



# Regular Town Council Meeting

Monday, February 13, 2023 at 7:00 pm

Town Hall Council Chambers

Live on CETV

### 1. Convening of the Meeting

Town Council Chair Jeremy A. Gabrielson

### 2. Roll Call by the Town Clerk

Jeremy A. Gabrielson, Chair  
Nicole Boucher  
Susan A. Gillis  
Caitlin R. Jordan  
Penelope A. Jordan  
Gretchen R. Noonan  
Timothy S. Reiniger

### 3. The Pledge of Allegiance to the Flag

### 4. Town Council Reports and Correspondence

#### Attachments:

- [Memo Ordinance Committee LD 2003 Amendment Process Update 01 27 2023](#)

### 5. Finance Committee Report

Councilor Nicole Boucher, Finance Committee Chair

#### Attachments:

- [Financial Dashboard 01 31 2023](#)
- [Appropriation Control January 2023](#)
- [Expense Distribution January 2023](#)
- [Revenue Control January 2023](#)
- [Revenue Distribution January 2023](#)

### 6. Citizen Opportunity for Discussion of Items Not on the Agenda

Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

### 7. Town Manager's Monthly Report

Matthew E. Sturgis, Town Manager

#### Attachments:

- [Town Manager's Report 02 13 2023](#)

### 8. Review of Draft Minutes

January 9, 2022 Regular Meeting

#### Attachments:

- [Town Council Minutes January 9, 2023](#)

### 9. Consent Calendar Item #33-2023 - Item #34-2023

The consent calendar provides for Item #33-2023 - Item #34-2023 to be considered en bloc. Any town councilor may ask for any item to be considered separately. At the discretion of the chair, any item removed from the consent calendar may be considered before or after the consideration of the items remaining on the consent calendar.

#### Opportunity for Public Comment - Consent Agenda Item #33-2023 - Item #34-2023

Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chairman, the speaker shall give his or her name and address or local affiliation, if the affiliation is pertinent.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council approves the consent calendar Item #33-2023 - Item #34-2023 as presented.

### 10. Item #33-2023 Request for Use of Fort Williams Park - South Portland Cape Elizabeth Rotary Club - Fireworks Display on March 4, 2023

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

On October 20, 2022 the Fort Williams Park Committee approved (5-0) the request of the South Portland Cape Elizabeth Rotary Club to have fireworks at Fort Williams Park on Saturday, March 4, 2023. In case of inclement weather, the alternate date is March 11.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee for the South Portland Cape Elizabeth Rotary Club to have fireworks in Fort Williams Park on Saturday, March 4, 2023 as presented. In case of inclement weather, the alternate date is March 11.

#### Attachments:

- [Rotary Fireworks 10 27 2022](#)
- [FWPC Minutes October 20, 2022](#)

### 11. Item #34-2023 Requests for Use of Fort Williams Park for 2023

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

On January 19, 2023 the Fort Williams Park Committee voted (6-0) to approve the following Group Use requests for 2023 as presented.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee to approve the following 2023 Group Use requests for Fort Williams Park as presented:

Cape Elizabeth Little League, 2023 Season, Opening 3/19/2023 (field consideration)

Cape Elizabeth High School Graduation, Sunday, June 4, 2023

Cape Elizabeth Family Fun Day, Saturday, June 17, 2023

Friends of Fort Williams Garden Tour, Saturday, July 15, 2023

Making Strides Against Cancer Walk, Sunday, October 15, 2023

#### Attachments:

- [FWPC Minutes January 19, 2023](#)

### 12. Public Hearing - Proposed Amendments to the Remote Participation Policy

Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

On January 9, the town council scheduled a public hearing for proposed amendments to the Remote Participation Policy. The draft is based on discussion at meetings held on January 3 and January 9.

#### Attachments:

- [Memo Town Clerk Remote Participation Policy 01 18 2023](#)
- [Draft Amendments to Remote Participation Policy](#)

### 13. Item #35-2023 Consideration of Proposed Amendments to the Remote Participation Policy

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council approves the recommended changes to the Remote Participation Policy effective immediately.

### 14. Item #36-2023 Nomination of Spirit of America Award Recipient

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

The Spirit of America Award was created by the Spirit of America Foundation to encourage volunteerism in communities. The recognition program provides an award for volunteers. An individual, group or organization may be recognized. Bruce Flaherty, President of Maine Spirit of America is requesting a nomination for the award.

#### Past Nominations:

2019 Pond Cove Parents Association Playground Committee

2021 Community Ice Rink Organizers (Sam and Maureen Sezak, Chris and Melissa Hooper, Jay and Kate Brandeis)

2022 James H. "Jim" Huebener

Town Manager Matthew Sturgis and Town Clerk Debra Lane are recommending the nomination of Kenneth S. "Scott" Berry for the 2023 Spirit of America Award.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council nominates Kenneth S. "Scott" Berry, 4 Mares Hollow Road, for the 2023 Spirit of America Award.

#### Attachments:

- [Spirit of America Nomination Berry](#)

### 15. Item #37-2023 Update from the Cape Community Arena Regarding the Ice Arena Season

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

Representatives of the Cape Community Arena will provide an update regarding the ice arena season.

No action is anticipated.

### 16. Item #38-2023 Consideration of Funding for a Sawyer/Spurwink Marsh NFWF Grant Application

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

On March 16, 2022 the Cape Elizabeth Town Council and Scarborough Town Council met in workshop session on future strategies for Sawyer Road (Cape Elizabeth) and Sawyer Street (Scarborough), which includes a 1,400' section of road crossing the Scarborough Marsh.

On May 9, 2022 the Cape Elizabeth Town Council authorized the submission of a grant proposal to the National Fish and Wildlife Foundation/National Coastal Resilience Fund for preliminary work to remove the portion of Sawyer Road sitting in the marsh. The grant application was not funded, but a follow-up interview indicates a reformatted application submitted spring/summer 2023 would be competitive.

Please see the email from Town Planner Maureen O'Meara dated January 26, 2023 explaining the recommendation from the grant team for a cash match for a grant to restore habitat as part of the removal of the portion of Sawyer Road/Street located in the Spurwink Marsh.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council authorizes the expenditure of \$35,000, from unassigned fund balance, as a cash match for an application to the National Fish and Wildlife Foundation/National Coastal Resilience Fund for a grant to restore habitat as part of removal of the portion of Sawyer Road/Street located in the Spurwink Marsh. Said cash match is also recommended from the Town of Scarborough.

#### Attachments:

- [Memo Town Planner Sawyer/Spurwink Marsh NFWF Grant Application 01 26 2023](#)

### 19. Item #41-2023 Consideration of Tasking the Energy Committee in Proposing Steps Toward Determining Climate Action Goals

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

As discussed at the February 6, 2023 workshop, the town council will consider tasking the Energy Committee with proposing a plan to determine steps and resources needed to begin review of climate action goals.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council tasks the Energy Committee to perform a review of Maine Won't Wait, the State of Maine's climate action plan and make recommendations to the Cape Elizabeth Town Council on a Town climate action plan. Additionally, to encourage coordination where applicable with other Town boards and committees on recommendations of climate change initiatives.

### 20. Item #42-2023 Consideration of 2023 Town Council Goals

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

The Town Council discussed the 2023 goals at workshops held on January 3 and February 6. The council may approve the draft, with or without edits, or refer to workshop for further discussion.

#### Attachments:

- [Draft Town Council Goals 02 06 2023](#)

### 21. Item #43-2023 Appointment of the Town Attorney

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

Recently the Town Manager issued a Request for Proposals for legal services. Of the 5 proposals received, 2 firms were interviewed.

The Town Manager is recommending the appointment of Bernstein Shur to provide legal services to the Town.

The Town of Cape Elizabeth wishes to thank and acknowledge the services of the Town's long-standing attorney, Monaghan Leahy.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council appoints Bernstein Shur to provide municipal legal services to the Town of Cape Elizabeth and authorizes the Town Manager to sign a letter of engagement.

#### Attachments:

- [Bernstein Shur Letter of Engagement](#)

### 22. Item #44-2023 Public Manager's Contract

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

The town council held executive sessions on December 14, 2022, January 3 and January 9, 2023 which included discussion of the town manager's contract ending January 29, 2023.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council accepts the Employment Agreement with Matthew E. Sturgis as Town Manager through January 29, 2026 and further authorizes the members of the Town Council to sign the contract on behalf of the Town.

#### Attachments:

- [Sturgis Employment Agreement Thru 01 29 2026](#)

### 23. Item #45-2023 Consideration of Scheduling a Public Hearing Regarding a Citizens Petition Relating to the Enactment of a Residential Pesticide Use Ordinance

Opportunity for Public Comment. Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

Pursuant to Council-Manager Charter Article VIII Sec. 3 Petition for enactment of ordinance, a citizens petition entitled Petition for Enactment of Cape Elizabeth Residential Pesticide Use Ordinance was filed with the Town Clerk on February 10, 2023.

If a sufficient number of signatures are verified to meet the requirement of the Charter, the town clerk must hold a public hearing within 30 days from the date of the filing of the petition. Within 30 days after the public hearing the council must schedule the referendum vote, unless prior to the referendum vote, such ordinance shall be enacted by the council.

As of the writing of this council agenda, the signatures have not been verified. To meet the requirements in the Charter, staff recommends the council schedule a special council meeting for the purpose of the public hearing on XXX. The public hearing date, which must be held by March 12, will be discussed at the council meeting.

No action is taken at the public hearing. In addition, an item will be included on the March 13 council agenda to schedule the referendum vote. The date of the referendum vote is at the discretion of the council.

#### Draft Motion

ORDERED, the Cape Elizabeth Town Council sets to public hearing, pursuant to the Council-Manager Charter Article III Initiative and Referendum Sec. 3 Petition for enactment of ordinance, a citizen petition filed with the Town Clerk on February 10, 2023 entitled Petition for Enactment of Cape Elizabeth Residential Pesticide Use Ordinance on XXX at the Cape Elizabeth Town Hall provided a sufficient number of signatures have been verified by the Town Clerk.

#### Council-Manager Charter Article VIII Initiative and Referendum

Sec. 3. Petition for enactment of ordinance. Subject to the provisions of Section 1, not less than 10% of the registered voters of the town may at any time petition over their personal signatures for the enactment of any proposed lawful ordinance by filing such petition including the complete text of such ordinance with the town clerk. The council shall call a public hearing to be held within 30 days from the date of filing of such petition with the town clerk and shall, within 30 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, unless prior to the referendum vote, such ordinance shall be enacted by the council. Such ordinance shall take effect on the 10th day after the conclusion of such referendum provided a majority of those voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by the town attorney before being submitted to referendum. The town attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutionality provisions and to assure accuracy in its text and references and clearness and preciseness in its phraseology, but the attorney shall not materially change its meaning and effect.

#### Attachments:

- [Copy of Citizens Petition - Petition for Enactment of Cape Elizabeth Residential Pesticide Use Ordinance](#)

### 24. Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.

Limited to 15 minutes; 3 minutes per person. Time may be extended by majority vote of the councilors present. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent.

### 25. Adjournment

#### 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 chair, the speaker shall give their 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 chair may decline to recognize any person who has already spoken on the same agenda item and may call on the 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 chair, the speaker shall give their name and address or name and local affiliation if the local affiliation is pertinent. 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 chair.