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May 2, 2012

Michael K. McGovern, Town Manager  
TOWN OF CAPE ELIZABETH  
320 Ocean House Road  
P.O. Box 6260  
Cape Elizabeth, ME 04107

*Via Electronic Mail*

RE: Proposed amendment to Town Charter

Dear Mike:

You have advised me that one or more members of the council wish to consider amending the Town Charter provision in regard to "Initiative and Referendum," being Article VIII. In addition to provisions for the overrule of adopted ordinances by referendum, and enactment of ordinances by referendum, Article VIII currently permits a petition to be signed by not less than 10% of the registered voters requesting a referendum on a council vote for a single capital expenditure or a single capital improvement the total cost of which exceeds 0.05% of the last state valuation. I understand the council wants to give consideration to an automatic referendum of any such vote, the total cost of which exceeds some to-be-determined amount.

Enclosed is a draft of Article VIII indicating proposed deletions by strikeout and new provisions by underlining. As you can see, we have attempted to leave intact the provisions in regard to ordinance overrule or enactment by referendum. Our changes are to prior Section 1 and by adding a new Section 2, resulting in a renumbering of former Sections 2, 3 and 4 as Sections 3, 4 and 5.

As you can see, we have provided two options in regard to the threshold cost, one being a fixed dollar amount and the other being a percentage of the last state valuation. I have added "*of town funds*" so as not to trigger such automatic referendum unless the town's funds, exclusive of state, federal or private funds, would exceed the determined threshold cost. I have also excluded a vote for capital expenditures arising from a fire or other casualty loss.

Michael K. McGovern, Town Manager  
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The Maine Constitution provides the authority to the inhabitants of any municipality to amend its charter. (Me. Const. Article VIII, Pt. 2, §1)

While the Town Charter contains no provision for amendments, Maine law specifically addresses the procedure under 30-A M.R.S.A. §2104, "Charter amendments; procedure." Subsection 1 thereof provides in part: "*The Municipal Officers may determine that amendments to the municipal charter should be considered and, by order, provide for notice and hearing on them....*" (Section 1) "...[a]t least 7 days before the hearing, they shall publish a notice of the hearing in a newspaper having general circulation in the municipality. The notice must contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them...." (Section 5(A)) "Within 7 days after the hearing, the municipal officers may order the proposed amendment to be placed on a ballot at the next regular municipal election held at least 30 days after the order is passed; or they may order a special election to be held at least 30 days from the date of the order for the purpose of voting on the proposed amendments." (Section 1)

If you have any further questions as to the procedure or wish any changes to my suggested amendment, please advise.

Best regards,

Monaghan Leahy, LLP

Thomas G. Leahy  
By Thomas G. Leahy, Esq.

TGL/kt

Enclosure