

To: Cape Elizabeth Town Council

From: Michael K. McGovern

Re: Goal Related to Fundraising

Date: July 26, 2012

One of the town council goals this year is to “**review fundraising policies for municipal property projects and programs.**” I have worked with Councilor Walsh in reviewing policies and am providing this update.

In recent years, private financial support has been instrumental in building a new turf field, furnishing bleachers and field lighting for CEHS, providing matching funds for the Shore Road pathway, constructing a new arboretum at Fort Williams Park, studying the needs of the Thomas Memorial Library and beginning a fund to assist local citizens with heating needs.

The Cape Elizabeth School Department has a separate policy relating to fundraising for the schools and has also benefitted from private support. Private groups have also raised substantial sums within the community and as these efforts are independent of the municipal government, they are not part of this review.

Current town policies relating to fundraising are in the Administrative Code section of the Code of Ordinances and more specifically in the subsection pertaining to improvements to town owned land and buildings. There is also a separate accord with the Thomas Memorial Library Foundation. As fundraising leads to the acceptance of a gift, the vehicle used to consider fundraising opportunities are the gift acceptance provisions in our ordinances and in Maine law.

Our ordinances have the following sections:

***Sec. 2-4-3 Role for Community Groups and Individuals.** Some projects on municipal or school property may involve contributions of funds and/or in-kind services from groups or individuals. The Town Treasurer may not accept any gifts for projects without acceptance by the Town Council or unless the Town Council has authorized fund raising for the project. Persons and groups providing financial or in-kind support for a project may provide input into project planning, but the scope of any project must be approved by the Town Council. Any projects within school buildings involving community groups shall be subject to school department regulation.*

***Sec. 2-4-4 Use of Municipal Resources.** Some projects on municipal and school property may be jointly funded by private groups and individuals and by the Town. The Town Council shall approve a cost sharing agreement for any joint project and no physical work may begin on a project or any construction contract signed unless funds are in place to complete the project or written cost sharing plan provides otherwise.*

The acceptance of most gifts to the town is customarily accomplished through an annual list provided to the town council each December. Any gifts that are substantial or that involve municipal projects that have not been approved are presented to the council for consideration of acceptance at the next council meeting.

Maine statutes have several provisions relating to the acceptance of gifts by municipalities:

**Title 30-A: MUNICIPALITIES AND COUNTIES HEADING**  
**Part 2: MUNICIPALITIES HEADING**  
**Subpart 9: FISCAL MATTERS HEADING**  
**Chapter 223: MUNICIPAL FINANCES HEADING**  
**Subchapter 1: GENERAL PROVISIONS HEADING**

**§5653. Gifts of money or property in trust**

This section governs a municipality's receipt of money or other property in trust for any specified public purpose. The municipal officers shall serve as trustees unless otherwise specified in the trust instrument.

**1. Acceptance or rejection.** When the municipal officers receive written notice from a prospective donor or a representative of a proposed trust, they shall submit the matter at the next meeting of the municipal legislative body. Within 10 days after the meeting, the municipal officers shall send written notice of its acceptance or rejection to the donor or the donor's representative.

**2. Deposited or invested.** Unless otherwise specified by the terms of the trust, the municipal officers shall either deposit or invest trust funds according to subchapter III-A.  
A. Unless the instrument or order creating the trust prohibits, the municipal officers may treat any 2 or more trust funds as a single fund solely for the purpose of investment.

B. After deducting management expenses, the municipal officers shall prorate any interest earned or capital gains realized among the various trust funds.

C. The municipal officers shall retain any property or securities included in the corpus of a trust fund where the trust instrument so provides.

D. Unless otherwise specified in the trust instrument, the municipal officers may spend only the annual income from the trust fund.

**3. Reversion to donor.** If the municipality fails to comply with the terms of the trust instrument, the trust fund reverts to the donor or the donor's heirs.

### **§5654. Conditional gifts**

This section governs a municipality's receipt of a conditional gift for any specified public purpose.

**1. Acceptance or rejection.** When the municipal officers receive written notice from a prospective donor or a representative of the proposed gift, they shall submit the matter at the next meeting of the municipal legislative body. Within 10 days after the meeting, the municipal officers shall send written notice of their acceptance or rejection to the donor or the donor's representative.

**2. Perpetually comply with conditions.** When the donor or the donor's representative has completed the donor's part of the agreement concerning the execution of a conditional gift, the municipality shall perpetually comply with, and may raise money to carry into effect, the conditions upon which the agreement was made.

**3. Deposited or invested.** Unless otherwise specified by its terms, a conditional gift of money may be deposited or invested according to subchapter III-A.

### **§5655. Unconditional gifts**

A gift without conditions, of any type of property, offered to a municipality may be accepted or rejected by its legislative body, except for forfeited assets conveyed to the municipality pursuant to Title 15, chapter 517, which may be accepted or rejected by the municipal officers.

The town council in October 2005 approved an accord with the Thomas Memorial Library Foundation relating to fundraising:

**Accord Between the Thomas Memorial Library Foundation and  
the Town of Cape Elizabeth  
Approved October 19, 2005**

The Thomas Memorial Library Foundation (“Foundation”) was established in 2005 to provide financial and other support to the Thomas Memorial Library (TML) in Cape Elizabeth, Maine. The Thomas Memorial Library is owned by the Town of Cape Elizabeth (“Town”) and is under the direction of the Cape Elizabeth Town Council (“Council”) pursuant to the Council-Manager Charter of Cape Elizabeth, Maine. The TML is operated pursuant to ordinances and policies adopted by the Council.

The Council welcomes private financial and other support for the Thomas Memorial Library including but not limited to support from the Thomas Memorial Library Foundation.

All funds donated to the Thomas Memorial Library Foundation are the property of the Foundation. The Foundation may offer funds to the Town from time to time. All funds offered to the Town as conditional gifts shall be accepted or not accepted by the Council in conformance with 30-A MRSA § 5654 et seq.

The Town will continue to accept donations for the TML that are not channeled through the Foundation. All donations received at the TML presented either in person, by mail or by electronic means shall be deemed as donations to the TML and not to the Foundation unless the donor(s) specifically reference the Foundation.

When asked questions about gifts to the TML, TML staff shall provide a brochure to potential donors providing the options of giving directly to the TML and/or to the Foundation. Any such brochure shall be approved by the TML Director and the Cape Elizabeth Town Manager.

The Foundation may utilize space at the TML with the permission of the Library Director. Information on the Foundation may be included in TML publications and on the TML website at the discretion of the Library Director. Foundation use of the Town website (the home page) is at the discretion of the Town Manager.

The Foundation shall annually provide a copy of its annual financial statement to the Town Treasurer. The Town Treasurer may make the report available to the public.

Any member of the Cape Elizabeth Town Council serving on the Foundation Board of Directors shall be nominated to serve by the Cape Elizabeth Town Council.

### **Other**

The town does not have an accord with other similar groups.

The town council goal is to review fundraising policies for municipal property projects and programs. The council should determine if current policies are sufficient, and if not, to adopt changes.