

CAPE ELIZABETH TOWN COUNCIL AGENDA

**Regular Meeting # 3-2012
Cape Elizabeth Town Hall
Monday, February 13, 2012
7:00 p.m.**

Roll Call by the Town Clerk

Sara W. Lennon, Chairman	Term Expires	12/2012	slennon@maine.rr.com
Frank J. Governali	Term Expires	12/2013	frank.governali@capeelizabeth.org
Caitlin R. Jordan	Term Expires	12/2013	caitlin.jordan@capeelizabeth.org
Katharine N. Ray	Term Expires	12/2014	katharine.ray@capeelizabeth.org
David S. Sherman, Jr.	Term Expires	12/2014	dsherman@dwmlaw.com
Jessica L. Sullivan	Term Expires	12/2012	jsullivan08@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 [Draft Minutes](#) of January 9, 2012 Meeting

Public Hearing: Sewer Rates

Item # 37-2012 [Sewer Rates](#)

Draft Motion:

ORDERED, that the Cape Elizabeth Town Council, pursuant to Sec. 15-1-11 of the Town Ordinances, does hereby revise and adopt the following Sewer Service Charge and Schedule:

A. The following user charge shall be effective for the first bill issued after the indicated date for all buildings within the Town of Cape Elizabeth connected to the public sanitary sewers of the Town:

Effective March 1, 2012

\$ 40.00 Up to 100 cubic feet of monthly measured water usage
\$ 5.10 Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

Effective March 1, 2013

\$ 43.00 Up to 100 cubic feet of monthly measured water usage
\$ 5.25 Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

Effective March 1, 2014

\$ 46.00 Up to 100 cubic feet of monthly measured water usage
\$ 5.41 Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

Effective March 1, 2015

\$ 48.00 Up to 100 cubic feet of monthly measured water usage

\$ 5.57 Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

The sewer service charge shall be applied directly for each water meter in place and for every structure attached to the municipal sewer.

B. Sewer Connection Fee Effective January 1, 2010

Pursuant to Sec. 15-1-6 (b) and 15-1-6 (c) of the Town Ordinances, the connection fee, including inspection and start-up assessment, shall be as follows:

\$4,000 for each unit to be served by the municipal sewer system with said fee to be paid prior to any connection to said system.

C. **ORDERED**, in accordance with Sec. 15-1-11 (c) of the Sewage Ordinance, interest for past-due sewage charges shall be assessed beginning twenty-five (25) days after date of billing at the same interest rate as is charged for past due taxes.

Public Hearing: Fort Williams Park Master Plan Update

Item # 38-2012

Fort Williams Park Master Plan Update

[Link to Summary](#)

It is recommended the Town Council refer to the Planning Board and the Fort Williams Advisory Commission the proposed master plan update (amendments) dated January 2012 for Fort Williams Park and hereby request comments within sixty days. This is in conformance with Sec 19-6-8 D.1. of the Cape Elizabeth Zoning Ordinance

Item # 39-2012

[Short Term Rentals Proposed Referral to Planning Board](#)

At the September 12, 2011 meeting, the Town Council forwarded to the Ordinance Committee a request to “review whether or not the Town should consider limitations on specific uses of short term rental properties in residential areas.”

The Ordinance Committee met four times in November, 2011 and 2 times in January 2012 regarding short term rentals. All meetings were held at 8:00 a.m. on weekday mornings. There were over 100 citizen comments and correspondence during the Ordinance Committee process. At the January 20, 2012 meeting, the Ordinance Committee voted 3-0 to forward the attached draft Short Term Rental amendments to the Zoning Ordinance to the Town Council for consideration.

The linked amendments reflect the Ordinance Committee’s effort to balance the concerns of neighbors with the desire of private property owners to rent their property on a short-term basis. The draft establishes a permit requirement for all short term rentals, and more specific standards for properties on lots of less than 30,000 sq. ft. where the property owner does not live on the same lot or an abutting lot. One of the standards limits the total number of tenants at a short term rental at 12 plus no more than one-half the total number of tenants as day guests.

Item # 40-2012

Old Setback Violation [Material A](#) [Material B](#)

A setback violation mistakenly occurred at 21 Woodcrest Road in 1999. It is not possible to have a variance granted at this time. The town attorney has worked with the attorney for the property owner and in consultation with the code enforcement officer and the town manager to prepare a proposed resolution.

Draft Motion: That the Council authorize the Manager to file an action in the Maine District Court in connection with a modest side yard set-back violation at 21 Woodcrest Road created when an addition was constructed in 1999-2000 and the owners mistakenly assumed the location of their boundary with 17 Woodcrest Road, and to thereafter enter into a consent judgment under which the Town would agree not to seek further enforcement of the setback violation, conditioned upon: (a) the owners paying to the Town the cost of such action (estimated at \$1,000); and (b) the Code Enforcement Officer recommending such action after determining the views of all abutting property owners.

Item # 41-2012

Bus Trolley Program for Fort Williams Park .

Draft Motion: Ordered: The original fees adopted by the Town Council shall remain in place except that any locally based tour operator who agrees in advance to participate in our invoicing program shall pay \$35.00 per bus instead of \$40.00 per bus. This includes the cruise ship buses and all buses coordinated by locally based operators. The trolleys will be \$1,500 for each of the three trolleys in regular circulation with the billing schedule to be determined by the Portland Head Light Museum Director. . A backup trolley occasionally used by the operator will not be additionally charged.

In addition, the Portland Head Light Museum Director .may have the flexibility to waive some bus fees, in 2012 only, for any tour where evidence can be shown that the tour and pricing were set before November 1, 2011. This is in the interest of building long term cooperative arrangements with the tour operators and does not apply to tours in conjunction with cruise ships. The Portland Head Light Museum Director will also work with our webmaster in providing bus and tour operators an opportunity to prepay fees through the Portland Head Light website.

The Town Council also agrees to authorize the hiring of greeters at Portland Head Light in 2012 provided 75% of the cost is paid through the budget for Portland Head Light. The greeter program shall be in effect from May through October and shall not exceed \$15,000 in total cost.

Item # 42-2012

Bond Refunding

We have an opportunity to call our 2002 bonds which paid for the renovation of the community center. The estimated [savings](#) is \$115,000.

TOWN OF CAPE ELIZABETH, MAINE
TOWN COUNCIL VOTE AUTHORIZING REFUNDING BONDS IN AN AMOUNT NOT TO
EXCEED \$780,000

WHEREAS, the Town has previously issued its \$1,500,000 2002 General Obligation Bonds dated June 1, 2002 (the "Prior Bonds"); and

WHEREAS, the Town wishes to refinance up to \$780,000 of the Prior Bonds in order to take advantage of a drop in interest rates and effect a cost savings to the Town.

NOW, THEREFORE, it is hereby

VOTED: Pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide funds to refinance the Prior Bonds, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$780,000 in principal amount to refinance the Prior Bonds.

VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell notes or bonds of the Town in the aggregate principal amount not to exceed \$780,000, such notes or bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk under the seal of the Town and to be in such form, have such maturity and bear interest at such rate as may be approved by the Treasurer and Chairman of the Town Council by their execution thereof.

VOTED: The form, maturity, interest rate and other details of said notes or bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have a final maturity not later than 20 years from date of issuance, and shall not be inconsistent with the provisions hereof. Such notes or bonds and any notes issued in anticipation thereof may be issued as callable notes or bonds in the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the Treasurer is authorized to negotiate, execute and deliver, in the name of and on behalf of the Town such contracts, agreements, and other documents, including refunding escrow agreements, verification reports, Bond Purchase Agreements, instruments and certificates as may be necessary or appropriate as determined and approved by the Treasurer in connection with the refinancing of the Prior Bonds, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Treasurer, such approval to be conclusively evidenced by his execution thereof.

VOTED: That the Treasurer be and hereby is authorized to engage Moors & Cabot, Inc. as financial advisor to the Town in connection with the issuance and sale of the Bonds.

VOTED: That the Treasurer be and hereby is authorized to select the underwriter for the Bonds heretofore authorized and the Treasurer be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

VOTED: That the Treasurer be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Treasurer, with the advice of the bond counsel for the Town, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the Town in connection with offering the Bonds for sale be and hereby is approved.

VOTED: That the Treasurer be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds heretofore authorized and an escrow agent for the Prior Bonds and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services.

VOTED: That the Bonds heretofore authorized shall be transferable only on the registration books of the Town kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof (or such other minimum denomination as the Treasurer shall approve) upon surrender thereof at the principal office of the Transfer Agent, with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond, the Town and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same.

VOTED: That the Treasurer be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds, and the Treasurer be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds for and participate in the Depository Trust Company Book-Entry Only System.

VOTED: That the Treasurer and Chairman of the Town Council from time to time shall execute such bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Treasurer and Chairman of the Town Council, and in case any officer of the Town whose signature appears on any Bond shall cease to be such officer before the delivery of said Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof.

VOTED: That the Treasurer be and hereby is authorized and directed to covenant and certify on behalf of the Town that no part of the proceeds of the issue and sale of the Bonds authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended.

VOTED: That if the Bonds or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds be and hereby are individually authorized to covenant and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the Town will refrain from any action that would cause interest on the Bonds to be subject to federal income taxation.

VOTED: That the officers executing the Bonds be and hereby are individually authorized to covenant, certify and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met.

VOTED: That any or all of the Bonds issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the Town Council of the Town of Cape Elizabeth.

VOTED: That the Treasurer and Chairman of the Town Council and Clerk and other proper officials of the Town be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds hereinabove authorized.

VOTED: That if any of the officers or officials of the Town who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds so signed and sealed shall have been actually authenticated or delivered by the Town, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the Town by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers and officials of the Town, although at the nominal date of such Bonds any such person shall not have been such officer or official.

VOTED: That if the Treasurer or Chairman of the Town Council or Clerk are for any reason unavailable to approve and execute the Bonds or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

VOTED: That the investment earnings on the proceeds of the Bonds, if any, and the excess proceeds of the Bonds (including premium), if any, be and hereby are authorized to be used to fund the refunding escrow for the Prior Bonds, to pay redemption premium on the Prior Bonds, if any, to pay interest on the Prior Bonds or the Bonds and to pay issuance costs for the Bonds.

Item # 43-2012

Town Council Goals for 2012

It is proposed to approve the draft goals the town council has discussed and reviewed at two previous workshop meetings.

Item # 44-2012

Thomas Memorial Library and Cultural Center

The following proposed actions reflect discussion at a town council workshop held on February 6, 2012

Ordered: The town council hereby:

1. Requests the Trustees of the Thomas Memorial Library to finalize and present to the town council a cultural center plan which optimizes functionality and accessibility of space and resources, adaptability for current and emerging technology and which emphasizes programming and resources for youth. As part of this plan, a pro forma operating budget should be prepared for programs, staff and utility costs for the new facility.
2. Requests the town manager to work with the Trustees and the Cape Elizabeth Historic Preservation Society to re-evaluate the space needed for archival storage in the proposed new facility.
3. Requests the town council chairman, the finance committee chair and the town manager to work with school officials and others to evaluate capital needs in light of the upcoming retirement of debt service payments for past school projects.
4. Requests the town manager to include in his recommended FY 2013 budget funds for part-time library staff so that the library director and the children's librarian may free up time for project planning and for implementation of enhanced library programming
5. Expresses its sincere appreciation to the Trustees of the Thomas Memorial Library, to the Thomas Memorial Library Foundation, to Demont Associates, to the library study oversight committee, to Jay Scherma, to Judy McManany and to all of the citizens who participated in the library study through meeting with representatives of Demont Associates.

Item # 45-2012

Drainage Easements

It is proposed to gratefully accept two drainage easements on Rocky Knoll Road from the Dinmore and Kerrigan properties. The town attorney shall file the deeds upon receiving releases from any mortgage holders.

[Quit-claim Deed from Dinmore](#)

[Easement from Kerrigan](#)

[Survey showing both](#)

Item # 46-2012

Great Pond Boat Rack Program

It is recommended the Town Council thank the Conservation Commission for their report on the Great Pond Boat Rack Program and approve its recommendations.

Item # 47-2012

Hardship Abatement Guidelines

Chairman Lennon, Councilor Sherman, Debra Lane and Michael McGovern served as a study group to prepare guidelines for consideration of applications for hardship abatements. It is recommended the Town Council approve the proposed guidelines.

Citizen Opportunity for Discussion of Items Not on the Agenda

Item # 48-2012

Town Manager Annual Evaluation

It is recommended the Town Council in conformance with 1 M.R.S.A. §405 6 A enter executive session to continue the annual evaluation of the town manager.

Adjournment

Link to Monthly Financial Information

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.