



Special Town Council Meeting

Monday, August 30, 2021 at 7:00 pm

Town Hall Council Chambers

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. Citizen Opportunity for Discussion of Items Not on the Agenda

Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

5. Item #126-2021 Public Hearing and Consideration of a Remote Participation Policy

Opportunity for Public Comment. 3 minutes per person. Time may be extended by majority vote of the councilors present. 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 consider adopting a Remote Participation Policy to allow a hybrid-approach to regular and special meetings of the town council, planning board and zoning board **when the technology is available to do so**. The hybrid approach would allow these board members, when allowed by law, to participate remotely. In addition the public would have the opportunity to participate remotely at each regular or special meeting.

The town council must adopt a policy in order to consider the following item relating to declaring a limited emergency to require remote public meetings.

The town council will discuss, at this meeting or a future meeting, if a hybrid-approach would be available for workshops. The availability of meeting rooms and technology will be considered.

In the next item, the town council will consider declaring a limited emergency requiring the town council, and all boards and committees to meet remotely starting immediately. Remote meetings will remain in force until the emergency is amended or rescinded.

Notice of meetings will be provided in accordance with 1 M.R.S. 406 and any applicable charter, ordinance, policy or bylaw.

The limited emergency is in response to a recent increase in the COVID-19 infection rate, the spread of the Delta variant and an effort to limit indoor gatherings particularly as it is difficult to social distance in most meeting locations. The town will continue to monitor the infection rate and spread of disease in an effort to resume in-person meetings when it is safe to do so.

Draft Motion

ORDERED, the Cape Elizabeth Town Council adopts a Remote Participation Policy effective immediately which allows, when technology is available, for hybrid special and regular meetings of the town council, planning board and zoning board. In addition the public will have the opportunity to participate remotely at such meetings.

Attachments:

- **Draft Remote Participation Policy** (SAMPLE_REMOTE_PARTICIPATION_POLICY_DML.doc)

6. Item #127-2021 Consideration of an Order Declaring a Limited Emergency to Require Remote Public Meetings

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. 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 the following:

WHEREAS, in the Spring of 2021 the COVID-19 Pandemic had seemed to be coming to an end with the advent of vaccines and good vaccination rates, but instead infection

rates, and new

variants, hospitalizations, and deaths from the COVID-19 virus have been increasing in recent months; and

WHEREAS, in the two (2) weeks between July 14 and July 28, 2021, the rate of COVID-19 infections confirmed by testing have more than doubled in the United States, and those trends continue; and

WHEREAS, on July 1, 2021, in the State of Maine, the average daily case total was 22.1;

WHEREAS, since that time the rate of COVID-19 infections confirmed by testing in the State of Maine has increased at a significant rate to an average number of 67.1 daily cases as of July 27, 2021, for an increase of 203.6 percent, and those trends continue; and

WHEREAS, a majority of the new infections in the United States and the State of Maine involve the Delta variant, a highly contagious SARS-CoV-2 virus strain; and

WHEREAS, the Delta variant has increased transmission, the severity of COVID-19 infections based on hospitalization and case fatality rates, and decreased susceptibility to therapeutic agents; and

WHEREAS, the Delta variant represents 47.6 percent of all sequenced samples collected in July in the State of Maine; and

WHEREAS, as a result of the Delta variant and the increase in COVID-19 infections, the United States Centers for Disease Control and Prevention announced on July 27, 2021, that fully vaccinated individuals should wear masks in indoor public settings in parts of the country that are experiencing a substantial or high transmission of COVID-19; and

WHEREAS, the Maine Center for Disease Control and Prevention similarly announced on July 28, 2021, that masks are recommended to be worn by fully vaccinated individuals in public indoor settings in almost all Maine counties, including Cumberland County; and

WHEREAS, the risk of COVID-19 virus transmission from vaccinated individuals to unvaccinated individuals (for example children under 12) remains unknown; and

WHEREAS, as a result of the above-described situation, the Town Manager has

determined that masks must be worn by staff and visitors to all Town buildings; and

WHEREAS, Town buildings have adequate ventilation under normal circumstances, but does not provide sufficient space to socially distance the number of members that may potentially attend meetings; and

WHEREAS, the technology infrastructure and processes currently exist to continue to continue to allow remote participation in and public access to Town Council, Board, and Committee meetings in accordance with Maine law; and

WHEREAS, the Town of Cape Elizabeth is committed to continuing to provide opportunities for public engagement which are accessible and safe; and

WHEREAS, all Town of Cape Elizabeth boards and committees have or will be adopting a Remote Participation Policy as authorized in 1 M.R.S. section 403-B;

NOW, THEREFORE, BE IT ORDERED AND DECLARED by the Cape Elizabeth Town Council that a limited emergency continues to exist within the Town of Cape Elizabeth; and

BE IT FURTHER ORDERED, that as a result of the declared limited emergency and the existence of an “emergency or urgent issue” as described above, pursuant to 1 M.R.S. section 403-B and the Town of Cape Elizabeth’s recently adopted Remote Participation Policy, being physically present for meetings in Cape Elizabeth Town buildings is not practicable at this time, and therefore requires that all Town of Cape Elizabeth boards, committees, and other groups continue to be conducted by remote technology/methods only until the limited emergency is terminated; and

BE IT FURTHER ORDERED, that as a result of this declared limited emergency, the existence of an “emergency or urgent issue,” the fact that Town buildings are unable to provide adequate social distancing for full public physical access to meetings, and in order to be consistent with board and committee meetings, the Town Council hereby strongly recommends that all other Town boards and committees also continue to meet by remote technology/methods only in accordance with the requirements of the Town’s adopted policy; and

BE IT FURTHER ORDERED that this Order is enacted as an Emergency so that it may take effect immediately.

Attachments:

- **Order Declaring a Limited Emergency 08 30 2021** (Order_Declaring_a_Limited_Emergency_8_30_2021_.pdf)

7. 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 majority vote of the councilors present. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

8. 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.

SAMPLE

[This sample policy is provided by MMA Legal Services. It adheres to the requirements of 1 M.R.S. § 403-B, and may be tailored to meet the needs of individual board/committees.

We strongly encourage municipalities to consult their municipal attorney prior to enacting any policy.]

REMOTE PARTICIPATION POLICY

Town of Cape Elizabeth

Pursuant to 1 M.R.S. § 403-B and after public notice and a hearing held on August 30, 2021, the Cape Elizabeth Town Council adopts the following policy effective immediately to govern the participation, via remote methods, of members of the Town Council, Planning Board and Board of Zoning Appeals and the public in the public proceedings or meetings of the body.

When technology is available hybrid meetings will become available.

Members of the body are expected to be physically present for meetings except when not practicable, such as in the case of an emergency or urgent issue that requires the body to meet via remote methods, or an illness or temporary absence of a member that causes significant difficulty traveling to the meeting location. The chair, in consultation with the town manager, or if applicable the board staff member or other members if appropriate and possible, will make a determination that remote methods of participation are necessary in as timely a manner as possible under the circumstances. A member who is unable to attend a meeting in person will notify the chair, and/or town manager or if applicable the board staff member as far in advance as possible.

Remote methods of participation may include telephonic or video technology allowing simultaneous reception of information and may include other means necessary to accommodate disabled persons. Remote participation will not be by text-only means such as e-mail, text messages, or chat functions.

The public will be provided a meaningful opportunity to attend via remote methods when any member of the body participates via remote methods. If public input is allowed or required at the meeting, an effective means of communication between the body and the public will also be provided. The public will also be provided an opportunity to attend the meeting in person unless there is an emergency or urgent issue that requires the entire body to meet using remote methods. Notice of all meetings will be provided in accordance with 1 M.R.S. § 406 and any applicable charter, ordinance, policy, or bylaw. When the public may attend via remote methods, notice will include the means by which the public may access the meeting remotely and will provide a method for disabled persons to request necessary accommodation to access the meeting. Notice will also identify a location where the public may attend the meeting in person. The body will not restrict public attendance to remote methods except in the case of an emergency or urgent issue that requires the body to meet using remote methods of attendance.

The body will make all documents and materials to be considered by the body available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the body.

All votes taken during a meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the body and the public. A member of the body who participates remotely will be considered present for purposes of a quorum and voting.

This policy will remain in force indefinitely unless amended or rescinded.

This policy will be reviewed annually at the Town Council's organization meeting in December.

Dated: August 30, 2021

Signed: _____

Order Declaring a Limited Emergency

WHEREAS, in the Spring of 2021 the COVID-19 Pandemic had seemed to be coming to an end with the advent of vaccines and good vaccination rates, but instead infection rates, and new variants, hospitalizations, and deaths from the COVID-19 virus have been increasing in recent months; and

WHEREAS, in the two (2) weeks between July 14 and July 28, 2021, the rate of COVID-19 infections confirmed by testing have more than doubled in the United States, and those trends continue; and

WHEREAS, on July 1, 2021, in the State of Maine, the average daily case total was 22.1;

WHEREAS, since that time the rate of COVID-19 infections confirmed by testing in the State of Maine has increased at a significant rate to an average number of 67.1 daily cases as of July 27, 2021, for an increase of 203.6 percent, and those trends continue; and

WHEREAS, a majority of the new infections in the United States and the State of Maine involve the Delta variant, a highly contagious SARS-CoV-2 virus strain; and

WHEREAS, the Delta variant has increased transmission, the severity of COVID-19 infections based on hospitalization and case fatality rates, and decreased susceptibility to therapeutic agents; and

WHEREAS, the Delta variant represents 47.6 percent of all sequenced samples collected in July in the State of Maine; and

WHEREAS, as a result of the Delta variant and the increase in COVID-19 infections, the United States Centers for Disease Control and Prevention announced on July 27, 2021, that fully vaccinated individuals should wear masks in indoor public settings in parts of the country that are experiencing a substantial or high transmission of COVID-19; and

WHEREAS, the Maine Center for Disease Control and Prevention similarly announced on July 28, 2021, that masks are recommended to be worn by fully vaccinated individuals in public indoor settings in almost all Maine counties, including Cumberland County; and

WHEREAS, the risk of COVID-19 virus transmission from vaccinated individuals to unvaccinated individuals (for example children under 12) remains unknown; and

WHEREAS, as a result of the above-described situation, the Town Manager has determined that masks must be worn by staff and visitors to all Town buildings; and

WHEREAS, Town buildings have adequate ventilation under normal circumstances, but does not provide sufficient space to socially distance the number of members that may potentially attend meetings; and

WHEREAS, the technology infrastructure and processes currently exist to continue to continue to allow remote participation in and public access to Town Council, Board, and Committee meetings in accordance with Maine law; and

WHEREAS, the Town of Cape Elizabeth is committed to continuing to provide opportunities for public engagement which are accessible and safe; and

WHEREAS, all Town of Cape Elizabeth boards and committees have or will be adopting a Remote Participation Policy as authorized in 1 M.R.S. section 403-B;

NOW, THEREFORE, BE IT ORDERED AND DECLARED by the Cape Elizabeth Town Council that a limited emergency continues to exist within the Town of Cape Elizabeth; and

BE IT FURTHER ORDERED, that as a result of the declared limited emergency and the existence of an “emergency or urgent issue” as described above, pursuant to 1 M.R.S. section 403-B and the Town of Cape Elizabeth’s recently adopted Remote Participation Policy, being physically

present for meetings in Cape Elizabeth Town buildings is not practicable at this time, and therefore requires that all Town of Cape Elizabeth boards, committees, and other groups continue to be conducted by remote technology/methods only until the limited emergency is terminated; and

BE IT FURTHER ORDERED, that as a result of this declared limited emergency, the existence of an “emergency or urgent issue,” the fact that Town buildings are unable to provide adequate social distancing for full public physical access to meetings, and in order to be consistent with board and committee meetings, the Town Council hereby strongly recommends that all other Town boards and committees also continue to meet by remote technology/methods only in accordance with the requirements of the Town’s adopted policy; and

BE IT FURTHER ORDERED that this Order is enacted as an Emergency so that it may take effect immediately.