



Cape Elizabeth Town Council
DRAFT Minutes
Monday, November 9, 2020
Zoom Online

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

6:00 p.m. Executive Session

7:00 p.m. The reminder of the agenda will not begin before 7:00 p.m.

The meeting via Zoom, an online video and audio conferencing platform, was convened at 6:00 p.m. by Town Council Chairman Pro-Tem James M. Garvin.

In response to the recent outbreak of Coronavirus Disease 2019 (COVID-19) Governor Mills 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 The section is repealed 30 days after the termination of the state of emergency.

The Cape Elizabeth Town Council will meet as necessary to continue the town's work via an online platform as allowed by State authorization during the state of emergency due to COVID-19. The platform will allow for public comment as outlined in the Town Council Rules. The public is reminded they should continue to provide questions and comments to the town council relating to business of the town via email or mailing correspondence to their attention to town hall.

Roll Call by the Town Clerk

All six members of the town council were present.

Debra M. Lane, Town Clerk
Maureen O'Meara, Town Planner
Matthew E. Sturgis, Town Manager

Opportunity for Public Comment of Items Not on the Agenda

None

Item #141-2020 Executive Session

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council enters into executive session at 6:00 p.m. in conformance with 1 MRS §405 6 E to confer with the town attorney on a legal matter.
(6 yes) (0 no)

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 7:23 p.m.
(6 yes) (0 no)

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The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Chairman Garvin acknowledged and thanked Councilor Adams and Councilor Straw for their service on the town council. Councilors Adams moved out of town and Councilor Straw did not seek a second term on the council.

Councilor Penelope Jordan thanked Debra Lane and the election staff for their work on the November 3 election.

Finance Committee Report

Finance Chairman Garvin and Town Manager Sturgis reviewed the revenues and expenditures to date.

Chairman Garvin congratulated Councilors-Elect Nicole Boucher and Gretchen Noonan. The new council term begins on December 14.

Citizen Opportunity for Discussion of Items Not on the Agenda

None

Town Manager's Report

Mr. Sturgis thanked Debra Lane and the election staff for their hard work on the election - absentee balloting through election day.

Debra Lane, Town Clerk provided an overview of the November 3 election. The estimated turnout is 81% (7009 state ballots cast) with 70% (6075) of voters requesting absentee ballots – 98% (5955) returned. Thank you to Kathy Maxwell, Deputy Town Clerk, Carol Anne Jordan, Warden, election staff and town and school departments for their support and dedication. With everyone working together the election went smoothly!

Review of Draft Minutes of Virtual Meetings

- *The minutes from the meeting held on October 14, 2020 will be reviewed and approved at the December 14, 2020 Town Council Meeting.*

Public Comment

Erin Plummer, 60 Woodland Road said she appreciates the work of town hall and thanked Debra Lane and the election staff for their work on the election.

Consent Calendar – Item #142-2020 - Item #146-2020

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves Item #142-2020 – Item #146-2020 en bloc, as presented.

(6 yes) (0 no)

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Item #142-2020 Maine Bureau of Highway Safety – Click It or Ticket Grant

ORDERED, the Cape Elizabeth Town Council accepts and appropriates a grant award of \$4,887.20 from the Maine Bureau of Highway Safety – Click It or Ticket grant in account 0725-4450. The grant will reimburse staff costs during the enforcement operations. Any match requirements will be met through the Police Department’s operating budget, as allowed by the terms of the grant. The grant period is November 16, 2020 to June 5, 2021.

Item #143-2020 Maine Bureau of Highway Safety – High Visibility Distracted Driving Enforcement Grant

ORDERED, the Cape Elizabeth Town Council accepts and appropriates a grant award of \$6,842.08 from the Maine Bureau of Highway Safety – High Visibility Distracted Driving grant in account 0725-4452. The grant will reimburse staff costs during enforcement operations. Any match requirements will be met through the Police Department’s operating budget, as allowed by the terms of the grant. The grant period is October 1, 2020 – September 15, 2021.

Item #144-2020 Maine Municipal Association – Ed MacDonald Safety Enhancement Grant

ORDERED, the Cape Elizabeth Town Council accepts and appropriates a grant award of up to \$2,000 from the Maine Municipal Association’s Ed MacDonald Safety Enhancement Grant for the purchase of various equipment items in account 0725-4451. The grant will reimburse two-thirds of the purchase cost and the balance will be charged to the Police Department’s operating budget.

Item #145-2020 MPIA Grant – Sidewalk Segment 1

ORDERED, the Cape Elizabeth Town Council accepts and appropriates an additional \$25,000 from the PACTS Municipal Partnership Initiative for the construction of Sidewalk Segment 1; the Town Council further authorizes the transfer of \$115,000 from account 0715-4013 to 0725-4013 as the Town’s grant match; and finally the Town Council authorizes the transfer of \$29,760.47 from account 0715-4013 to 0725-4013 for costs in excess of the grant and match.

Item #146-2020 Acceptance Distribution from the Estate of Frances Dyer for the Thomas Memorial Library

ORDERED, the Cape Elizabeth Town Council accepts the distribution of \$51,170.29 from the Estate of Frances M. Dyer without limitations on the use of the funds other than they are to be used by the Thomas Memorial Library.

Item #139-2020 Tabled from October 14, 2020

Authorization to Enter into a Lease Option Agreement and a Net Energy Billing Credits Agreement with Encore Renewable Energy at the Landfill Site at the Cape Elizabeth Recycling Center

Moved by Penelope A. Jordan and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council takes Item #139-2020 off the table from October 14, 2020.

(6 yes) (0 no)

Moved by Penelope A. Jordan and Seconded by Christopher M. Straw

ORDERED, the Cape Elizabeth Town Council authorizes the Town Manager to enter into the 2-year Lease Option Agreement (the “Option”) now, and further authorize you to enter into a 25-year Site Lease Agreement (the “Ground Lease”) in substantially the same form as attached to the Option, in the event that Encore Redevelopment LLC (“Encore”) exercises its Option, all subject to final review and approval by the Town Manager and Town Attorney. The Option gives Encore the right to extend the Option for an additional year upon payment of \$1,000. The Ground Lease gives Encore the right to extend the term of the Ground Lease for two (2) five year terms. Further, the Cape Elizabeth Town Council authorizes the Town Manager to enter into the 20-year Net Energy Billing Credits Agreement.

(6 yes) (0 no)

Item #147-2020 Authorization by the Town Council to Apply to Efficiency Maine for Two Electric Vehicle Recharging Station Grants

Introduction – Mr. Sturgis

Moved by Valerie J. Deveraux and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council authorizes the application for an Efficiency Maine grant to fund two electric vehicle charging stations as presented.

(6 yes) (0 no)

Item #148-2020 Town Council Update on the Current Status of the Pending Paper Streets Issue

Present – Durward Parkinson, Town Attorney

Public Comments

George Foley, 9 Pilot Point Road encouraged the town council to vote to accept now, all of Surfside Avenue and Atlantic Place.

Richard Bryant, 55 Spurwink Avenue encouraged the town council to vote now.

Mary Ann Lynch, 2 Olde Colony Lane encouraged the town council to vote now to accept the paper streets as public ways.

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Glenn Israel, Representative to the Abutters said the abutters are willing to work with the town. There are still questions to be answered.

Maynard Murphy, 24 Pilot Point Road agreed with the comments from George Foley, Richard Foley and Mary Ann Lynch.

The town council continues to work on this issue. No town council action was taken.

Item #149-2020 Consideration of the Extension of the Short Term Rental Moratorium

Moved by Penelope A. Jordan and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council extends the adopted moratorium banning any new short term rental permits that began June 1, 2020 for an additional 180 days effective January 1, 2021 as presented.

(6 yes) (0 no)

See attachment.

Item #150-2020 Review Parking/Management of Cliff House Beach Park

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council refers to the Ordinance Committee the recommendations of the Conservation Committee regarding usage intensity and parking issues related to Cliff House Beach.

(6 yes) (0 no)

Item #151-2020 Town Farm Parking Amendment

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council refers the recommendations of the Ordinance Committee to allow parking as a permitted use in the Town Farm District to the Planning Board for review and recommendation.

(6 yes) (0 no)

Item #152-2020 Consideration of Fence Amendments

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council refers to the Planning Board for review and recommendations consideration of fence amendments.

(6 yes) (0 no)

Item #153-2020 Consideration of Pesticide Regulation

Moved by Valerie J. Deveraux and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council refers the recommendation of the Ordinance Committee relating to pesticide regulation to a future workshop.

(6 yes) (0 no)

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Item #154-2020 Vernal Pool Referral

On September 2, 2020 the ordinance committee voted 3-0 to recommend the town council take no action at this time relating to vernal pool regulations and revisit at a future date to the extent of the Comprehensive Plan growth areas are changed or amended.

No action was taken by the town council.

Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.

None

Adjournment

Moved by Christopher M. Straw and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council adjourns at 8:57 p.m.

(6 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk

Attachment Item #149-2020

**TOWN OF CAPE ELIZABETH ORDINANCE ENACTING
A MORATORIUM ON SHORT TERM RENTALS**

WHEREAS, the Town of Cape Elizabeth Town Council (hereinafter “Town Council”) requested the Ordinance Committee to review short term rental regulations on October 16, 2019;

WHEREAS, the Ordinance Committee, after numerous meetings which involved the editing of multiple ordinance amendments, voted on February 26, 2020, to recommend to the Town Council that a moratorium be adopted banning the issuance of new short term rental permits after June 1, 2020;

WHEREAS, the Town Council, on the recommendation of the Ordinance Committee, issued a moratorium on April 13, 2020, with a duration of one hundred and eighty (180) days, effective June 1, 2020, prohibiting the issuance of new short term rental permits;

WHEREAS, the Ordinance Committee specifically recommended allowing any lawfully existing short term rental as of June 1, 2020, to continue and also provide any existing short term rental permit holder the ability to renew, as long as said lawfully existing short term rental or valid short term rental permit was effective prior to June 1, 2020;

WHEREAS, the Town Council and Ordinance Committee need an additional reasonable amount of time to continue amending the proposed short term rental regulations, which is in acknowledgement of the ongoing COVID-19 pandemic;

NOW THEREFORE, pursuant to the authority granted by 30-A M.R.S. § 4356, the Town of Cape Elizabeth, acting through the Town Council, hereby renews the following Ordinance, pursuant to 30-A M.R.S. § 4356(2), establishing a moratorium on the issuance of new short term rental permits for a period of one hundred and eighty (180) days from the date the Ordinance is enacted:

Section 1 Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, part 2, section 1 of the Maine Constitution, the provisions of 30-A M.R.S. § 2101, et seq. (Home Rule), 30-A M.R.S § 3001, et seq. (Ordinance Power), and 30-A M.R.S § 4356 (Moratoria) § 1B (Necessity) and § 2 (Definite Term).

Section 2 Applicability

This moratorium shall apply to the issuance of any and all new short term rental permits, including existing short term rentals otherwise lawfully in existence, which are requested or arise on or after the effective date of the Ordinance.

Section 3 Requests not to be Accepted or Acted Upon

During the period this Ordinance is in effect, no officer, board, body, agency, agent, official, or employee of the Town of Cape Elizabeth shall accept, process, or act upon any application or request for any new short term rental permit.

Section 4 Conflicts with Other Ordinances

The provisions of this Ordinance supersede any conflicting provisions of the Town of Cape Elizabeth's Ordinances.

Section 5 Enforcement, Violation and Penalties

This Ordinance shall be enforced by the Town of Cape Elizabeth Code Enforcement Officer. Any person who violates any of the provisions of this Ordinance be subject to civil penalties and other remedies as provided in 30-A M.R.S. § 4452.

Section 6 Severability

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

Section 7 Effective Date

This Ordinance takes effect on January 1, 2021, and shall apply, to the maximum extent permitted by law but subject to the severance clause above, to all proceedings, applications and petitions not pending as of the effective date. This Ordinance shall expire at the end of the 180th day after its effective date, unless earlier extended, repealed or modified by the Town of Cape Elizabeth.