

CAPE ELIZABETH TOWN COUNCIL AGENDA
Regular Meeting # 14-2011
Cape Elizabeth Town Hall
Wednesday, October 12, 2011
7:30 p.m.

Roll Call by the Town Clerk

David S. Sherman, Jr., Chair	Term Expires 12/2011	dsherman@dwmlaw.com
Frank J. Governali	Term Expires 12/2013	frank.governali@capeelizabeth.org
Caitlin R. Jordan	Term Expires 12/2013	caitlin.jordan@capeelizabeth.org
Sara W. Lennon	Term Expires 12/2012	slennon@maine.rr.com
Jessica L. Sullivan	Term Expires 12/2012	jsullivan08@maine.rr.com
Anne E. Swift-Kayatta	Term Expires 12/2011	aeskay@maine.rr.com
James T. Walsh	Term Expires 12/2012	jim.walsh@capeelizabeth.org

The Pledge of Allegiance to the Flag
Town Council Reports and Correspondence
Citizen Opportunity for Discussion of Items Not on the Agenda
Town Manager's Report

Review of Minutes of [September 12, 2011 Meeting](#)

Public Hearing: Rudys' of the Cape Liquor Licenses

Malt, Vinous and Spirituous License for 517 Ocean House Road, LLC d/b/a Rudy's of the Cape

Item # 128-2011 [Rudy's Liquor Licenses](#)

The Rudy's property has been recently sold to 517 Ocean House Road LLC. The new owner has applied for malt, vinous and spirituous licenses.

Item # 129-2011 [Arboretum at Fort Williams Park](#)

The Arboretum at Fort Williams Park has recently revised their master plan. They are asking for approval of the master plan and authorization for the town manager to apply for permits for sites along the cliff walk. Materials include: [Full Document](#) and individual parts: [Recommendation from Fort Williams Advisory Commission](#) [Cover Memorandum from Arboretum Steering Committee](#) [Old Master Plan](#) [New Master Plan](#) [Master Plan Language Paths](#)

Item # 130-2011 [Fort Williams Park Fee for Commercial Transportation Vehicles](#)

The Town Council discussed at a workshop on October 3, 2011, the following recommendation of the Fort Williams Advisory Commission made in June 2011, and recommended a public hearing be set for Monday, November 14, 2011 on the proposal.

At the FWAC meeting last Thursday, we arrived at a final recommendation regarding fees for tour buses and trolleys.

We determined that all tour buses, whether related to a cruise ship or arriving randomly, should be charged \$40.00. We also determined the trolley company should be assessed a seasonal charge of \$1,500 for each trolley. In the past we understand there have been 3 trolleys which made runs to Fort Williams from Commercial Street. Assuming last year's total of 784 buses, we

would generate gross income of \$31,360 from buses and \$4,500 from trolleys, for a total of \$35,860.

We further determined that we would not assess a charge for camp and recreation program buses. Since municipal rec. programs are not for profit operations, commission members felt we should not institute a fee for such visits. We also agreed not to charge the small buses and vans which may be operated by elderly care facilities such as Village Crossings, Piper Shores or the South Portland Housing Authority.

This recommendation is for 2012.

Item # 131-2011 Fort Williams Leases

Greg Marles, the facilities manager, has been meeting with prospective tenants of rental spaces. He has been focusing of late on Building # 326 at Fort Williams Park which is the larger of the two Officer's Row buildings. It is recommended to offer proposed leases to: Relentless Capital, LLC and Behavioral Health Resources, Inc. The leases will result in new annual income of \$17,826 plus \$2,964 for utilities with the funds benefitting the Fort Williams Park Capital Fund. Additional space still remains for lease in Building #326.

Item # 132-2011 Planning Board Growth Area Recommendation

On June 13, 2011, the Town Council requested the Planning Board to consider the possibility of rezoning Turkey Hill Farm and the Loveitt Heirs parcel from the RB growth area zone to the RA zone. The Planning Board recommended in September 2011 that the zoning for the two parcels not be changed. The Town Council may accept the report and the issue would be dead. The Town Council could refer the recommendation elsewhere. The Town Council could also schedule a public hearing for November 14th on rezoning one or both parcels from RB to RA. The Loveitt Heirs parcel is located immediately behind Sherwood Forest which is the neighborhood across from Fort Williams Park . Turkey Hill Farm is off Old Ocean House Road with frontage extending southwesterly from the intersection of Trundy Road and Old Ocean House Road.

Item # 133-2011 Planning Board Open Space Impact Fee Recommendation

The Planning Board recommends the following open space impact fee:

Fee Calculation

Total open space available for public access (town records): 1191 acres

Cape Elizabeth population (2010 U.S. Census): 9015

Average household size 2010 U.S. Census): 2.57

Average value of 1 acre undeveloped land (Town Assessor): \$ 19,850

1191 acres/9015 persons = .132 acres per person

.132 acres per person x 2.57 persons per household = .339 acres per household (lot)

.339 acres = 14,767 sq. ft.

.339 acres per lot/unit x 19,850 per acre = \$6,729 dollars per lot/unit

Item # 134-2011 Consumer Fireworks Regulations

The Ordinance Committee is recommending a proposed amendment to the Miscellaneous Offenses Ordinance which would regulate consumer fireworks. It is recommended a public hearing be set for Monday, November 14, 2011 at 7:30 p.m. at the Cape Elizabeth Town Hall.

Article V. Consumer Fireworks Regulations

Sec 12-5-1. Definitions The following definitions shall apply to this article:

Consumer Fireworks: Shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. Consumer fireworks does not include missile type rockets, helicopter and aerial spinners, all as defined by the State Fire Marshal by rule. Nor does the definition include sky rockets and bottle rockets which for purposes of this section are defined as cylindrical tubes containing not more than 20 grams of chemical composition as defined by the State Fire Marshal by rule.

Display: An entertainment feature where the public or a private group is admitted or permitted to view a showing or discharge of fireworks or special effects.

Sec. 12-5-2. Consumer Fireworks Prohibited No person shall use, possess with the intent to use, sell, possess with the intent to sell or offer for sale consumer fireworks within the Town of Cape Elizabeth. This section does not apply to a person issued a fireworks display permit by the Town of Cape Elizabeth and/or by the State of Maine pursuant to 8 M.R.S.A. §227-A.

Sec. 12-5-3. Seizure and Disposal of Fireworks The Town may seize consumer fireworks that the Town has probable cause to believe are used, possessed or sold in violation of this Article and shall forfeit seized consumer fireworks to the State of Maine for disposal.

Sec. 12-5-4. Penalties

- (a) Any person who uses consumer fireworks or possesses consumer fireworks with the intent for use in the town of Cape Elizabeth shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) per violation plus costs shall be imposed.
- (b) Any person who sells consumer fireworks or possesses consumer fireworks with the intent to sell in the town of Cape Elizabeth shall be punished by a fine of not less than five hundred dollars (\$500.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than one thousand dollars (\$1000.00) per violation plus costs shall be imposed.

Item # 135-2011 Roosters

The Ordinance Committee is recommending a proposed amendment to the Miscellaneous Offenses Ordinance which would regulate rooster owners. It is recommended a public hearing be set for Monday, November 14, 2011 at 7:30 p.m. at the Cape Elizabeth Town Hall.

Sec. 12-1-2. Animal Control.

(a) No owner or person having charge of any horse, cow, ox, swine, goat, chicken, rooster or other ~~grazing~~ animal shall turn such animal into, or permit the same to go at large in any street, highway or public place within the town, or onto private property without the permission of the property owner

(b) No owner or person having charge of any horse, cow, ox, swine, goat, chicken, rooster or other animal shall allow any loud noises from the animal which shall either annoy, disturb, injure, disturb the peace or otherwise deprive abutting property owners of the peaceful and quiet enjoyment of their property.

Item # 136-2011 Rescue Unit Staffing

It is recommended that the Town Manager be authorized to develop enhanced rescue staffing with per diem personnel as described in a memorandum dated September 23, 2011 with the funds to be provided through the Rescue special revenue fund.

Item # 137-2011 Fund Balance Policy

It is proposed to update the Town of Cape Elizabeth fund balance policy

Town of Cape Elizabeth Fund Balance Policy

The Town of Cape Elizabeth shall comply with GASB 54 standards for reporting fund balances.

The fund balance shall be reported in five categories:

- Non-spendable- Funds that cannot be spent because they are either illiquid or legally or contractually required to be maintained intact.
- Restricted- Funds that are constrained with either externally imposed constraints or mandated to be reserved by law.
- Committed- Funds that can only be used for certain purposes per a formal action of the Town Council
- Assigned- Funds that are constrained by the Town Council's intent of use for a certain purpose, but are neither restricted nor committed.
- Unassigned- The residual classification for the general fund.

The general fund shall seek to have an ~~undesignated~~ unassigned municipal (excluding schools) fund balance of 8.33% of annual general fund operating revenues. This is equivalent to revenues anticipated in an average one month period

If the ~~targeted-undesignated~~ unassigned municipal (excluding schools) fund balance target is exceeded, 100% of any excess funds between 100% and 115% of the target shall be used to reduce the tax commitment in the next budget to be considered by the Town Council. Any

amount over 115% of the target may be committed or assigned for any capital need or unanticipated expenditure or may be placed in an assigned fund for future property tax relief.

~~Until~~ If the ~~undesignated~~ unassigned fund balance ~~reaches~~ falls below its target level, an interim objective is to increase as a percentage of operating revenues the ~~undesignated~~ unassigned fund balance every year. The balance shall not be used to support the annual budget or ~~other~~ for capital needs to a degree that the ~~undesignated~~ unassigned fund balance will be a lower percentage of operating revenues than in the previous year.

Museum at Portland Head Light Fund

The Museum at Portland Head Light Fund is an independent 501C entity under the control of a board of directors consisting of the members of the Cape Elizabeth Town Council.

The Museum at Portland Head Light Fund shall have an ~~undesignated~~ unassigned fund balance of not more than 100% of its annual projected income nor less than 25% of its annual projected income. Any excess greater than the ~~undesignated~~ unassigned fund balance target shall be used for improvements to the property and for operating expenses as provided in the by-laws of the Museum at Portland Head Light.

Item # 138-2011 [General Assistance Guidelines](#)

It is proposed to schedule a public hearing on the annual update of general assistance guidelines for Monday, November 14, 2011 at 7:30 p.m. at the Cape Elizabeth Town Hall.

Item # 139-2011 [Public Safety Message Board Sign](#)

It is proposed to adopt a policy for the use of the public safety message board sign.

Public Safety Message Board Sign

The Town of Cape Elizabeth acquired a portable message board sign through a grant from the US Department of Homeland Security. The sign is approximately 5' x 8' and is moved with a trailer hitch on a pick up truck. The sign is powered with a rechargeable battery and with a small solar panel.

The sign face may support 3 lines of message with each line having up to 8 characters. Upon each placement, the sign needs to be programmed and we utilize approximately 3 person hours for two persons to move the sign from its storage location, to set it up and to return it to storage. The sign is not used prior to snow plowing due to potential damage.

The sign has traditionally been utilized for public safety messages and for providing advance word of upcoming road construction projects.

Prioritization of Sign Use

The sign shall first be utilized for the purposes for which it was acquired. The sign was purchased to assist with information in public emergencies and especially in instances when Internet services and other means of communication may be unavailable.

The sign shall next be used for purposes affecting the public health, safety and welfare of citizens. These uses include road closings or restrictions, new or temporary speed limits, information about public safety programs, water or sewer use restrictions, air quality alerts etc.

The sign may next be used within 7 days of a regular or special election to alert citizens about the dates and location of Election Day voting.

As the primary purpose of the sign is for public safety, and extensive use could diminish attention given to the sign, the sign shall not be utilized for fundraising purposes, to advertise meetings, athletic or cultural events (excepting road closures) or to provide recognition of teams or individuals.

Item # 140-2011 [Fair Hearing Officer Appointment](#)

It is proposed to appoint Michael Vaillancourt to a new three year term as Fair Hearing Officer expiring December 31, 2014.

Citizens Discussion of Items not on the Agenda

Item # 141-2011 Executive Session Request

It is recommended that the Town Council, in conformance with 1MRSA §405 6 F enter executive session to review a request for a hardship abatement.

[Link to Monthly Financial Update](#)

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 Council. 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.