

Proposed Fort Williams Park Foundation By Laws Change

The Fort Williams Park Foundation seeks approval of a proposed change to the by-laws of the Fort Williams Charitable Foundation:

Article IX, Amendments, Section 1 (d) as written:

No proposed amendment, alteration, or repeal of these By-Laws, or any provision thereof, shall become effective unless and until approved by the Cape Elizabeth Town Council.

Proposed change: Eliminate the Article IX Section 1 (d) requirement for Town Council approval of any change to the By-Laws.

Rationale:

The Fort Williams Charitable Foundation (dba The Fort Williams Park Foundation) was chartered in 2001 by the Cape Elizabeth Town Council and the Fort Williams Advisory Commission (now the Fort Williams Park Committee) to provide an independent non-profit umbrella organization to receive tax-deductible gifts for the Park. The Purpose is stated as "to provide financial resources to preserve and enhance the unique qualities of Fort Williams Park in Cape Elizabeth, Maine, which is a unique ocean front park with irreplaceable scenic, natural and historic qualities and to insure continued public access to the Park. See attached By-Laws, Article I, Section 4.

The Foundation board met for the first time on May 29, 2001 and was approved as a 501 (c)(iii) organization three months later. At the time the Foundation was formed by the Town Council, it made sense that the Council would approve the new by-laws. The Council was also charged with appointing the initial Board of Directors for the Foundation, after which the directors became responsible for electing new directors. (Article III, Section 2.) The Town Manager (or his or her designee) and a member of the Fort Williams Advisory Committee were to serve as ex officio members of the Board, providing ongoing communications with the Town. (Article III, Section 4.)

Given that the Foundation is now a well established, high-functioning organization led by a responsible, talented board, the requirement for the Town Council to approve by-law changes seems obsolete. Projects affecting the park must all be approved by the Park Committee and the Council, which would seem to be a much more important, significant area of oversight.

BY-LAWS
THE FORT WILLIAMS CHARITABLE FOUNDATION

(September 14, 2004)

Article I

Name, Seal and Location

Section 1. Name: The name of the Corporation is The Fort Williams Charitable Foundation.

Section 2. Corporate Seal: The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary.

Section 3. Location: The Corporation shall be located and shall have its principal place of business in Cape Elizabeth, Maine.

Section 4. Purpose: The purpose of the Corporation is to engage exclusively in activities for charitable and educational purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1986 (or the Corresponding provision of any future United States Internal Revenue Code) to provide financial resources to preserve and enhance the unique qualities of Fort Williams Park in Cape Elizabeth, Maine, which is a unique ocean front park with irreplaceable scenic, natural and historic qualities, and to insure continued public access to the Park.

Article II

Members

Section 1. Members: The Corporation shall have no members. The Board of Directors, when meeting as the Board of Directors, may exercise the rights and powers of members.

Article III

Directors

Section 1. Powers: The business and affairs of the Corporation shall be conducted and managed by its Board of Directors, which shall exercise all of the powers of the Corporation. The Board of Directors may, by general resolution, delegate to committees and officers of the Corporation such powers as it sees fit.

Section 2. Election and Composition of Board: Upon incorporation, an initial Board of Directors shall be appointed by the Cape Elizabeth Town Council. At each annual meeting of the Corporation, the then-serving Directors shall elect Directors to hold office until the next annual meeting of the Corporation, or until the

election and qualification of their respective successors. The number of Directors shall be initially seven (7) but such number may from time to time be increased to a number not to exceed the number provided in the Articles of Incorporation, provided that the number of Directors shall never be less than seven (7) and shall always be an odd number. The term of office for each director shall be three [3] years, except that the term of office for the members of the first Board of Directors shall be staggered so that no more than one-third [1/3] of such directors shall be elected for a one [1] year term, one-third [1/3], for a two-year; and the remaining directors for a three-year term. Thereafter, directors shall be elected at each annual meeting to service for a full three [3] year term upon expiration of their term as provided above. Terms shall be staggered and limited to two [2] consecutive three [3] year terms with reelection permitted after a one [1] year hiatus. *(This Section 2. amended June 5, 2001)*

Section 3. Resignation, Removal and Vacancies: Any Director may resign at any time by giving written notice to the President or the Board of Directors and may be removed at any time in accordance with applicable law. Any vacancy on the Board of Directors occurring during the year, including any vacancy created by an increase of the number of Directors, may be filled for the unexpired portion of the term by the Directors then serving, although less than a quorum, by an affirmative vote of the majority thereof, and any Director so elected shall hold office until the election and qualification of a successor.

Section 4. Honorary Directors and Ex Officio Members of the Board of Directors: The Corporation may have no more than twenty-five Honorary Directors. Honorary Directors shall be elected by majority vote of the Board and may be elected for successive one (1) year terms at the annual meeting of the Corporation. The Town Manager (or his or her designee) and a member of the Fort Williams Advisory Committee shall serve as ex officio Members of the Board of Directors. Honorary Directors and ex officio Members shall be entitled to notice of and the right to attend all meetings of the Board, but shall not have the right to vote nor to be counted in the determination of a quorum. *(This Section 4. amended September 14, 2004)*

Section 5. Annual Meetings: An annual meeting of the Corporation shall be held each year during the month of June for the purpose of electing Directors and taking such other action as may come before the Board. As soon as practicable after each annual election, the newly elected Directors shall meet for the purpose of organization, the election of officers, and the transaction of other business. Such meetings shall be held at such place within or without the State of Maine as may be designated by the Board of Directors.

Section 6. Regular Meetings: The Board of Directors shall establish a schedule for regular meetings of the Board. Regular meetings may be held without notice, provided that the next meeting date or a list of future meeting dates is part of the minutes of a meeting.

Section 7. Special Meetings: Special meetings of the Board of Directors may be called by the President or the Secretary and must be called by either of them on the written request of any two (2) members of the Board.

Section 8. Notice of Meetings: Notice of all Directors' meetings, except as herein otherwise provided, shall be given by mailing the same at least three (3) days before the meeting, or by sending notice by e-mail or facsimile transmission at least one (1) day before the meeting to the usual business or residence address of the Director. At any meeting at which every director shall be present, even though without notice, any business may be transacted.

Section 9. Quorum and Voting: At all meetings of the Board of Directors a majority of the Directors shall be necessary and sufficient to constitute quorum for the transaction of business and the act of a majority of the Directors present at any meeting at which three is a quorum shall be the act of the Board of Directors. If at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting.

Section 10. Informal Action by Directors: Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board or committee.

Section 11. Compensation: Directors shall serve without compensation.

Article IV

Officers

Section 1. Executive Officers: The Executive Officers of the Corporation shall be a President, who shall be selected from among the Board of Directors, a Secretary, a Treasurer, and such other officers with such powers and duties not inconsistent with these By-laws as may be appointed and determined by the Board of Directors. The same person may hold any two offices, provided that the President shall not also be a Vice-President if Vice-President is appointed. The officers shall be elected from among the Directors at the annual meeting for a term of one year.

Section 2. Resignation, Removal, and Vacancies: Any officer may resign at any time by giving written notice to the President or the Board of Directors and may be removed from office by the vote of the Directors at any time, in accordance with applicable law. In case any office of the Corporation becomes vacant by death, resignation, retirement, disqualification, or any other cause, the Board of Directors by majority may select an officer to fill such vacancy.

Section 3. President: The President shall preside at all meetings of the Board of Directors except that the Directors may appoint a substitute in the President's absence. The President shall have and exercise general charge and supervision of the affairs of the Corporation and shall do and perform such other duties as are customary to the office and as may be assigned to that office by the Board of Directors. The President shall sign all legal documents on behalf of the Corporation when so authorized by the Board and shall sign checks of the Corporation except for amounts over \$250 which shall require a second signature from the Treasurer.

Section 4. Secretary: The Secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose. The Secretary shall attend to the giving and serving of all notice of the Corporation; the Secretary shall have charge of the minute books and such other books and records as the Board of Directors may direct, may attest to the accuracy of such books and records and shall perform such other duties as are customary to that office and as may from time to time be directed by the President or the Board of Directors. At the expiration of the Secretary's term of office, the Secretary shall deliver to the Board all books, papers, records and other property of the Corporation

Section 5. Treasurer: The Treasurer shall have the custody of all funds, property, and securities of the Corporation, subject to such regulations as may be imposed by the Board of Directors. When necessary or proper, the Treasurer shall endorse on behalf of the Corporation for collection, checks notes, and other obligations, and shall deposit the same to the credit of the Corporation at such bank or banks or depository as the Board of Directors may designate. The Treasurer shall, in general, perform duties incident to the office of Treasurer, including a general supervision and control of the accounts of the Corporation, subject to the control of the Board of Directors.

Section 6. Other Officers: The Board of Directors may elect or appoint one or more Vice- Presidents and such other officers and assistant officers as they may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by the President or by the Board of Directors.

Section 7. Compensation: Officers shall serve without compensation.

Article V

Committees

Section 1. Committees: The Board of Directors may appoint from their number, or from among such other persons as the Board may see fit, such committees as the Board may determine, which shall in each case have such powers and duties as shall from time to time be prescribed by the Board.

Section 2. Rules, Record of Proceedings: Each Committee may prescribe rules, procedures for to call and conduct its meetings. Each Committee shall keep regular minutes of its proceedings and shall report the same to the Board of Directors and the President when required.

Section 3. Compensation: Committee members shall serve without compensation.

Article VI

Corporate Assets and Earnings

Section 1. Assets: The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it according to the judgment of the Board of Directors provided, however, that no action shall be taken by or on behalf of the Corporation if such action would result in the denial or loss of the tax exemption under Section 501 (c) (3) or any other section of the Internal Revenue Code of 1986 and applicable Regulations relating thereto as they now exist or as they may hereafter be amended (the "Code").

The Board shall have the care and charge of the investment of the assets of the Corporation, which it may exercise directly or through the designation of an Investment Committee. The Board of Directors have the power to authorize and direct the purchase, sale, transfer, and conveyance of all stocks, bonds, securities or other property held or to be held by the Corporation for investment purposes, pursuant to investment guidelines approved by the Board of Trustees. In the exercise of these powers, the Committee shall retain one or more outside investment advisors, subject to the approval of the Board. No investment of funds or sale, transfer, or conveyance of any stocks, bonds, securities or other property held for investment, other than by an approved outside investment advisor, shall be made without the authorization of the Board.

Section 2. Inurement Prohibition: No Director, officer, committee member or employee of, or any person connected with, the Corporation, or any other private individual, shall receive at anytime any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent the payment to any such person of such reasonable compensation and reimbursement of expenses as shall be fixed by the Board of Directors for services rendered to or for the Corporation in effecting any of its purposes; and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation.

Section 3. Dissolution: Upon the dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debt have been satisfied, then remaining in the hands of the Board of Directors shall be distributed, transferred, conveyed, delivered, and paid over, in such amounts as the Board of Directors may determine or as may be determined by a court of competent jurisdiction upon application of the Board of Directors, exclusively to a charitable organization or organizations which would then qualify under the provisions of Section 501 (c) (3) of the Code and which have a similar purpose to that of the Corporation.

Section 4. Exempt Activities: Notwithstanding any other provision of these By-Laws, no member, Director, officer, employee, or representative of this Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section 501 (c) (3) of the code, or by an organization contributions to which are deductible under Section 170 (c) (2) of the Code.

Article VII

Miscellaneous

Section 1. Fiscal Year: The fiscal year of the Corporation shall be as determined by the Board of Directors and evidenced by resolution filed with the corporate records and shall, to the extent possible, run contemporaneously with the fiscal year of the Town of Cape Elizabeth.

Section 2. Records and Reports: The Corporation shall keep correct and complete books and records of account and of its transactions and minutes of the proceedings of its Board of Directors and of any committee. The President or the Secretary of the Corporation shall prepare or cause to be prepared annually a full and correct statement of operations for the preceding fiscal year, which shall be submitted at the annual meetings of the Board of Directors and be filed within twenty days thereafter at the principal office of the Corporation.

Section 3. Audit: An annual audit of the Corporation's finances shall be performed.

Article VIII

Indemnification

Section 1. Indemnification: The Corporation shall, to the full extent of its power to do so provided by law, including without limitation Section 714 of Title 13-B of the Maine Revised Statutes Annotated, indemnify any and all present and former officers, directors, employees, committee members and agents of the Corporation against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of their being or having been officers, directors, employees, committee members, or agent of the Corporation; except in relation to matters as to which any such person shall be finally adjudicated in any such action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Corporation, or, with respect to any criminal action or proceeding, where such person is finally adjudged to have had reasonable cause to believe that his or her conduct was unlawful. Such indemnification shall be made in accordance with the procedures set forth in Maine Revised Statutes Annotated, Title 13-B, Section 714, subsection 3, as the same may be amended from time to time. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any other by-law, agreement, or otherwise.

Article IX

Amendments

Section 1. Amendments: The Board of Directors shall have power to make, alter, amend, and repeal the Articles of Incorporation or the By-laws of the Corporation by vote of two thirds of all the Directors, provided that:

(a) The proposed amendments, alterations or repeals have been read during a regular or annual meeting of the Board directly preceding the meeting when the proposed amendments, alterations or repeals shall be considered;

(b) The proposed amendments, alterations or repeals shall be mailed to the Board of Directors individually at least seven (7) days prior to the meeting at which they are to be considered;

(c) The proposed amendments, alterations or repeals shall be plainly stated in the call for the meeting at which they are to be considered;

(d) No proposed amendment, alteration or repeal of these By-Laws, or any provision thereof, shall become effective unless and until approved by the Cape Elizabeth Town Council.

Article X

Effective Date

Section 1. Effective Date: These By-Laws and any amendments thereto shall take effect after adoption by the Board and approved by the Cape Elizabeth Town Council.