

CAPE ELIZABETH TOWN COUNCIL MINUTES
Regular Meeting # 10-2012
Cape Elizabeth Town Hall
Monday, August 13, 2012
7:00 p.m.

Roll Call by the Town Clerk Present Absent

Sara W. Lennon, Chairman	Term Expires	X	12/2012	slennon@maine.rr.com
Frank J. Governali	Term Expires	X	12/2013	frank.governali@capeelizabeth.org
Caitlin R. Jordan	Term Expires	X	12/2013	caitlin.jordan@capeelizabeth.org
Katharine N. Ray	Term Expires	X	12/2014	katharine.ray@capeelizabeth.org
David S. Sherman, Jr.	Term Expires	X	12/2014	dsherman@dwmlaw.com
Jessica L. Sullivan	Term Expires	X	12/2012	jsullivan08@maine.rr.com
James T. Walsh	Term Expires	X	12/2012	jim.walsh@capeelizabeth.org
Michael K. McGovern, Town Manager		X		
Debra M. Lane, Town Clerk		X		

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Sherman attended the annual meeting of ecomaine. Congratulations to Michael McGovern for being elected President of the ecomaine Board of Directors.

Councilor Sullivan reminded residents of the summer concert series at the Thomas Memorial Library. Residents are encouraged to attend tours of the library and informational sessions to familiarize themselves with the library project for the upcoming vote in November.

Nomination papers for town council and school board are now available. Three seats are available on both the town council and school board. The deadline to file nomination papers is Friday, September 7, 2012 at 4:00 p.m.

Councilor Sherman commented on the progress of the Shore Road Pathway and thanked the organizers and participants of the Beach to Beach road race.

Citizen Opportunity for Discussion of Items Not on the Agenda None

Town Manager's Report

Mr. McGovern reported on the following projects;
 Shore Road Pathway
 Riverside Memorial Cemetery Stonewall
 Town Hall
 Building #326 at Fort Williams Park
 Trail Work

The manager also mentioned the Planning Board's review of the Subdivision Ordinance and clarified with the town council that the review will include formatting and technical changes to allow the ordinance to read easier to understand. These changes are not considered substantial.

Review of Draft Minutes of July 9, 2012 Town Council Meeting

Moved by David S. Sherman, Jr. and Seconded by James T. Walsh

ORDERED, the Cape Elizabeth Town Council approves the minutes of Meeting #9-2012 held July 9, 2012 as presented.

(7 yes) (0 no)

Item# 113 -2012 November 2012 Election Warrant

Moved by James T. Walsh and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council approves the warrant for the November 6, 2012 municipal election and ballot questions as presented.

(7 yes) (0 no)

TOWN OF CAPE ELIZABETH

MUNICIPAL ELECTION
WARRANT

TUESDAY, NOVEMBER 6, 2012

County of Cumberland, ss.

To Neil R. Williams, a constable of Cape Elizabeth. You are hereby directed to notify the voters of Cape Elizabeth of the election described in the warrant.

Voting for three members of the Town Council to serve a three year term until December 14, 2015.

Voting for three members of the School Board to serve a three year term until December 14, 2015.

Citizen Vote on Proposed Library Project

Shall the Town of Cape Elizabeth borrow up to \$6.0 million to fund a new Thomas Memorial Library and accept private donations to assist with the project?

YES NO

Proposed Charter Amendment

Shall the proposed charter amendment to the Council-Manager Charter of the Town of Cape Elizabeth, a copy of which is printed herein, be adopted?

YES NO

ARTICLE VIII
Initiative and Referendum

Sec. 1. Petition for overrule of ordinance. ~~action of council.~~ All ordinances, ~~except emergency ordinances passed pursuant to Article II, Section 12, or any vote for a single capital expenditure or a single capital improvement, the total cost of which exceeds 0.05 percent of the last state valuation,~~ shall be subject to overrule by a referendum, ~~as hereinafter provided; except the following shall not be subject to referendum:~~

1. If, within 20 days after the enactment of any such ordinances ~~or passage of any such vote,~~ 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, ~~or approving such vote.~~ Pending action by referendum, the referred ordinance ~~or vote~~ shall be suspended from going into operation until it has received an affirmative vote of the majority of the voters voting on said question.

1. ~~The annual budget; provided, however, if a single capital expenditure or a single capital improvement, the total cost of which exceeds 0.05 percent of the last state valuation, is included in the annual budget, then that part of the annual budget shall be subject to referendum;~~

Item# 115-2012 Library Internet Policy

Moved by Frank J. Governali and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council approves the recommendations from the Thomas Memorial Library Trustees for changes to the library internet policy as presented.

(7 yes) (0 no)

Thomas Memorial Library
Policy Manual
Electronic Information, Services and Network Access Policy

This electronic access policy governs the use of the library's computer workstations and all that can be accessed through them, including the Internet, for educational and recreational use compatible with the library's mission. In order to offer this limited service in a consistent and equal manner to patrons, regardless of age, while protecting the interests of all users, the following guidelines have been established.

ACCESS

TML provides access to electronic resources throughout the library for use by all patrons regardless of age. In accordance with Federal Law, all of our internet enabled computers as well as our wireless network are equipped with a filtering solution to direct children and young adults to sites appropriate for their use and to limit access to inappropriate matter. Adults (over 17 years old) may lawfully request that their sessions be unblocked.

CAVEAT

The Internet is an unmoderated medium, produced by a diverse society. Our library staff is unable to control or censor the material that is available to our patrons. Users of our computers do so with an understanding that they may find some web sites objectionable. When doing research on the Internet, patrons should be aware that information might be dated, incomplete, or inaccurate. Consequently, the library advises researchers that all sources of information should be checked. Despite the use of filters in the library, the Internet remains unregulated. Filters are not perfect. They may restrict access to appropriate web sites, and may also allow access to inappropriate ones. Therefore, parents should supervise their children's use of the electronic media as they would any other library resource. Parents and children are encouraged to read and discuss with each other the material contained within the pamphlets Child Safety on the Information Highway and Teen Safety on the Information Highway. Copies of these brochures are available at our Reference Desks.

STAFF ASSISTANCE

In order to assist patrons, the library staff has familiarized themselves with the use of electronic information, services and networks. They will, time allowing; attempt to assist any patron requesting assistance. Due to the vastness and ever-changing nature of electronic resources, however, patrons should recognize that the assistance provided to any individual would be limited.

USER INFORMATION

While the privacy of patron circulation information can be safeguarded by the Thomas Memorial Library, technological limitations make it impossible for the library or its staff to guarantee the privacy of any patron's use of the Internet. Consequently, every workstation user must respect the privacy of others by not representing themselves as another and by not attempting to modify or gain access to files belonging to another.

The library maintains the confidentiality of information relating to patrons' use of its resources, in accordance with Maine statutes. Parents should supervise their children to assure that no unauthorized disclosures of personal information are communicated.

A maximum of two people at a time may use our workstations. Parties with special needs who must have another person with them must see the librarian on duty for a relaxation of the two-person rule.

TIME

Patrons may sign up to use a workstation for one 30-minute period at our Reference Desks. Provided no one else is waiting to use a workstation, patrons may sign up to work for one additional 30 minute period only, after which time they will be asked to cease working or move to a different workstation. Reservations may not be "booked" in advance, but patrons may call ahead to check on the availability of our machines.

Workstations will be available for patron use during normal library hours.

**Page 5 Town Council Minutes
August 13, 2012**

LIMITS ON USE OF THE TECHNOLOGY

Due to space limitations, no information may be saved to a workstation's hard drive. Files or documents accessed through library workstations may only be saved to a formatted diskette purchased at our Reference Desks to reduce the risk of computer viruses migrating to library machines.

Personal E-mail accounts are not available. Computers in the children's library may not be used for email, chat, or other direct communication.

Users are expected to respect the rights of other patrons and to comply with laws, including laws governing copyrights, privacy, and the security of computer systems and networks.

COSTS

Electronic resource users will not access fee-for-service information providers using library accounts. Any costs accrued by accessing prohibited resources will be borne by the patron who signed up to use the workstation assessed such fees.

A printing fee of fifteen cents per page will be assessed.

ACCESS RESPONSIBILITIES

Access to the Internet is a service offered by the Thomas Memorial Library. Use of the system implies an understanding and acceptance of this policy. The library may suspend or terminate patron access to the Internet due to abuse of any of the user guidelines. Damage to equipment, software, databases, or other library property is unacceptable and will result in legal action. Suspension of privileges to access technology at the library will be handled in the following manner:

- First Offense - Two week suspension
- Second Offense - Four week suspension
- Third Offense - One year suspension

Accepted: 9/19/2002

Page – 14 *Approved: 1/13/2003*

Item# 116-2012 Proposed Demolition of 7 Holman Road

Present – Greg Marles, Facilities and Transportation Manager

Intro – Mr. McGovern

Moved by David S. Sherman, Jr. and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council authorizes the Town Manager to have demolished the structures located on the 7 Holman Road parcel adjacent to the Thomas Memorial Library as presented.

(7 yes) (0 no)

Item# 117 -2012 Town Ways Ordinance Draft Amendments

Intro – Councilor Walsh, Chairman Ordinance Committee

Moved by James T. Walsh and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council thanks the Ordinance Committee for reviewing issues relating to the town ways ordinance with specific attention to the issuance of permits by the Public Works Director and refers the proposal to a public hearing on Monday, September 10, 2012 at 7:00 p.m. at the Cape Elizabeth Town Hall with proper notice thereof.

(7 yes) (0 no)

Item# 118-2012 Administrative Code Technical Amendments

Intro – Mr. McGovern

Moved by David S. Sherman, Jr. and Seconded by James T. Walsh

ORDERED, the Cape Elizabeth Town Council receives the Town Manager’s proposed technical amendments to the administrative code for positions not part of other municipal departments and refers the proposal to a public hearing on Monday, September 10, 2012 at 7:00 p.m. at the Cape Elizabeth Town Hall with proper notice thereof.

(7 yes) (0 no)

Item# 119-2012 Compliance Policy after Issuance of Bonds

Intro – Mr. McGovern

Moved by James T. Walsh and Seconded Frank J. Governali

ORDERED, the Cape Elizabeth Town Council adopts the policy for compliance with requirements following issuance of bonds as presented.

(7 yes) (0 no)

Post Issuance Compliance Policy Relating to Bonds Issued by the Town

This policy is being adopted by the Town of Cape Elizabeth (the "Town") in order to assure that the Town complies with the requirements of federal and state law and the covenants in its bond documents that apply following the issuance of Bonds by the Town. For purposes of this policy, the term "Bonds" means any obligations of the Town incurred for the purpose of borrowing money, including, without limitation, bonds, notes, and equipment lease-purchase agreements.

1. Responsibility for Post-Issuance Compliance: The Town Treasurer (the "Treasurer") is responsible for monitoring compliance with this Policy. The Treasurer may designate employees to carry out their duties under this Policy.

2. Compliance with Covenants in Bond Documents: The Treasurer shall ensure compliance with all covenants made by the Town in the Bond documents, including, but not limited to, financial reporting, restrictions on the use and disposition of property, restrictions on the use and investment of Bond proceeds, and arbitrage and rebate compliance.

3. Continuing Disclosure Compliance: The Town will comply with any applicable continuing disclosure requirements of Rule 15c2-12 under the Securities and Exchange Act of 1934, as amended, and officially interpreted from time to time and the terms of any continuing disclosure agreement or certificate entered by the Town (each, a "Continuing Disclosure Agreement"), including the following:

(a) The Town will provide the following information to the Municipal Securities Rulemaking Board or any successor thereto ("MRSB") established under the Securities and Exchange Act of 1934, as amended: (x) not later than 270 days after the end of each fiscal year, annual financial information and operating data relating to the Town for the preceding fiscal year of the type presented in any Official Statement prepared in connection with the Bonds regarding: (i) revenues and expenditures of the Town relating to its operating budget, (ii) capital expenditures, (iii) fund balances, (iv) rate information, (v) outstanding indebtedness and overlapping debt of the Town, (vi) pension obligations of the Town, and (vii) such other financial information and operating data as may be required to comply with the Rule; and (y) promptly upon their public release, the audited financial statements of the Town, prepared in accordance with generally accepted accounting principles.

(b) The Town will provide in a timely manner not in excess of nine (9) business days after the occurrence of an event listed in this Section 2 to the MSRB or any successor thereto, notice of the occurrence of any of the following events with respect to the Bonds:

- i. Principal and interest payment delinquencies;
- ii. Non-payment related defaults, if material;
- iii. Unscheduled draws on debt service reserves reflecting financial difficulties;
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties;
- v. Substitution of credit or liquidity providers, or their failure to perform;

Page 7 Town Council Minutes
August 13, 2012

- vi. Adverse tax opinions, the issuance by the Internal Revenue Service of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- vii. Modifications to the rights of securities holders, if material;
- viii. Bond calls, if material, and tender offers;
- ix. Defeasances;
- x. Release, substitution, or sale of property securing repayment of the Bonds, if material;
- xi. Rating changes;
- xii. Bankruptcy, insolvency, receivership or similar event of the Town; for the purposes of the event identified in this clause (l), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Town in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town;
- xiii. The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of the assets of the Town, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- xiv. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

4. Federal Tax Law Compliance: The Town will comply with the terms of each arbitrage and use of proceeds certificate or tax compliance certificate (each, an "Arbitrage and Use of Proceeds Certificate") for each issue of Bonds issued by the Town and with the applicable provisions of federal tax law. Without limitation of the foregoing, the Town shall take the following actions:

(a) Proper Use of Proceeds — The Treasurer shall ensure that bond proceeds are expended and allocated to expenditures in a manner that is consistent with the purpose for which each bond issue is undertaken, as set forth in any Arbitrage and Use of Proceeds Certificate or agreement related to each bond issue.

(b) Investment of Bond Proceeds — The Treasurer shall ensure that bond proceeds are invested in investments that are permissible under the terms of Maine law, the bond documents, and applicable federal tax laws.

(c) Arbitrage and Rebate — The Treasurer shall ensure that the Town complies with the arbitrage, rebate and yield restriction requirements of Section 148 of the Internal Revenue Code and the regulations promulgated pursuant thereto and that the Town completes all necessary arbitrage rebate calculations, payments and filings in a timely manner or confirms that the Bonds are exempt from rebate.

(d) Administration of Direct Pay Bonds — The Treasurer shall ensure the proper administration of each issue of Bonds qualifying for the payment by the Federal government of a credit equal to a percentage of interest on such Bonds, including the timely completion and filing of any forms required by the Internal Revenue Service to maintain or establish the applicable status of the Bonds for purposes of federal income taxation.

(e) Use of Bond-Financed Facilities — The Treasurer shall consult with Bond Counsel for the Town before entering into any agreement or other arrangement for the sale, lease, management or use of bond-financed property, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use bond-financed property, agreements granting special rights or entitlements to private parties or naming rights agreements. The Treasurer shall review such agreements for compliance with federal tax laws.

(f) Post-Issuance Transactions — The Treasurer shall consult with Bond Counsel for the Town before making any modifications or amendments to the bond documents for a bond issue, including, but not limited to, entering or modifying investment agreements; making any change in security for the Bonds; engaging in post-issuance credit enhancement transactions (e.g., bond insurance, letter of credit) or hedging transactions (e.g., interest rate swap, cap); terminating or appointing successor trustees; releasing any liens, or reissuing or refunding the Bonds.

(g) Remedial Action — In the event that is determined that any use of bond proceeds or bond-financed facilities is inconsistent with the character of the status for federal income tax purposes of the Bonds, the Treasurer shall consult with the Town's Bond Counsel for the purpose of determining the nature and extent of any remedial action necessary or proper for the Town to take with respect to such Bonds or bond-financed facilities. If the Town takes any action after the issuance of Bonds that causes the conditions of the private business tests or the private loan financing test to be met, then the Town shall take timely remedial actions in accordance with the federal Treasury Regulations section 1.141-12 as necessary in order to preserve the tax-exempt status of the Bonds.

**Page 8 Town Council Minutes
August 13, 2012**

5. Record Retention: The Town shall maintain all records relating to the issuance of Bonds and the requirements of the Internal Revenue Code and the representations, certifications and covenants set forth in the Arbitrage and Use of Proceeds Certificate relating to the issuance of Bonds until the date six years after the last outstanding Bonds have been retired. If any of the Bonds are refunded by tax-exempt obligations, the Town shall maintain all records required to be retained by this section until the later of the date six years after the last outstanding Bonds have been retired or the date three years after the last refunding obligations have been retired. The records that must be retained include, but are not limited to (a) basic records and documents relating to the Bonds (including any loan agreement, Arbitrage and Use of Proceeds Certificate and the opinion of Bond Counsel); (b) documentation evidencing the expenditure of Bond proceeds; (c) documentation evidencing the use of the project(s) financed by the Bonds by public and private sources (i.e., copies of management contracts, research agreements, leases, etc.); (d) documentation evidencing all sources of payment or security for the Bonds; and (e) documentation pertaining to any investment of Bond proceeds (including the purchase and sale of securities, SLGS subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations).

6. Annual Policy Review and Education: On an annual basis, or sooner if deemed necessary or appropriate by the Treasurer or Town Council, the Town's Bond Counsel shall review this policy and assess the Town's compliance with this Policy. The Bond Counsel will then report their findings as part of their annual letter to the auditors, and this information will be included in the annual audit report presented to the council. The Treasurer shall make changes to this Policy as appropriate to ensure compliance with any covenants in the bond documents or the requirements of federal tax and securities law and any other applicable law. The Town will also implement a program, including appropriate instruction and education of personnel, for purposes of ensuring compliance with the terms of this Policy.

Item# 120-2012 Goal to Review Fundraising Policies

One of the town council goals is to review fundraising policies; no action was taken.

Citizen Opportunity for Discussion of Items Not on the Agenda None

Adjournment

Moved by Jessica L. Sullivan and Seconded by David S. Sherman, Jr.
ORDERED, the Cape Elizabeth Town Council adjourns at 7:47 p.m.
(7 yes) (0 no)

The Ordinance Committee will meet at 4:00 p.m. on Thursday, September 6 to discuss short term rentals.

Respectfully Submitted,

Debra M. Lane, Town Clerk