



Ad Hoc 1934 Building Committee Regular Meeting

Tuesday, March 24, 2026 at 6:00 PM

Jordan Conference Room, Town Hall

Google Meet joining info

Video call link: <https://meet.google.com/pfq-ytpi-irk>

Or dial: (US) +1 475-355-7133 PIN: 893 740 735#

More phone numbers: <https://tel.meet/pfq-ytpi-irk?pin=2363756528470>

Introductions

Name, background, and why you wanted to serve on the committee and what you feel you bring to the team.

Brief Overview of FOAA (Opening Meeting, Public Information, etc.)

1. **FOAA Presentation -**

Housekeeping Items

Meeting Schedule, Remote Participation, Agenda-building, Absences, etc.

Review and Discuss Committee Charge

1. **Ad Hoc 1934 Building Committee Charge -**

Capture the thoughts/ideas people have for repurposing the building

Brainstorm work ahead

Committee members will share thoughts and ideas on what they feel are key actions for our work.

Start sequencing work for upcoming meetings

Next Meeting

Freedom of Access Act (FOAA) Training Town of Cape Elizabeth

Mary Costigan

December 10, 2025

Declaration of Intent

- “...public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly....”
- The law “shall be liberally construed and applied to promote its underlying purposes and policies....” 1 M.R.S. §401

What Does the Law Cover?



PUBLIC MEETINGS
/ PROCEEDINGS



PUBLIC RECORDS

Public Meetings / Proceedings

What are public proceedings? Who is covered by FOAA?

- “Public Proceedings” are defined in §402(2) to mean the transactions of any functions affecting any or all citizens of the State by any of the following:
 - Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision

Open Meeting Requirement

§403:

Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

When can a public proceeding be closed to the public?

“Except as otherwise provided by statute or by section 405”

Statutory exemption: Example - Poverty Abatements

Executive Sessions under §405

Communications Outside a Public Meeting

- **§401:** FOAA “does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of” FOAA
- Telephone and electronic communications are subject to FOAA
- Including personal and official email accounts, Facebook, Twitter, etc...
- Phone, e-mail, electronic communications can be used for communications on non-substantive issues (set meeting date for example), but not to deliberate or discuss substantive matters among board members.
- **Common violations:** polling members by telephone to vote on or discuss an application; chance meeting at grocery store or private party where matter is discussed, making decisions in a closed-door meeting when not authorized, and conducting discussions about official business by email.

Public Right to Attend and Record §404

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny,

- All persons shall be entitled to attend public proceedings and
- To make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings.
- The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

Public Right to Comment

30-A M.R.S.A. §2608 (LD 1091)

- A reasonable opportunity for public comment must be provided on matters addressed by the municipal governing body at any regularly scheduled public meeting of the municipal officers.
- This section does not apply to a subcommittee meeting of a municipal governing body.
- This section does not preempt or restrict the municipal governing body from adopting and enforcing reasonable standards governing public comment, including time limits and conduct standards.

Executive Sessions - §405

Permitted Deliberations: Deliberations on only the following matters may be conducted during an executive session:

- A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:
1. An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
 2. Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
 3. Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
 4. Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.
- This paragraph does not apply to discussion of a budget or budget proposal;

Executive Sessions - §405

- B.** Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school
- C.** Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;
- D.** Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

Executive Sessions - §405

- E.** Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage;
- F.** Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
- G.** Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and
- H.** Consultations between municipal officers and a code enforcement officer representing the municipality

Restrictions on Executive Sessions

- An executive session may not be used to defeat the purposes of the FOAA.
- An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.
- An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.
- A motion to go into executive session must :
 - Indicate the precise nature of the business of the executive session and
 - Include a citation of one or more sources of statutory or other authority that permits an executive session for that business.
- Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

Notice of Public Meetings - §406



Public notice shall be given for all public proceedings ... if these proceedings are a meeting of a body or agency consisting of 3 or more persons.



This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned.



In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

Decisions - §406

1. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.
2. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

Remote Meeting Participation - §403-B

A public body may allow members of the body and the public to participate in a public proceeding using remote methods only under the following conditions:

- The body has adopted a written policy governing remote participation
- If no policy is adopted, the chair can determine a meeting can be held remotely if an emergency exists.
- Members of the public must be able to attend by remote methods when members of the body participate by remote methods
- Reasonable accommodations may be provided when necessary to provide access to individuals with disabilities.
- If there is an opportunity for public input during the proceeding, an effective means of communication must be provided.
- Notice of remote meetings must include the means by which members of the public may access the proceeding using remote methods.
- The notice must also identify a location for members of the public to attend in person.
- Public attendance at a proceeding may be limited solely to remote methods if there is an emergency or urgent situation that requires the body to meet only by remote methods.

Remote Meeting Participation - §403-B

- A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting.
- All votes taken during a public proceeding using remote methods must be taken by roll call.
- All documents and other materials considered by the public body must be made available, electronically or otherwise, to the public who attend by remote methods
- Members of the public are permitted to record the proceeding remotely.
- A remote participation policy adopted by the municipal officers applies to all public bodies that are within the jurisdiction of the municipality unless the municipal officers specifically authorize a public body under their jurisdiction to adopt its own remote participation policy.

Public Records

Definition: Written, printed, graphic, mechanical or electronic information;

Possession or custody of agency, official or association; and

Received, prepared or containing information related to transaction of public business

Public Records Exceptions

Common Exceptions:

- Records designated confidential by statute, including **customer information in possession of a public sewer system (LD 251)**
- Municipal statutory exceptions include personnel records, certain TIF submissions, forest management plans (tree growth and open space programs), poverty abatement records applications, certain GA applications, and **personal contact information of applicants for municipal employment (LD 1828)**.
- Information contained in a communication between a constituent and an elected official if the information: is of a personal nature including medical information, credit or financial info, personal history, social security number, or complaints, charges of misconduct or other materials pertaining to disciplinary action.
- Juvenile records
- Investigations
- Email addresses collected and used by a political subdivision to provide noninteractive notifications, updates and cancellations

Who May Make a FOAA Request?

Who?

- “Any person” – regardless of residency or citizenship
 - Includes individuals, corporations, associations, media

The “why” behind the request

- FOAA requesters generally do not have to justify or explain their reasons for making requests

The “how” of the request

- Does not have to be in writing
- No required form

Responding to a FOAA Request?



Acknowledge request within 5 working days of receipt and provide an estimated time frame and cost in reasonable amount of time



Denial in writing within 5 working days; **cite to statutory authority for denial (LD 1797)**



Locate responsive records and redact exempt information



Respond to requester with the documents within a reasonable time



Schedule inspection, conversion, or copying during reasonable office hours

Unduly Burdensome Requests (LD1827)

- Town can deny a series of request for inspections or copying public records on the basis that the requests are unduly burdensome or oppressive.
- The Town can seek protection from an unduly burdensome or oppressive request by filing for a protection order in Superior Court.
- Action must be filed within 60 days of receipt of the request or within 60 days of the date on which the Town notifies the requester that the series of requests is unduly burdensome or oppressive.

Fees

- \$25/hour after the first two hours of staff time for time spent searching, retrieving, compiling or redacting
- Reasonable fee for copying; actual costs for conversion and mailing
- If estimate of costs is greater than \$50, must notify requester before proceeding; if costs exceed \$100, payment in advance can be required
- Fee waivers can be granted if requester is indigent, or the agency or official considers release of the public record to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government, and is not primarily in the commercial interest of the requester

Violations

- Any person may appeal to Superior Court
- Burden on agency or public body
- If illegal meeting, action of board will null and void
 - If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and penalties may apply
- Officials subject to penalties and attorneys fees
- A willful violation of FOAA is subject to a civil penalty of not more than \$500

Public Access Officers

Public Access Officers

- Each agency must designate a Public Access Officer from among its existing employees
- Serves as FOIA contact for the agency
- Serves as resource within the agency on FOIA issues and to ensure requests are properly acknowledged.
- Same training requirements as elected officials

Public Access Ombudsman

- Created earlier, but not previously funded.
- The Ombudsman is available to review complaints about compliance with the Freedom of Access Act and attempt to mediate their resolution, as well as answer calls from the public, media and government agencies about the requirements of the law.

Training

Certain public officials must complete a FOAA training within 120 days after the official takes the oath of office

- Public access officer
- Municipal officers, municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers and deputies for those positions, planning board members, and budget committee members

Training must include the following topics:

- General legal requirements of FOAA regarding public records and public proceedings
- Procedures and requirements to comply with a public record request
- Penalties and other consequences for failure to comply with the law

Certificate and record of completed training is required

Conflicts of Interest

Financial
Conflicts of
Interest

Incompatibility
of Office

Prohibited
Appointments
or Employment

Relationships

Predisposition
or Bias

Financial Conflicts of Interest

Common Law

- “whether the town official by reason of his [her] interest, is placed in a situation of temptation to serve his own personal pecuniary interest to the prejudice of the interests of those for whom the law authorized and required him to act...”
- Not a lot of guidance on the threshold for indirect pecuniary interests that triggers disqualification. The Maine Law Court has directed that the determination of whether a particular interest is sufficient to disqualify an individual must be made on a case-by-case basis.

Financial Conflicts of Interest

Statutory Law

- 30-A M.R.S.A. § 2605 sets out black letter standards when it will be presumed that the official or deciding party is “self-interested” in connection with the performance of governmental actions or decision making.

Statutory Test – 10% Rule

- When the official is an “officer, director, partner, associate or stockholder of a private corporation, business or other economic entity” which is the subject of the issue before the body; and
- The individual is “directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least 10% interest in the business or other economic entity.”

Avoid Appearance of a Conflict of Interest

Safeguard the integrity of the proceedings.

- Do you think that in light of the points raised, circumstances and situation that you can participate in these proceedings without any bias, predisposition or letting your relationship impact your participation or decision?

and

- Will you conduct yourself and base your decision in the proceedings based solely on the record of the proceedings and based on your best judgment on applying the applicable and relevant standards?

Handling Conflicts



Disclose, Discuss and Vote



Consequence – Action Could be Voidable if Challenged

Prohibited Appointments

- **30-A M.R.S.A. § 2606:** No municipal officer, during the term for which that officer has been elected and for one year thereafter, may be appointed to any civil office of profit or employment position of the municipality, which was created or the compensation of which was increased by the action of the municipal officers during the officer's term.
- **Charter/Ordinance/Policy:** *Callaghan v. South Portland*

Incompatibility of Offices

Statutory Prohibitions:

- Town manager may not serve as town moderator, selectman, assessor or school committee member
- Tax collector or treasurer may not serve as selectman or assessor
- Municipal officer (or spouse) may not serve on board of appeals
- Etc....

Common law:

- Municipal officers and code enforcement officers, road commission, school committee member, municipal clerk, election warden, etc...

Bias Based on Relationships

- Quasi-judicial Functions
- Consanguinity or Affinity Within the 6th Degree = Bias
 - 1 M.R.S. §71(6): when a municipal officer sits as a quasi-judicial officer (e.g., one who makes licensing decisions, hears, and decides personnel matters, hears appeals) to decide on a matter involving a relative by blood (consanguinity) or marriage (affinity) (and likely adoption) who is related to a party to the proceeding as a second cousin or closer, that municipal official is disqualified from participation in that proceeding.

Bias Based on Predisposition

Quasi-Judicial Functions

Can you make an impartial decision?

Is there an appearance of bias?

Burden of Proof is on the applicant

Research Conducted by Board Members

Thank you!

Mary Costigan

Shareholder

mcostigan@bernsteinshur.com

**CERTIFICATE OF COMPLETION
FREEDOM OF ACCESS ACT
Training Required by 1 M.R.S.A. § 412**

I, _____, hereby certify that I have met the training
(*Name of official or public access officer*)

requirements set forth in [1 M.R.S.A. § 412](#) on _____
(*Date of training*)

by completing the following training:

- A thorough review of all the information made available on the Frequently Asked Questions portion of the State website, www.maine.gov/foaa/faq.
- Another training course that includes this information, identified as follows:

(*Title of Course*)

(*Name of Course Provider*)

Dated this _____ day of _____, 20_____.

Signature

Printed Name

Elected/Appointed Office or Position

Note: A public access officer or an official subject to this section shall complete the training not later than the 120th day after the date the official assumes the person's duties as an official or the person is designated as a public access officer.

Ad Hoc 1934 Building Committee Charge

(Council Approved January 21, 2026)

An Ad Hoc 1934 Building Committee is hereby established by the Cape Elizabeth Town Council to advise and support the Council on the transition of the 1934 building, which is currently part of the Cape Elizabeth Middle School but will be relinquished and made available for town use or possible discontinuation in the Fall of 2028 (construction timeline plan permitting). This committee will explore, study and gather information for options and make one or more recommendations to the Town Council.

Committee Composition:

- The Committee shall consist of 9 members as follows:
- Two (2) members from the Cape Elizabeth Town Council, one serving as Chair, and the other as Vice-Chair
- One member of the School Board
- Six (6) community members, appointed by the Town Council on the recommendation by the Appointments Committee.
- The Town Manager shall serve as a non-voting member of the Committee
- Any Town Council member vacancy following the initial appointment shall be filled by the Town Council
- Any public member vacancy following the initial appointment shall be filled by using the Appointment Committee process.
- Staff support shall be coordinated through the Town Manager's office.

Committee Governance & Operations

- The Committee shall operate for 12 months, unless extended for cause by the Town Council.
- The Committee shall perform their duties in compliance with ordinance section 4-1-5, Operations of Boards and Committees.
- The Committee shall meet at least once a month and may schedule additional meetings as needed.
- All meetings shall be video recorded unless the technology is not available or working at the time of the meeting.
- Recommendations provided to the Town Council are expected to be financially foreseeable and practically viable - as such experts are expected and encouraged to be consulted. These may include, but are not limited to, school and town staff and experts in the areas of Architecture, Engineering, Construction, Building Systems, Land Use, Housing and Historic Preservation

- The Committee may establish sub-committees, which shall operate in accordance with the Maine Open Meeting Law and Public Records Law.
- The Committee chair shall provide status reports and executive summaries of their work to the Town Council, with the assistance of the Town Manager by the following dates:
 - August 2026
 - December 2026
- The Committee shall provide a final report to the Town Council by March 30, 2027.
- The Chair of the Committee will provide monthly updates to the Town Council at one of its regular meetings.

Specific Responsibilities include

1. Assess the current condition and size of the building.
2. Members must familiarize themselves with the Town's Comprehensive Plan (2019) and relevant zoning regulations.
3. Explore all possibilities of use, including public, private or mixed use, discontinuation, sale of the building, and possible removal.
4. Hear from the public about preferred possibilities of the future of the building after exploring the reasonable costs.
5. Explore costs of renovations that could come with this change of use as well as the value of the building on the open market.
6. Explore the availability of and feasibility of acquiring (non-municipal) public funds, including but not limited to, Historic Preservation.
7. Explore the pros and cons, and general public appetite for, a variety of solutions and the costs associated with them.
8. Review and approve the work of any subcommittee the Committee may establish.
9. Ensure regular communication and transparency with the Town Council and broader community.