



Town of Cape Elizabeth, Maine

Council-Manager Charter

as Amended through November 2012

TOWN of CAPE ELIZABETH, MAINE

Council-Manager Charter

Enacted by the

ONE HUNDRED THIRD LEGISLATURE

**Approved by the
CITIZENS of CAPE ELIZABETH
November 7, 1967**

**Amendments Approved by the
CITIZENS OF CAPE ELIZABETH
November 3, 1987
November 6, 1990
November 2, 2004
November 6, 2012**

A BRIEF HISTORY of CAPE ELIZABETH

The early 1600's brought both the English and French explorers to the Maine coastline. It was Captain John Smith who was responsible for the naming of Cape Elizabeth. In 1615 he presented a descriptive map of the New England coast to Prince Charles (later Charles I of England), urging him to change some of the "barbarous" Indian names. Thus Cape Elizabeth was named for Charles' beautiful sister Elizabeth, who later became the ancestress of the present Queen Elizabeth II.

Richmond Island, off the southern shores of Cape Elizabeth, was the focus of the first Cape Elizabeth Settlement. As early as 1605 the French explorer Champlain had discovered its charm, christening it "Isle of Bacchus" in honor of its lavish supply of wild grapes. The first settler was George Richmond, an Englishman, who probably traded with the mainland Indians in the late 1620's. Other than his name which he bequeathed to the island, little is known about George Richmond.

History and legend have described the next settler in more colorful detail. The notorious Walter Bagnall established a trading post on the island in 1628 and grew prosperous trading rum for Indian beaver skins. Romantic tales of treasure buried by Bagnall came to life when a later inhabitant, while plowing, uncovered coins dating from 1563 to 1625. Bagnall reaped the fruits of his dishonest dealings with the Indians when they rose against him, murdered him, and burned the trading post to the ground.

That same year, in 1631, two English merchants, Robert Trelawny and Moses Goodyear, received a grant of land on the mainland near Spurwink River with fishing and trading privileges on Richmond Island. Their agent, John Winters, established a flourishing enterprise on the island. The natural harbor became a port for traders, the chief item being fish. Houses were built and crops planted. The Reverend Robert Jordan arrived to minister to the colony. Marrying Winter's daughter, he was to play an important role in the development of the mainland.

In 1632 when John Winters arrived to lay claim to the mainland grant, he found two settlers already farming the area. George Cleeve and Richard Tucker, uprooted by Winters, became the first settlers of Portland.

Robert Trelawny, one of the patentees of Cape Elizabeth and Richmond Island, became a political prisoner during the English civil war in 1640. He lost both his fortune and his land grant. Thereafter business declined on Richmond Island, and was terminated by the death of John Winters in 1645.

The decline of Richmond Island quickened development of the mainland. Robert Jordan moved to the Spurwink River area, became a wealthy landowner, and was instrumental in stalling the efforts of Massachusetts Puritans to lay claim to the Province of Maine. However, in 1658, the Towns of Scarborough and old Falmouth (then including Cape Elizabeth, Portland, South Portland, Falmouth and Westbrook) swore allegiance to the General Court of Massachusetts. The dependent relation with Massachusetts was to last until Maine separated in 1820. Growth continued in both the Purpoodock (South

Portland) and Spurwink settlements in Cape Elizabeth. Increasing conflict with the Indians encouraged the building of garrisons in both communities.

The French and Indian War forced abandonment of the entire area from 1675 to 1713. The Rev. Jordan's grandson resettled at Spurwink in 1715, and gradually settlers returned to the Purpoodock colony. Falmouth (including Cape Elizabeth) was officially incorporated by the General Court in 1718. By 1725 the population in Cape Elizabeth numbered 17 families.

In 1733, the growing population of Cape Elizabeth and the difficulty of getting across the Fore River for business, church and school seemed good enough reasons for its being established as a second parish in old Falmouth. It was not until 1765, when its citizens petitioned for separation from Falmouth, that the Town of Cape Elizabeth was incorporated by the General Court. It was Maine's twenty-third town.

Following the hardships of the Revolutionary War and the era under the Articles of Confederation, the early period under the federal Constitution ushered in a time of prosperity for the entire Portland area. In 1791, Portland Head Light was first lit as the first lighthouse completed by the new federal government. Burgeoning trade and commerce was brought to a standstill, however, during the Embargo of 1807 and the War of 1812. Cape Elizabeth drowsed through the era, fishing and farming.

After the Civil War, ship repairing became the chief industry in the area, with the resultant growth of the Purpoodock end of town. Conflict over taxes involved with the bringing in of a public water supply to Purpoodock caused the final split between the northern and southern parts of Cape Elizabeth. In 1895 the town was divided into South Portland and Cape Elizabeth as we know it today.

The late nineties and early twentieth century brought Fort Williams, new residents who commuted to Portland, summer resort visitors, and pleasure seekers who, first by trolley and later by automobile, sought out the fashionable casinos and the magnificent beaches and ocean-side panoramas of Cape Elizabeth. The world wars brought in new residents who worked in the neighboring shipyards.

In 1967 Cape Elizabeth was suffering from acute growing pains. It had grown in population from 1877 in 1895, when it separated from South Portland, to about 7300. Having celebrated its bicentennial, the town turned to the future with a brand new form of government. To deal more effectively with growing needs in the town, Cape Elizabeth abandoned the traditional Town Meeting and adopted a modern Council-Manager Charter.

ARTICLE I

Grant of Powers to the Town

Sec. 1. Incorporation. The inhabitants of the Town of Cape Elizabeth, within the limits as now established or as hereafter established in the manner provided by law, shall be a municipal corporation, by the name of the Town of Cape Elizabeth.

Sec. 2. Powers and duties. The town shall have, exercise and enjoy all the rights, immunities, powers and privileges and franchises and shall be subject to all the duties, liabilities and obligations and provided for herein, or otherwise, pertaining to or incumbent upon said town as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable bylaws, regulations and ordinances for municipal purposes, not inconsistent with the Constitution and statutes of the State of Maine, and impose penalties for the breach thereof, to be recovered in such amounts and for such uses as said bylaws, regulations or ordinance shall provide.

The administration of all fiscal prudential and municipal affairs of said town, with the government thereof, except the general management, care, conduct and control of the schools of said town, which shall be vested in a board of education as hereinafter provided, and also except as otherwise provided by this charter, shall be and are vested in one body of 7 members, which shall constitute and be called the town council, all of whom shall be inhabitants of said town and shall be sworn in the manner hereinafter prescribed.

The town may acquire property for any town purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, mortgage, hold, manage and control such property as its interest may require.

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the power, which the town would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the town may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers the town may assume pursuant to state laws and to the provisions of the State Constitution.

Article II Town Council

Sec. 1. Number; election; term. The town council, hereinafter called the "council," shall be composed of 7 members, each of whom shall be elected by the registered voters of the entire town. Except as provided in Article VII, Section 1, each member shall be elected for a term of 3 years and until a successor is elected and qualified.

Sec. 2. Qualifications. Councilors shall be registered voters of the town and shall reside in the town during their term of office. In case of a vacancy caused by death, resignation, removal from the town or removal from office as hereinafter provided, of any member of the town council more than 6 months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal

election, the vacancy may be filled by a special election for the unexpired portion of the term. Such election may be called by a majority of the council members then in office. Such election shall be called and held and nominations made as in regular municipal elections.

Any member of the council who shall be convicted of a felony or a misdemeanor involving moral turpitude while in office shall, after due notice and hearing before the council and the production of the records of such conviction, forfeit the office.

Sec. 3. Enumeration of powers. Without limitation of the foregoing, the council shall have the power to:

1. Appointments; removal. Appoint, and remove for cause after hearing, the town manager and a town assessor. Appoint a town attorney or attorneys, who shall serve at the will of the council. Appoint, and remove for cause after hearing, the members of the board of assessment review, the planning board, and the board of zoning appeals which shall have such powers and perform such duties as are provided by the statutes of the State of Maine. Appoint, and remove for cause after hearing, trustees of the Thomas Memorial Library and the Riverside Cemetery, and determine the length of their terms.

2. Make ordinances. By ordinance create, change and abolish offices, departments, agencies, boards and commissions, other than the offices, departments, agencies, boards and commissions established by this charter. The council by ordinance may assign additional functions or duties to offices, departments, agencies, boards and commissions established by this charter, but may not discontinue or assign to any other office, department, agency, board or commission any function or duty assigned by this charter to a particular office, department, agency, board or commission.

3. Make, alter and repeal ordinances. Make, alter and repeal ordinances, including the power to enact ordinances providing for the grant of licenses and permits for the conduct of any business, as set forth in the statutes of the State of Maine, for such periods of time and in accordance with such rules and regulations not inconsistent with law and upon payment by the licensee of such fees as the council may establish in such ordinance.

4. Make investigations. Inquire into the conduct of any office, department, agency, board or commission of the town and make investigations as to municipal affairs.

5. Annual budget. Adopt the annual budget.

6. Annual Audit. Provide for an annual audit.

7. Exercise all legislative, financial and other powers. Exercise all the legislative, financial and other powers now or hereafter given by statute to inhabitants of towns acting in town meeting; and also exercise all of the powers now or hereafter given by statute to selectmen of towns and municipal officers of towns.

8. Other powers. Exercise all of the powers given to the inhabitants of towns and to the selectmen and municipal officers of towns relating to borrowing of any kind.

Sec. 4. Compensation. Compensation of the councilors shall be set by ordinance. The council by order shall fix the compensation of officials appointed by the council, including the compensation of the town manager for his or her services as such and for all other services rendered. Compensation of the appointees of the town manager shall be fixed by the town manager in accordance with a pay classification plan approved by the town council.

Sec. 5. Induction of council into office. Commencing in year 2005, the town council shall meet at the usual place for holding meetings on the second Monday in December following the regular municipal election, and at said meeting the councilors-elect shall be sworn to the faithful discharge of their duties by the Town Clerk or by a notary public, and a record made thereof.

Sec. 6. Council to be judge of qualifications of its members. The council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and require production of records, but the decision of the council in any such case shall be subject to review by the courts.

Sec. 7. Regular meetings. The council shall, at its first meeting, or as soon thereafter as possible, establish by resolution a regular place and time for holding its regular meetings and shall meet regularly at least once a month. It shall also provide a method for calling special meetings. All meetings of the council shall be open to the public in accordance with the statutes of the State of Maine.

Sec. 8. Rules of procedure; journal. The council shall determine its own rules and order of business. It shall keep a record of its proceedings and the record shall be open to public inspection.

Sec. 9. Chairman. At its first meeting or as soon thereafter as practicable, the council shall elect, by majority vote of the entire council, one of its members for the ensuing year as chairman and the council may fill, for an unexpired term, any vacancy in the office of chairman that may occur. The chairman shall preside at the meetings of the council, and shall be recognized as head of the town government for all ceremonial purposes and by the governor for purposes of military law, but shall have no regular administrative duties. The chairman shall be entitled to vote, and his or her vote shall be counted upon all matters and issues as a vote of other members of the council. In the temporary absence or disability of the chairman, the council may elect a chairman pro tempore from among its members, and he or she shall exercise all the powers of chairman during such temporary absence or disability of the chairman.

Sec. 10. Quorum. A majority of the council shall constitute a quorum for the transaction of business. At least 4 votes shall be required for passage of any ordinance, order or resolution, except as provided in Article II, Section 12. A smaller number may adjourn from time to time. At least 24 hours notice of the time and place of holding such

adjourned meetings shall be given to all members who were not present at the meeting from which adjournment was taken.

Sec. 11. Public hearing on ordinances. At least one public hearing, notice of which shall state the general subject matter and shall be given as hereinafter provided, shall be held by the council before any ordinance shall be passed, but nothing contained herein shall be deemed to require publication of the ordinance itself. The passage of such ordinance shall not be effective until 30 days after such enactment. Notice of all public hearings under this charter shall be given at least 7 days in advance of the public hearing by publication in a newspaper or newspapers having a general circulation in the town and by posting copies of said notice at the town hall and such other places as the council shall designate. The council in its discretion may cause copies of said notice to be mailed, postage prepaid, to interested parties in the town.

Sec. 12. Emergency ordinances. The council may, by vote of 5 of its members, pass emergency ordinances, to take effect at the time indicated therein, to meet public emergencies affecting life, health, property or the public peace. Such emergency ordinances shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the council shall be conclusive. Within 5 days after passages, such ordinance shall be posted at the town hall and such other places as the council may designate, and statement of the general subject matter shall be published in a newspaper or newspapers having a general circulation in the town. No public hearing or notice thereof shall be required prior to the passage of an emergency ordinance. Every emergency ordinance shall automatically stand repealed as of the 91st day following the date which it was adopted. Any action taken pursuant to the emergency ordinance remains valid following expiration of the emergency ordinance.

Sec. 13. Clerk of the council. In addition to the statutory duties of the town clerk, he or she shall act as clerk of the council and shall keep a public record of all proceedings of the council, including all votes.

Sec. 14. Independent annual audit. Prior to the end of each fiscal year, the council shall designate the State Department of Audit or private certified public accountants who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the town government, and shall submit their report to the council and the town manager. Such accountants shall not maintain any accounts or records of the town business, but shall post-audit the books and documents kept by any office, officer, department or agency of the town government.

ARTICLE III Town Manager

Sec. 1. Appointment; qualification; powers and duties. The town manager shall be chosen by the council solely on the basis of character and executive and administrative qualifications and may or may not be a resident of the Town of Cape Elizabeth or of the State of Maine at the time of appointment. The town manager shall be tax collector and overseer of the poor and shall have and exercise all powers and perform all the duties conferred or imposed by law upon said respective offices. No councilor shall receive appointment to the office of town manager during the term for which he or she shall have been elected, nor within one year after the expiration of his or her term, nor shall any member of the council act in that capacity. The town manager shall give bond for the faithful discharge of his or her duties to the town in such sum as the council shall determine and direct, and with surety or sureties to be approved by the council. The premium on the town manager's bond shall be paid by the town. The town manager shall be the administrative head of the town and shall be responsible to the council for the administration of all departments assigned to him or her. The town manager's powers and duties shall be as follows:

1. Appointments by town manager; removals. Appoint and remove, both subject to approval of the council, the town clerk, town treasurer, police chief, fire chief, public works director and other department heads and prescribe their duties. The town manager shall also have the power to appoint the local health officer, and the manager shall act as health officer in the event of incapacity or absence of the local health officer.

2. Prepare annual budget. Prepare annual budget, submit it to the council and be responsible for its administration after adoption.

3. Annual town report. Prepare and submit to the council as of the end of the fiscal year a complete report on the finances and administrative activities of the town for the preceding year and cause such annual town report to be published and made available to the public as promptly as possible after the close of the fiscal year.

4. Attend meetings. Attend the meetings of the council, except when his or her removal is being considered, and keep the council advised of the financial condition and future needs of the town and make such recommendations as may seem to him or her desirable.

5. Laws, etc. faithfully administered. See that all laws and ordinances governing the town are faithfully administered.

6. Purchasing agent. Act as purchasing agent for all departments of the town except the department of education.

7. Other duties. Perform such other duties as may be prescribed by this charter or required of the town manager by the council, not inconsistent with this charter.

8. Administrative code. Prepare an administrative code, submit it to the council for adoption and be responsible for its administration after adoption.

Sec. 2. Removal. The town manager may be removed for cause by the council in accordance with the provisions of the statutes of the State of Maine relating to the removal of a town manager.

Sec. 3. Department heads. All statutory officers and department heads other than listed in Article II, Section 3, subsection 1, shall be appointed and removed by the town manager, both subject to approval of the council.

Sec. 4. Council not to interfere in appointments or removals. Neither the council nor any of its members shall direct or request the appointment of any person to or his or her removal from office by the manager or by any of the town manager's subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager, and neither the council nor any member thereof shall give orders to any subordinate of the manager, either publicly or privately.

Sec. 5. Vacancy in office of town manager. During any vacancy in the office of town manager, and during the absence or disability of the town manager, the council shall designate a properly qualified person, not a member of the council, to perform the duties of manager and fix the compensation. While so acting, he or she shall have the same powers and duties as those given to and imposed on the town manager. Before entering his or her duties, the acting town manager shall give bond to the town in a sum and with surety or sureties to be approved by the council. The premium on said bond shall be paid by the town.

ARTICLE IV

Department of Education

Sec. 1. Board of education. The department of education shall be administered by a board of education, hereinafter called the "school board," which shall consist of 7 registered voters of the town, who shall be nominated and elected by the registered voters of the entire town according to the provisions of Article VII of this charter. Except as provided in Article VII, Section 1, each member shall be elected for a term of 3 years and until their successors are elected and qualified.

Sec. 2. Qualifications. School Board members shall be registered voters of the town and shall reside in the town during their term of office. In case of a vacancy caused by death, resignation, removal from the town or removal from office as hereinafter provided, of any member of the school board more than 6 months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal election, the vacancy may be filled by a special election for the unexpired portion of the term. Such election may be called by a majority of the school board members then in office. Such election shall be called and held and nominations made as in regular municipal election.

Any member of the school board who shall be convicted of a felony or a misdemeanor involving moral turpitude while in office shall, after due notice and hearing before the school board and the production of the records of such conviction, forfeit the office.

Sec. 3. Organization and Quorum. Commencing in year 2005, the members of the school board shall meet for organization on the second Monday in December following the regular municipal election, and at said meeting the members-elect shall be sworn to the faithful discharge of their duties by the Town Clerk or by a notary public, and a record made thereof. The majority of the whole number of the school board shall be a quorum.

Sec. 4. Chairman. At its first meeting or as soon thereafter as practicable, the school board shall elect, by majority vote of the entire school board, one of its members for the ensuing year as chairman and the school board may fill, for an unexpired term, any vacancy in the office of chairman that may occur. The chairman shall preside at the meetings of the school board, and shall be recognized as the ceremonial head of the school department. The chairman shall be entitled to vote, and his or her vote shall be counted upon all matters and issues as a vote of other members of the school board. In the temporary absence or disability of the chairman, the school board may elect a chairman pro tempore from among its members, and he or she shall exercise all the powers of chairman during such temporary absence or disability of the chairman.

Sec. 5. Powers and duties. The school board shall have all the powers conferred and shall perform all the duties imposed by law upon school boards in regard to the care and management of the public schools of the town, except as otherwise provided in this charter. The school board shall prepare budget estimates in detail of the several sums required during the ensuing budget year for the support of the public schools and at least 75 days before the beginning of the budget year, the school board shall furnish copies of such estimates to the town manager.

ARTICLE V Budget

Sec. 1. Fiscal Year. The fiscal year of the town government shall begin the first day of July and shall end on the 30th day of June of each calendar year, or such other fiscal year as the council may decide. Such fiscal year shall constitute the budget and accounting year as used in this charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

Sec. 2. Preparation and submission of the budget. The town manager, at least 75 days prior to the beginning of each budget year, shall submit to the council a budget and an explanatory budget message. The budget authority of the council shall be limited to the final determination of the total appropriation to be made to each of the several offices, departments and agencies of the town. This budget shall contain:

1. Statement of financial condition. Exact statement of the financial condition of the town.

2. Statement of appropriations. An itemized statement of appropriations recommended for current expenses and for permanent improvements, with comparative statements in parallel columns of estimated expenditures for the current year and actual

expenditures for the next preceding fiscal year. An increase or decrease in any item shall be indicated.

3. Statement of estimated revenue. An itemized statement of estimated revenue from all sources, other than taxation, and a statement of taxes required, comparative figures from current and next preceding year.

4. Other information. Such other information as may be required by the council.

The proposed budget prepared by the manager shall be reviewed by the council which shall approve the budget with or without amendments. The complete town budget as approved by the council shall be printed and distributed and the council shall fix the time and place for holding a public hearing on the budget, and shall give a public notice of such hearing as provided in this charter. The council shall then review the budget and adopt the same, with amendments, if any.

Sec. 3. Budget establishes appropriations. From the date of adoption of the budget, which adoption shall be no later than 30 days prior to the first day of the budget year, the several amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies and purposes therein named.

Sec. 4. Budget establishes amount to be raised by property tax; certification to town assessor. From the date of adoption of the budget, the amounts stated therein as the amount to be raised by property tax shall constitute a determination of the amount of the levy for the purposes of the town in the corresponding fiscal year. A copy of the budget as finally adopted shall be certified by the town manager and filed by him or her with the town assessor, whose duty it shall be to levy such taxes for the corresponding fiscal year.

Sec. 5. Budget summary. At the head of the budget there shall appear a summary of the budget which shall be itemized by department and kinds of expenditures and also by principal sources of anticipated revenue stating separately the amount to be raised by property taxes, all in such a manner as to present to taxpayers a simple and clear summary of the detailed estimates of the budget.

Sec. 6. Expenditures and departmental revenue. The budget for all departments shall include all proposed expenditures, and the council shall make a gross appropriation for each department for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the council.

Sec. 7. Work program; allotments. Before the beginning of the budget year, the head of each office, department or agency shall submit to the town manager, when required by him or her, a work program of the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The town manager may revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total of appropriations available to said office, department or agency for the budget year.

Sec. 8. Transfers of appropriations. At the request of the manager and within the last 3 months of the budget year, the council may by order transfer any unencumbered appropriation, balance or portion thereof between departments.

Sec. 9. General fund appropriations. Every general fund appropriation shall lapse at the close of the fiscal year to the extent that it has not been expanded or encumbered, except that an appropriation for a capital expenditure shall not lapse until the purpose for which it was made is accomplished or abandoned.

ARTICLE VI Tax Administration

Sec. 1. Assessor. There shall be established a department of assessment, the head of which shall be the town assessor. The assessor, appointed by the council as hereinbefore provided, shall exercise the same powers and be subject to the same duties and liabilities that similar officers of the several towns and cities in the State may exercise, and may now or hereafter be subject to, under the statutes of the State of Maine.

Sec. 2. Board of assessment review, appointments; vacancies. There shall be a board of assessment review to consist of 3 members, who shall be appointed by the council for a term of 3 years, and shall be residents and registered voters of the town. Members may be removed for cause, after hearing, by the council. Compensation, if any, to such members shall be determined by the council. Vacancies in the membership of such board shall be filled by appointment by the council for the unexpired term.

Sec. 3. Board of assessment review; powers and duties. The board of assessment review shall have the power to:

1. Review and revise assessments. Review on complaint of property owners, and revise assessments for the purpose of taxation of real and personal property within the town limits made by the town assessor;

2. Administer oaths. Administer oaths;

3. Take testimony. Take testimony.

4. Hold hearings. Hold hearings;

5. Adopt regulations. Adopt regulations regarding the procedure of assessment review not inconsistent with statutory provisions.

ARTICLE VII Nominations and Elections

Sec. 1. Municipal elections. Commencing in year 2005, the regular election for the members of the town council and school board shall be held on the first Tuesday after the first Monday in November. All elections shall be conducted on a non-partisan basis and without party designations on the election ballot. The terms of those town councilors and school board members in office on January 1, 2005, shall expire on the second Monday of December next following completion of their three years in office provided their successor has been elected and qualified.

Sec. 2. Nomination. Registered voters of the town shall be nominated for the council or school board only by the use of nomination papers in accordance with the statutes of the State of Maine, provided nevertheless, that notwithstanding anything contained in said statutes to the contrary, including without limitation, 30-A M.R.S.A. §2528(4)(C) and (D), completed nomination papers must be filed with the town clerk during business hours by the 60th day prior to election day. They must be accompanied by the written consent of the person proposed as a candidate agreeing:

- (1) to accept the nomination if nominated;
- (2) not to withdraw; and
- (3) if elected at the municipal election, to qualify as such municipal officer or school board member.

A nomination paper that complies with the above requirements is valid unless a written objection to it is made to the town council by the 2nd day following the deadline for submission of a nomination paper. All other provisions of 30-A M.R.S.A. §2528 not inconsistent with the foregoing remain applicable, including 30-A M.R.S.A. §2528(4)(E).

Sec. 3. Conduct of municipal elections. The provisions of the statutes of the State of Maine relating to the qualifications of voters, the registration of voters, the nomination for any office, the manner of voting, the duties of election officers and all other particulars relative to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all municipal elections, except as otherwise provided in this charter.

Sec. 4. Voting places. The voting places for municipal elections shall be those, which have been or may be established for the state elections.

Sec. 5. Election officials. The town council shall, 10 days before any election, appoint a warden and a clerk, in addition to the regular ballot clerks, for each voting place.

Sec. 6. Conflict of interest. No full or part-time employee of the Town or the School Department shall serve in any local elected office, provided that this provision shall not prohibit a volunteer member of the Cape Elizabeth Fire Department from serving as an elected official, provided that this subsection shall not apply to a person serving in a part-time position and as an elected official at the time of adoption of this section.

ARTICLE VIII

Initiative and Referendum

Sec. 1. Petition for overrule of ordinance. All ordinances, except emergency ordinances passed pursuant to Article II, Section 12 shall be subject to overrule by a referendum.

1. If, within 20 days after the enactment of any such ordinances, a petition signed by not less than 10% of the registered voters of the Town of Cape Elizabeth is filed with the town clerk requesting its reference to a referendum, the council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the town clerk and shall, within 14 days after said public hearing, designate a time and place for the purpose of submitting to a referendum vote the question of adopting such ordinance. Pending action by referendum, the referred ordinance shall be suspended from going into operation until it has received an affirmative vote of the majority of the voters voting on said question.

Sec. 2. Referendum for approval of certain capital expenditures. Any vote by the council for a single capital expenditure of town funds or a single capital improvement not arising from a fire or other casualty loss, nor arising from a federal or state mandate, the total cost of which exceeds One Million Dollars (\$1,000,000), whether as a separate vote or included in the approved annual budget, shall be submitted to a referendum vote at a time designated by the council. Pending action by referendum, the referred vote, or budget item, shall be suspended from going into operation until it has received an affirmative vote of the majority of voters voting on said question. This section shall not apply to the refinancing of previously authorized debt.

Sec. 3. Petition for enactment of ordinance. Subject to the provisions of Section 1, not less than 10% of the registered voters of the town may at any time petition over their personal signatures for the enactment of any proposed lawful ordinance by filing such petition including the complete text of such ordinance with the town clerk. The council shall call a public hearing to be held within 30 days from the date of filing of such petition with the town clerk and shall, within 30 days after said public hearing, designate a time and place for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the referendum vote, such ordinance shall be enacted by the council. Such ordinance shall take effect on the 10th day after the conclusion of such referendum provided a majority of those voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by the town attorney before being submitted to referendum. The town attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions and to assure accuracy in its text and references and clearness and preciseness in its phraseology, but the attorney shall not materially change its meaning and effect.

Sec. 4. Petition for submission of amendments of charter. Citizens may petition for an amendment to this charter in the manner prescribed in Maine statutes.

Sec. 5. Form of ballot. The ballot shall contain a copy of the proposed ordinance or charter amendment(s) except where the municipal officers, with the advice of the town attorney, determine that it is not practical to print the proposed ordinance or amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed ordinance or

amendment. The municipal officers shall include in the order a summary of the proposed ordinance or amendment and instructions to the clerk to include on the ballot the summary in lieu of the text of the proposed ordinance or amendment. The form of ballot for the proposed ordinance or charter amendment shall be substantially as follows:

"Shall the proposed ordinance, a copy of which is printed herein or attached hereto, be adopted?"

For the Ordinance

Against the Ordinance

The voter shall write a cross or a check in the appropriate box.

ARTICLE IX General Provisions

Sec. 1. Repealing clause. All acts and parts of acts of the private and special laws of Maine relating to the Town of Cape Elizabeth, inconsistent with the provisions of this charter, are repealed.

Sec. 2. Separability clause. If any portion of this charter shall be held to be invalid, such decision shall not affect the validity of the remaining portions thereof.

Sec. 3. Short title. This charter shall be known and may be cited as the "Council-Manager Charter of the Town of Cape Elizabeth." The clerk shall cause it to be printed and made available to the public.

Sec. 4. Existing contracts not invalidated, unless inconsistent. All rights, actions, proceedings, prosecutions and contracts of the town or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent herewith, shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Sec. 5. Subpoena before council. The clerks of the Supreme Judicial and Superior Courts may issue a subpoena for witnesses to attend and produce books, documents and papers at any meeting of the council for the Town of Cape Elizabeth at which a hearing is had in any matter regarding any alleged dereliction of duty by town officers or employees. On complaint of failure to obey subpoena filed with any Justice of the Superior Court, said justice, if he or she finds failure to obey such subpoena to be without reasonable excuse, shall impose a fine of not less than \$10 nor more than \$100, or imprisonment for not more than 30 days, or both.

Sec. 6. Oath of Office. Every officer of the town shall, before entering upon the duties of his or her office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the town clerk:

"I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and the State of Maine; that I will, in all respects, observe the provisions of the charter and ordinances of the Town of Cape Elizabeth and statutes of the State of Maine, and will faithfully discharge the duties of the office of.....".

Sec. 7. Ordinances not inconsistent continue in force. All ordinances of the Town of Cape Elizabeth in force at the time when this charter takes effect, not inconsistent with the provisions of this charter, shall continue in force until amended or repealed.

Sec. 8. Removal of officers and employees. Any statutory officer, department head or employee appointed by the town manager may be removed by him or her at any time, except where prohibited by statute and subject to the provisions of Article III, Section 1, subsection 1.

Sec. 9. Continuance of present administrative officers. All persons holding administrative office at the time this charter takes effect shall continue in office and in the performance of their duties until provision shall have been made in accordance herewith for the performance of such duties or the discontinuation of such office.