head Light Fund section to correct 25% to 25.00% in the second paragraph.

**Draft Motion**

ORDERED, the Cape Elizabeth Town Council approves the amendments to the Fund Balance Policy as presented.

**15. Item#81-2021 Fiscal Year 2022 Municipal General Fund Budget Approval**

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.

On April 27, 2021 the town council voted to hold a public hearing on May 3 relating to the fiscal year 2022 general fund budget. On May 3 the town council scheduled the vote for May 10.

**Draft Motion**

ORDERED, the Cape Elizabeth Town Council having held a public hearing on Monday, May 3, 2021 does hereby adopt the Municipal General Fund Operating and CIP expenditure budget for Fiscal Year 2022, of \$16,857,021, not including overlay, with estimated non-property tax revenues of \$10,018,272 and estimated property taxes of \$6,838,749 and hereby adopts the following revenue budget and gross appropriations for each listed department as follows.

Note: The revenue and expenditure breakdowns are listed in the attachment and will be included in the minutes.

## 16. Item #82-2021 Fiscal Year 2022 School Budget Approval

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.

On April 27, 2021 the town council voted to hold a public hearing on May 3 relating to the fiscal year 2022 general fund budget. On May 3 the town council scheduled the vote for May 10. The school budget validation referendum will be held on June 8, 2021.

The Cape Elizabeth School Board is recommending proposed expenditures of \$29,857,097, and estimated revenues of \$2,558,689.

### Draft Motion

ORDERED, the Cape Elizabeth Town Council following a public hearing on May 3, 2021 at 7:00 p.m. via Zoom approves the school department budget as recommended by the School Board for Fiscal Year 2022 for a total appropriation of \$29,857,097 and estimated revenues of \$2,558,689.

1. ORDERED: **State/Local EPS Funding Allocation.** That the Town of Cape Elizabeth appropriate **\$18,026,099** for the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act and that the Town of Cape Elizabeth raise **\$16,328,268** as the Town's contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act in accordance with the Maine Revised Statutes, Title 20-A, section 15688.

Explanation: The Town's contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act is the amount of money determined by state law to be the minimum amount that the Town must raise in order to receive the full amount of state dollars.

2. ORDERED: **Non-State Funded Debt Service.** That the Town of Cape Elizabeth raise and appropriate **\$439,400** for the annual payments on debt service previously approved by the legislative body for non-state-funded school construction projects, or non-state funded portions of school construction projects in addition to the funds appropriated as the local share of the Town's contribution to the total cost of funding public education from kindergarten to grade 12.

Explanation: Non-state-funded debt service is the amount of money needed for the

annual payments on the Town's long-term debt for major capital school construction projects that are not approved for state subsidy. The bonding of this long-term debt was previously approved by the voters or other legislative body.

3.ORDERED: **Food Service Transfer.** That the Town of Cape Elizabeth raise and appropriate **\$246,255** to transfer to the Food Service Program.

Explanation: Monies raised for Food Service are not to be included in the calculation of the Local Additional Funds article because they are outside of the State's Essential Programs and Services funding model.

4.ORDERED: **Additional Local Funds.** That the Town of Cape Elizabeth raise and appropriate **\$10,284,485** in additional local funds, which exceeds the State's Essential Programs and Services funding model by **\$10,284,485** as required to fund the budget recommended by the school board.

The School Board recommends an appropriation which exceeds the State Essential Program and Services model for the following reasons:

The state's funding model does not support all of the costs for K-12 education. It includes only those costs considered essential by the state's Essential Programs and Services (EPS) model.

Explanation: The additional local funds are those locally raised funds over and above the Town's local contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act and local amounts raised for the annual payment on non-state-funded debt service that will help achieve the Town's budget for educational programs.

5.ORDERED: **Total School Budget Summary.** That the Town of Cape Elizabeth authorizes the School Board to expend **\$29,857.097** for the fiscal year beginning July 1, 2021 and ending June 30, 2022 from the Town's contributions to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act, non-state-funded school construction projects, additional local funds for school purposes under the Maine Revised Statutes, Title 20-A, section 15690, unexpended balances, tuition receipts, state subsidy and other receipts for the support of schools.

6.ORDERED: **Special Funds.** That the Town of Cape Elizabeth authorizes the School Board to expend sums as may be received from federal or state grants or programs or

other sources during the fiscal year for school purposes, provided that such grants, programs, or other sources do not require the expenditure of other funds not previously appropriated.

7.ORDERED: Changes in Anticipated State Subsidy (50% to reduce taxes/50% to fund balance): That in the event the Town receives more state general purpose aid for education than the \$1,740,104 amount included in the school budget, the Town shall use 50% of the extra amount to reduce the amount of taxes raised for the school budget, and 50% to supplement the school department unassigned fund balance; and that in the event the amount of that state aid is less than the amount included in the school budget, the Town Treasurer shall execute a journal entry in the amount of any shortfall to be debited from.

**17. Item #83-2021 Proposed Fiscal Year 2022 Municipal General Fund Budget Summary Motion Concerning Property Taxes**

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**

ORDERED, the Cape Elizabeth Town Council having held a public hearing on Monday, May 3, 2021 does hereby adopt the following items concerning property taxes:

1. Fix October 1, 2021 and April 1, 2022 as the dates upon each of which one-half (1/2) of such tax is due and payable 36 M.R.S. §505 (2);
2. Interest to accrue upon taxes due and unpaid after each date at the interest rate of 6.00% per annum 36 M.R.S. §505 (4);
3. Authorize the Tax Collector and Town Treasurer to accept or decline prepayments of taxes not yet committed or prior to any due date, and pay no interest thereon 36 M.R.S. §506, and
4. Fix the interest rate for taxes paid in excess of the assessment 2.00% per annum 36 M.R.S. § 506-A.

**18. Item #84-2021 Property Tax Levy Limit**

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**



ORDERED, the Cape Elizabeth Town Council hereby increases the property tax levy for municipal services to \$8,155,119 in accordance with 30-A M.R.S. §5721-A.

**19. Item #85-2021 Consideration of Changes to the Fee Schedule**

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.

On April 27, 2021 the finance committee reviewed changes to the fee schedule as recommended by department heads. It is recommended the changes become effective July 1, 2021, except that the elimination of the catering and liquor license fees be effective immediately. The effective date coincides with the new fiscal year and provides an opportunity for departments to post the changes.

**Draft Motion**

ORDERED, the Cape Elizabeth Town Council approves the changes to the fee schedule as presented effective July 1, 2021. Except that the elimination of certain fees is effective immediately.

**20. Item #86-2021 Recommendation from the Thomas Memorial Library Committee to Amend Certain Policies**

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.

On April 29, 2021 the Thomas Memorial Library Committee voted to recommend amendments to certain policies; General Use Policy, Food & Beverage Policy, Computer Use and Internet Policy and Safe Child & Vulnerable Adults Policy. Existing policies are outdated so new policies have been rewritten.

A memo is provided by Rachel Davis, Library Director outlining the changes.

**Draft Motion**

ORDERED, the Cape Elizabeth Town Council refers to workshop proposed amendments to certain policies for the Thomas Memorial Library including General Use Policy, Food & Beverage Policy, Computer Use and Internet Policy and Safe Child & Vulnerable Adults Policy.

**21. Item #87-2021 Affordable Housing Recommendations from 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.

On February 8, 2021 the town council referred to the planning board development of Town Center Affordable Housing Amendments. The amendments should preserve Town Center requirements to the extent feasible while also permitting an affordable housing project that provides a substantial public benefit. Recommended amendments should be returned to the town council by April 30, 2021.

On April 20, 2021 the planning board voted amendments Option 1 by a 4-2 vote.

**Draft Motion**

ORDERED, the Cape Elizabeth Town Council refers to the ordinance committee for review and report back to the town council Town Center Affordable Housing Amendments as recommended by the planning board.

**22. Item #88-2021 Request to Amend Chapter 19 Zoning Ordinance Relating to Agricultural Buildings**

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 William H. Jordan Farm is requesting consideration of amending Chapter 19 Zoning Ordinance regarding the size of agricultural buildings. The current ordinance Sec. 19-9-2 Applicability under Activities Not Requiring Site Plan Review limits agriculture buildings to not exceed 2,00 sq. ft. in size. The proposal would increase the size not to exceed 3,000 sq. ft. This will allow for more growing space for farms thus extending their season or year round production. This will also allow Cape Elizabeth farms to participate in the High Tunnel program funded by the USDA's NRCS EQUIP program.

A memo from the William H. Jordan Farm explains the request.

Due to the subject of the request, two councilors, who also serve on the ordinance committee, have a conflict of interest. Therefore it is recommended the request be referred to the planning board.

### **Draft Motion**

ORDERED, the Cape Elizabeth Town Council refers to the planning board for review and report back to the town council a request to increase the size of agricultural buildings, Sec. 19-9-2.

### **23. Item #89-2021 Wireless Infrastructure Amendment**

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.

Town staff are recommending the zoning ordinance be amended to clarify how new wireless infrastructure should be treated as a land use.

One of the town council infrastructure goals is to expand communication coverage. Having the framework (ordinances) in place to address the technology is a way toward the goal.

### **Draft Motion**

ORDERED, the Cape Elizabeth Town Council refers to the ordinance committee proposed amendments to Chapter 19 Zoning Ordinance relating to how new wireless infrastructure should be treated as a land use.

### **24. 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.

### **25. Adjournment**

#### **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.