



## Cape Elizabeth Town Council Agenda

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

**Monday, November 9, 2020**

**Zoom Online**

**6:00 p.m. Executive Session**

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

Please click the link below to join the webinar:

<https://zoom.us/j/92462413312>

Or iPhone one-tap :

US: +16468769923,,92462413312# or +13017158592,,92462413312#

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 +1 253 215 8782  
or +1 346 248 7799 or +1 408 638 0968 or +1 669 900 6833

Webinar ID: 924 6241 3312

International numbers available: <https://zoom.us/u/acf1RefKSu>

### ***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 The section is repealed 30 days after the termination of the state of emergency.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 Executive Session at 6:00 p.m. by the Chairman Pro-Tem. The remainder of the meeting will not begin before 7:00 p.m.**

### **Roll Call by the Town Clerk**

### **Opportunity for Public Comment of Item**

(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.

### **Item #141-2020      Executive Session**

#### **Draft Motion:**

ORDERED, the Cape Elizabeth Town Council enters into executive session in conformance with 1 MRS §405 6 E to confer with the town attorney on a legal matter.

### **The Pledge of Allegiance to the Flag**

### **Town Council Reports and Correspondence**

#### **Finance Committee Report**

#### **Dashboard and Financial Reports as of October 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 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.*

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

The consent calendar provides for Item #141-2020 – 145-2020 to be considered en bloc. Any Town Council member 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 of Item #142 -2020 - #146-2020**

(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.

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

On October 16, 2020, Chief Fenton received notification of an award of up to \$4887.20 from the Maine Bureau of Highway Safety – Click It or Ticket Grant.

#### **Draft Motion:**

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**

On October 8, 2020, Chief Fenton received notification of an award of up to \$6,842.08 from the Maine Bureau of Highway Safety – High Visibility Distracted Driving grant.

#### **Draft Motion:**

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**

On September 29, 2020, Chief Fenton received notification of an award of up to \$2,000 from the Maine Municipal Association’s Ed MacDonald Safety Enhancement Grant for the purchase of various equipment items.

#### **Draft Motion**

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**

On February 10, 2020 the town council accepted a grant from the PACTS Municipal Partnership Initiative in the amount of \$90,000 for the Town Center Sidewalk – Segment 1 project with the remaining local share to be included in the FY 2021 budget (0715-4013).

The work on Sidewalk Segment 1 (0725-4013) is completed with a final cost total of \$259,760.47. Because the actual costs exceed the original \$180,000 grant and match, MPIA is providing an additional \$25,000 after January 1, 2021 with a \$25,000 match from the Town. This leaves \$29,760.47 of costs outside of the grant and match.

**Draft Motion:**

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**

On September 23, 2020, Thomas Memorial Library Director Rachel David received notification of funds to the Thomas Memorial Library from the Estate of Frances M. Dyer.

**Draft Motion**

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**

**Draft Motion:**

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

On July 20, 2020 the town council authorized the Town Manager to enter into negotiations with Encore Renewable Energy for the installation of a solar power installation at the Cape Elizabeth Recycling Center former landfill site as recommended by the energy committee. Over the past two months the Town Manager and the Town Attorney have negotiated the first step in this process for the council to consider, and that is the lease option agreement and the net energy billing credits agreement.

**Draft Motion:**

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.

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

**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 Energy Committee has investigated an opportunity for grants relating to electric vehicle charging stations. In their investigation they discovered an opportunity with Efficiency Maine for a grant covering 80% of the project cost, with an application deadline of December 1, 2020. The request is to authorize the application for an Efficiency Maine grant for two charging stations, with one to be located at Fort Williams Park and one at Community Services. Funding for the project would be anticipated to be part of the Fiscal Year 2022 budget, and would not commit the Town to funding, but would apply as part of the project cost if the project ultimately moves forward.

**Draft Motion**

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

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

**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 town council will provide an update on the current status of the pending paper streets issue.

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

**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 13, 2020 the town council adopted a moratorium banning any new short term rental permits as of June 1, 2020 for 180 days. This extension would extend the moratorium an additional 180 days, effective January 1, 2021.

**Draft Motion:**

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.

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

**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 July 13, 2020 the town council referred to the Conservation Committee concerns raised about usage intensity at Cliff House Beach during the COVID-19 crisis along with related parking issues with recommendations back to the town council.

**Draft Motion:**

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.

**Item #151-2020      Town Farm Parking 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.

On September 14, 2020 the town council referred to the Ordinance Committee review of a proposed amendment to the Zoning Ordinance to make parking a permitted use in the Town Farm District.

**Draft Motion:**

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.

**Item #152-2020      Consideration of Fence Amendments**

**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 August 10, 2020 the town council referred a review of fence regulations to the Ordinance Committee.

**Draft Motion**

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

## **Item #153-2020      Consideration of Pesticide Regulation**

**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 October 16, 2019 the town council referred to the Ordinance Committee review of the Comprehensive Plan Recommendation #51 for review and recommendations.  
#51 Consider town action to require residents to minimize pesticide use and take advantage of programs such as the Cumberland County Soil and Water Conservation District (CCSWCS) Healthy Yardscaping Initiative.

The ordinance committee discussed pesticide regulation on May 13, August 5 and September 2, 2020. The committee recommends discussion by the town council of adopting the Town of Falmouth's approach of tracking community application of pesticides and logging volume before adopting restrictions, and then consider additional steps.

### **Draft Motion:**

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

## **Item #154-2020      Vernal Pool Referral**

**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 10, 2020 the town council referred to the Ordinance Committee a review of vernal pool regulations, in response to a citizen request.

The ordinance committee discussed vernal pool regulations on August 5 and September 2, 2020.

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.

**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**