



## FAIRHAVEN SELECT BOARD

### Meeting Minutes

July 10, 2023

FAIRHAVEN TOWN CLERK  
RCUD 2023 AUG 23 PM 12:30

**Present:** Chair Leon Correy, Clerk Stasia Powers, Select Board member Keith Silvia, Select Board member Robert Espindola, and Town Administrator Angie Lopes Ellison.

**Via zoom:** Vice-Chair Charles Murphy Sr.

**Also Present:** Christopher Petrini and Arthur Goldberg from Petrini & Associates PC, Jaime Kenny and Caitlyn Morey from Clifford & Kenny, LLP, Gary Lavalette and Philip Beauregard

**The meeting was videotaped by Cable access and Zoom meeting application.**

**Mr. Correy opened the Select Board meeting at 6:34p.m.**

#### EXECUTIVE SESSION

**Motion:** Mr. Espindola motioned to enter executive session pursuant to G.L. c. 30A, § 21(a)(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual (Gary Lavalette). Ms. Powers seconded. Roll Call vote, Mr. Murphy in favor, Mr. Espindola in favor, Ms. Powers in favor, Mr. Correy in favor and Mr. Silvia abstained. The motion passed (4-0-1).

Mr. Espindola amended his motion to add that the Board will return to open session. Ms. Powers seconded. Roll Call vote, Mr. Murphy in favor, Mr. Espindola in favor, Ms. Powers in favor, Mr. Correy in favor and Mr. Silvia abstained. The motion passed (4-0-1).

Mr. Silvia recused himself citing a personal and business relationship with Mr. Lavalette and exited Town Hall.

*The Select Board exited the Banquet Room at 6:36p.m. for Executive Session*

*The Select Board returned to Open Session at 7:16 p.m.*

Mr. Correy announced that Mr. Lavalette has the right to conduct this meeting in Executive Session and he has waived his right to Executive Session. He stated:

“This evening the Fairhaven Select Board is holding a hearing on the contemplated removal of Gary Lavalette from the Historical Commission. The purpose of this hearing is to hear from the Town and from Mr. Lavalette regarding whether the Select Board has cause to remove Mr. Lavalette from the Historical Commission. A determination of the hearing outcome will be made in writing after the hearing has been conducted by the Board.”

Mr. Correy explained the rules and process for the hearing. Each witness was asked to sign in with their name, address, email and telephone number for the record and then was sworn in by Mr. Correy. Each witness was advised that they would either be called on behalf of the Town by Attorney Christopher Petrini or on behalf of Mr. Lavalette by Attorney Philip Beauregard, each attorney would have an opportunity to cross-examine witnesses. Once Atty. Petrini concludes, Atty. Beauregard would be given the opportunity to present witnesses and evidence on behalf of Mr. Lavalette.

Mr. Correy reiterated that the hearing was being conducted for the specific purpose of considering whether the Fairhaven Select Board – July 10, 2023 – Open Session – Page 1

Board will act against Mr. Lavalette.

The Following six documents were entered into record and each attorney confirmed they had a copy:

1. July 6, 2023 amended notice of the hearing
2. June 15, 2023 notice of the hearing
3. Investigator's Supplemental Report (Redacted)
4. Investigator's Conservation Department Workplace Conduct Investigation Report (Redacted)
5. February 9, 2023 Fairhaven Police Report (Redacted)
6. Personnel Policy of Town of Fairhaven (7/18/2022)

Atty. Petrini representing the Town gave an opening statement.

The first witness was Attorney Caitlin Morey. Atty. Petrini questioned Atty. Morey and Atty. Beauregard crossed. After cross examination, Atty. Petrini asked questions on redirect and Atty. Morey concluded her testimony.

Mr. Correy advised that the meeting would adjourn at approximately 9:40p.m. and that an additional meeting would need to be scheduled to continue the hearing to allow for any additional witnesses and evidence not able to be presented tonight.

The second witness was Kamryn Dubois. Atty. Petrini questioned Ms. Dubois and Atty. Beauregard crossed.

The Board thanked Atty. Morey and Ms. Dubois for their time. Mr. Correy asked the attorneys if they would be able to continue the meeting until July 31, 2023. Each attorney will confirm the date.

**Motion:** Mr. Espindola motioned to adjourn the meeting. Ms. Powers seconded. Roll Call vote, Mr. Murphy in favor, Mr. Espindola in favor, Ms. Powers in favor and Mr. Correy in favor. The motion passed (4-0-0).

**Meeting adjourned at 9:27p.m.**

*Respectfully submitted on behalf of the Select Board Clerk (ah)*

**Attachments:**

1. July 6, 2023 amended notice of the hearing
2. June 15, 2023 notice of the hearing
3. Investigator's Supplemental Report (Redacted)
4. Investigator's Conservation Department Workplace Conduct Investigation Report (Redacted)
5. February 9, 2023 Fairhaven Police Report (Redacted)
6. Personnel Policy of Town of Fairhaven (7/18/2022)

*Approved on August 21, 2023*

**G. LAVALETTE 7/10/23 HEARING  
FAIRHAVEN SELECT BOARD  
TOWN EXHIBITS**

1. July 6, 2023 Amended Notice of Removal Hearing
2. June 15, 2023 Notice of Removal Hearing
3. Investigator's Supplemental Report [Redacted]
4. Investigator's Conservation Department Workplace Conduct Investigation Report [Redacted]
5. February 9, 2023 Fairhaven Police Report [Redacted]
6. Personnel Policy of Town of Fairhaven (7/18/22)

*2023.07.10 G. Lavalette Removal Hearing List of Exhibits (620-17)*

# Exhibit 1



Town of Fairhaven Massachusetts  
Office of the Select Board  
40 Center Street  
Fairhaven, MA 02719

Tel: (508) 979-4023  
selectmen@Fairhaven-MA.gov

July 6, 2023

**Via Hand Delivery and Email (Garysplumbing@msn.com)**

Gary Lavalette  
4 Bellevue Street  
Fairhaven, MA 02719

**AMENDED NOTICE OF EXECUTIVE SESSION ON CONTEMPLATED REMOVAL FROM HISTORICAL COMMISSION**

**Monday, June 20, 2023 at 6:30PM Fairhaven Town Hall**

Dear Mr. Lavalette:

Pursuant to G.L. c. 30A, §21(a)(1), this letter shall serve as Notice of an Executive Session of the Select Board for the Town of Fairhaven scheduled for **Monday, July 10, 2023, at 6:30 PM at Fairhaven Town Hall** during which the Select Board, as appointing authority, shall consider your contemplated removal from your appointed position on the Fairhaven Historical Commission due to complaints filed by Town employees and residents in 2022 and 2023. The Select Board shall also conduct a hearing relative to the same, pursuant to Fairhaven Town Bylaws and G.L. c. 40 § 8D.

The specifics of such complaints are set forth in two reports prepared by Investigator Caitlin Morey, Esq. of Clifford & Kenny, LLP, entitled as follows:

1. Supplemental Report: Investigation of Complaints-Conclusions & Recommendations and
2. Fairhaven Conservation Department Workplace Climate Assessment.

Redacted copies of the two reports were provided to you by the Investigator on May 11, 2023, and you signed an Acknowledgement of receipt of the same (a copy of which is enclosed with this letter). The two reports and the specifics contained therein are incorporated by reference into this notice.

Without limiting or waiving any of the specifics contained in the two reports, the reports discuss a number of complaints and findings by the Investigator, which, if credited by the Select Board, may justify removal from your role as a member of the Historical Commission. By way of example, the Investigator concluded, after interviewing you and a number of witnesses, and after reviewing relevant documents, that you engaged in the following conduct:

- (a) Violated the Town's Harassment and Standards of Conduct Policies by making inappropriate, racist and/or misogynistic comments to Town residents, the Town Administrator, and other Town officials;
- (b) Entered private property of residents without authorization, and bullied and threatened residents with large fines and other proceedings;
- (c) Violated the Town's Harassment and Standards of Conduct Policies by making improper references to a female African American co-owner of property as a "tenant;"
- (d) Violated the Town's Harassment Policy by making comments about your male reproductive organs to a Town resident; and
- (e) Violated the Town's Harassment Policy by referring more than once to the complaints of a Town resident and the Town Administrator as "playing the black card," or words to this effect.

The Select Board, as appointing authority, may conclude that such conduct, if found to be true in whole or in part by the Board, may warrant your removal from the Historical Commission. If the Board votes to remove you from the Historical Commission, such removal shall also constitute removal from your membership on the Fairhaven Community Preservation Committee (CPC), as your role on the CPC as a representative of the Historical Commission is solely derivative of your role as a member of the Historical Commission.

Please note that G.L. c. 30A, §2 1(a)(1) affords you the following rights:

- (a) A public body may meet in executive session only for the following purposes:
  - (1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
    - i. to be present at such executive session during deliberations which involve that individual;
    - ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
    - iii. to speak on his own behalf; and
    - iv. to cause an independent record to be created of said executive session by audio-

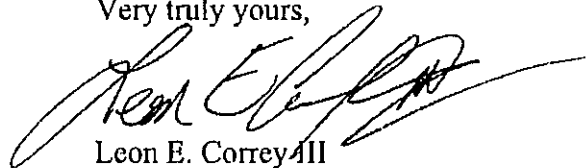
recording or transcription, at the individual's expense.

The **rights** of an **individual** set forth in this paragraph are in addition to the **rights** that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The discussion of the above matter(s) shall take place in Executive Session, as detailed above. However, as the subject of this proceeding, you have the right to request that this meeting take place in Open Session. Please note that if you choose, you may have a stenographer present at your own expense to transcribe the proceedings, whether held in executive or open session.

If you intend to have a stenographer present or to request that this hearing be held in open session, we ask that you notify the Town no later than Monday, July 10, 2023 at 12:00PM. Thank you for your attention to this matter.

Very truly yours,



Leon E. Correy III  
Chair, Select Board  
Town of Fairhaven

cc: *(All by Electronic Transmission Only)*  
Philip Beauregard, Esq., Counsel to Gary Lavalette  
Angeline Lopes Ellison, Town Administrator  
Christopher J. Petrini, Esq.

TOWN OF FAIRHAVEN

ACKNOWLEDGEMENT

By completing and submitting this form, you are acknowledging the following.

- I acknowledge and understand that the documents provided to me today by Attorney Caitlin Morey are confidential personnel documents and are not to be copied, shared, disseminated, distributed or posted in any manner.
- I have been informed and reminded about the Town's policy against retaliation.

First Name: GAO  
(Printed)

Last Name: LAVALLETTE  
(Printed)

Ray Lavallette  
Signature

Date: 5-11-2023



# Exhibit 2



Town of Fairhaven  
Massachusetts  
Office of the Select Board  
40 Center Street  
Fairhaven, MA 02719

Tel (508) 979-4023  
selectmen@Fairhaven-MA.gov

June 15, 2023

Via First Class Mail and Email [Garysplumbing@msn.com](mailto:Garysplumbing@msn.com)

Gary Lavalette  
4 Bellevue Street  
Fairhaven, MA 02719

**NOTICE OF EXECUTIVE SESSION ON CONTEMPLATED REMOVAL**

**Tuesday, June 20, 2023 at 7:00PM**

**Fairhaven Town Hall**

Dear Mr. Lavalette:

Pursuant to G.L. c. 30A, § 21(a)(1), this letter shall serve as Notice of the Executive Session of the Select Board for the Town of Fairhaven scheduled for Tuesday, June 20, 2023 at 7:00PM at Fairhaven Town Hall during which the Select Board, as appointing authority, shall consider your contemplated removal from your appointed position on the Fairhaven Historic Commission due to complaints filed by Town employees and residents between October 2022 through February 2023. The Select Board shall also conduct a hearing relative to the same, pursuant to Fairhaven Town Bylaws and G.L. c. 40 §§ 8C and 8D.

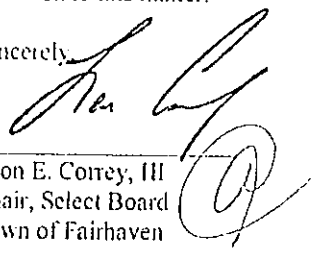
Please note that G.L. c. 30A, § 21(a)(1) affords you the following rights:

- (a) A public body may meet in executive session only for the following purposes:
- (1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
- i. to be present at such executive session during deliberations which involve that individual;
  - ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
  - iii. to speak on his own behalf; and
  - iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The discussion of the above matter(s) shall take place in Executive Session, as detailed above. However, as the subject of the instant matter, you have a right to request that this meeting take place in Open Session. If you intend to make such a request, you must notify the Town no later than Tuesday, June 20, 2023 at 12:00PM. Thank you for your attention to this matter.

Sincerely,

  
\_\_\_\_\_  
Leon E. Corey, III  
Chair, Select Board  
Town of Fairhaven

CC: Angeline Lopes Ellison, Town Administrator, Town of Fairhaven  
Christopher Petrini, Town Counsel

# Exhibit 3

**SUPPLEMENTAL REPORT:  
INVESTIGATION OF COMPLAINTS  
CONCLUSIONS & RECOMMENDATIONS**

**I. INTRODUCTION**

This report is the result of an investigation into multiple complaints that were brought during the course of a Workplace Climate Assessment for the Town of Fairhaven ("Town") Conservation Department, which includes Town Hall staff and the Conservation Commission ("Commission"). As discussed more fully below, this Investigator was engaged to determine whether any violations of Town policies occurred, and, if so, to provide appropriate recommendations for corrective action.

**II. SUMMARY OF ALLEGATIONS AND SCOPE OF INVESTIGATION**

During the above-referenced Workplace Climate Assessment, [REDACTED] for the Town, shared concerns with [REDACTED] regarding excessive criticism and "nit-picking" by members of the Conservation Commission—particularly during their public meetings. As a result, [REDACTED] attended at least one Conservation Commission meeting and spoke with multiple Commissioners regarding their treatment of [REDACTED]. Those interactions, which are detailed below, led to complaints by Geoff Haworth ("Mr. Haworth"), the Commission's Chair, and Karen Isherwood ("Ms. Isherwood"), the Commission's Vice Chair, against [REDACTED].

Ms. Isherwood has alleged that [REDACTED] "bullied and threatened" her via a voicemail on October 12, 2022. Mr. Haworth alleged that [REDACTED] acted outside of her authority, which was addressed in the Climate Assessment Report. [REDACTED]

During the Workplace Climate Assessment, three (3) property owners in Town made complaints about the conduct of Gary Lavalette ("Mr. Lavalette"), a member of the Conservation Commission. Mr. Lavalette allegedly entered their property without authorization or notice and he was reportedly hostile and aggressive in his interactions with them. One resident, [REDACTED] alleged that Mr. Lavalette made derogatory statements to [REDACTED] regarding [REDACTED] race and about people of Asian descent, and that he made reference to his reproductive organs during their conversation. [REDACTED] and another resident, [REDACTED] alleged that Mr. Lavalette and Mr. Haworth acted in a hostile manner and repeatedly threatened them, as well as others on their property at that time, with heavy fines.

Mr. Lavalette also made troubling comments during an investigatory interview regarding [REDACTED] and [REDACTED], both of whom are Black [REDACTED]. Specifically, he stated that they were attempting to use the "Black card" against him.

Near the conclusion of this investigation, the Town received another complaint from a resident against Mr. Lavalette. Due to the timing of that complaint, it was considered outside of the scope of this investigation; however, the Town reserves the right to separately investigate this matter and take action, as may be necessary.

III. WITNESSES INTERVIEWED

1. [REDACTED]
2. [REDACTED]
3. Geoff Haworth – Chair, Conservation Commission
4. Karen Isherwood – Vice Chair, Conservation Commission
5. Gary Lavalette – Member, Conservation Commission
6. Amy DeSalvatore – Member, Conservation Commission
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]

IV. RELEVANT POLICIES

1. 15.0 Unlawful Harassment Policy/Sexual Harassment/Workplace Bullying

15-1. Introduction. It is the goal of the Town of Fairhaven to promote a workplace that is free of unlawful harassment, sexual harassment, discrimination, and hostile work environments in any form. The Town will not tolerate unlawful harassment, sexual harassment, and/or discrimination of employees occurring in the workplace, or in other settings in which employees may find themselves in connection with their employment. Further, any retaliation against an individual who has complained about unlawful harassment, sexual harassment, and/or discrimination, or retaliation against individuals for cooperating with an investigation of an unlawful harassment, sexual harassment, and/or discrimination complaint is similarly unlawful and will not be tolerated.

15.1.1. Definitions.

- A. Unlawful Harassment – Unlawful harassment is unwelcome conduct that is based on race, color, religion, gender (including pregnancy), gender identity/expression, national origin or ancestry, age (40 or older), disability, genetic information, military status, or sexual orientation. Harassment becomes unlawful where:
  - a. Enduring the offensive conduct becomes a condition of continued employment
  - b. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive
- B. Sexual Harassment – Sexual harassment is unlawful harassment based on a person's sex. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature, and/or offensive remarks about a person's sex. Both victim and the harasser may be either a man or a woman, and the victim may be the same sex.
- C. Discrimination – Discrimination is any decision that is made or action taken that is motivated by a bias because of an employee's age, disability, gender, gender identity/expression, genetics, military status, national origin or ancestry, race or color, religion, retaliation, sexual orientation, or political affiliation.
- D. Hostile Work Environment – A Hostile Work Environment is created when any unlawful discrimination or unlawful harassment becomes severe or pervasive, the endurance of which becomes a condition of continued employment

Employees are protected from harassment and discrimination on the basis of their race, color, religion, national origin, ancestry, sex, age, handicap (disability), and participation in discrimination complaint-related activities, sexual orientation, gender identity, genetics, or active military or veteran status. Prohibited behavior includes slurs or other derogatory comments, objects, pictures, cartoons, or demeaning gestures connected to employee's membership in a protected group.

To achieve our goal of providing a workplace free from unlawful harassment, sexual harassment, and/or discrimination, the conduct that is described in this policy will not be tolerated. Because the Town of Fairhaven takes allegations of unlawful harassment, sexual harassment, and/or discrimination seriously, we will respond promptly to complaints of this type of conduct where it is determined that such inappropriate conduct has occurred, will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate up to and including termination.

This policy shall apply to all employees, appointees, elected officials and volunteers of the Town of Fairhaven, MA. Any individual violating this policy shall be subject to appropriate discipline.

While this policy sets forth the Town's goals of promoting a workplace that is free of unlawful harassment, sexual harassment, and/or discrimination, the policy is not designed or intended to limit the Town's authority to discipline or take remedial action for workplace conduct which

the Town deems unacceptable, regardless of whether that conduct satisfies the definition of unlawful harassment, sexual harassment, and/or discrimination.

15-2. *Workplace Bullying.* The Town has a “zero tolerance” for bullying. Bullying harms employees, employers, and the organization by creating a disrespectful, unhealthy, and nonproductive work environment. The Town of Faithhaven expressly prohibits any form of employee bullying. The Town prohibits unwelcome conduct, whether verbal, physical, or visual, and includes any discriminatory employment action and any unwelcome conduct that affects someone because of that individual’s protected status.

While bullying encompasses a wide range of conduct, some examples of specifically prohibited conduct include: ethnic slurs or epithets; racial jokes; unwanted or unwelcome physical contact; malicious gossip; displaying, storing, or transmitting offensive or harassing materials at work or while using the Town’s equipment or facilities.

Further, any harassing conduct that occurs using electronic communication equipment and media, such as through email or social media, is a serious offense and violates the Town’s Equal Employment Opportunity policies, including the harassment policy.

2. 23.0 Americans with Disabilities Act and Reasonable Accommodations Policy

23-1. *Policy.* The Town of Faithhaven does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. The Town will comply with the Americans with Disabilities Act (ADA), the Massachusetts Fair Employment Practices Law (MFEPL), and all other applicable state and local laws, and is committed to providing equal employment opportunities to qualified individuals with disabilities. The Town’s ADA Coordinator has been designated to monitor compliance with the non-discrimination requirements in the Section 504 regulations and the Americans with Disabilities Act regulations as implemented by the Equal Employment Opportunity Commission and the Department of Justice.

23-2. *Reasonable Accommodations Policy.* The Town will engage in an interactive process with employees or applicants in order to provide “reasonable accommodations” to employees who are receiving Worker’s Compensation or who are otherwise eligible under the ADA.

“Reasonable accommodations” are limited accommodations which allow the employee to perform the essential functions of his/her position. In accordance with the ADA, accommodations that impose an undue hardship on the Town are not considered reasonable and will not be granted. A permanent reassignment or transfer of an employee will not be considered a reasonable accommodation.

Employees who believe they are in need of an accommodation should contact the Human Resources Director. Upon receiving a request for an accommodation from the employee or prospective employee capable of performing the essential functions of the position involved, the Town will engage in a timely, good faith and interactive process with the employee or



applicant to determine an effective, reasonable accommodation to enable the employee or applicant to perform the essential functions of the position.

The Town may require the employee or applicant to provide documentation from an appropriate health care or rehabilitation professional about the need for a reasonable accommodation or the extension of a previously agreed upon accommodation.

The Town prohibits any form of retaliation, discipline, reprisal or intimidation against any employee or applicant who has made a good faith request for an accommodation or who has been granted an accommodation under this policy.

3. 12.0 Standards of Conduct/Conflict of Interest

12-1. *Policy.* The Town of Fairhaven expects all employees to conduct themselves and Town business in a manner that reflects the highest standards of ethical conduct and in accordance with all federal, state, and local laws and regulations. This includes avoiding all real and potential conflicts of interest. Town employees shall recognize that the chief function of local government is to serve the best interests of all people, and shall conduct themselves in a manner that maintains public confidence and trust.

Town employees are prohibited from engaging in any conduct that could reflect unfavorably upon the Town. Town employees shall avoid any action, which might result in or create the impression of using public office for private gain, giving preferential treatment to any person, or losing complete impartiality in conducting Town business. Employees are expected to keep in mind that they are public employees and are to conduct themselves in a manner that in no way discredits the Town, public officials or fellow employees.

Employees have responsibility to the Town, first and foremost, and must remember that they are obligated to consider any possible financial or legal ramifications of any action that could be in conflict with this policy and could cost the Town financially or cost the Town in its reputation.

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12-6. *Customer Service Expectations.* Fairhaven employees must be fully committed to providing service excellence to every person who visits, works, or resides in the Town of Fairhaven by embodying the organization's core values: ethics, inclusion, integrity, accountability, positivity, helpfulness and collaboration. Part of this excellent customer service is the expectation of availability. It is expected that department heads will make every attempt to avoid office closure, scheduling paid-time-off, lunches, and breaks accordingly to allow their offices to remain open during posted Town Hall hours. If a department does not have sufficient staff to remain open during normal business hours, the department director shall so notify the town administrator at least 24 hours in advance of the possible closure and the town administrator shall either assign staff from other departments to provide office coverage or cause to be placed notices on the office doors of where assistance can be provided and the time that the office will reopen.

V. FINDINGS OF FACT

Based on the interviews of the listed witnesses and review of the above-referenced documents and policies, this Investigator makes the following findings of fact:

1. During [REDACTED] first two (2) Commission meetings as the [REDACTED], Ms. Isherwood made many comments regarding [REDACTED] preparation for the meeting, particularly regarding the reports and documentation. [REDACTED] believed [REDACTED] followed the templates from the previous and Interim [REDACTED], but Ms. Isherwood was frustrated when she saw typographical errors and inconsistencies within the reports and documentation. [REDACTED] made [REDACTED] aware of what [REDACTED] felt was "nit-picking" by Ms. Isherwood and that [REDACTED] was not being given the opportunity to succeed in his position, as he was the [REDACTED] for approximately six (6) weeks at the time. [REDACTED] was concerned that the commentary was approaching a complaint against [REDACTED]. Such a complaint against a public employee requires statutory notice, and [REDACTED] was concerned the Commission was going to run afoul of [REDACTED] statutory rights.
2. [REDACTED] joined the October 3, 2022, Commission meeting. During this meeting, Ms. Isherwood was again critical of [REDACTED]. [REDACTED] privately messaged Mr. Haworth, the Commission Chair, over Zoom, telling him he needed to stop Ms. Isherwood from evaluating [REDACTED] during a public, recorded meeting. Mr. Haworth later expressed to this Investigator that he felt [REDACTED] was attempting to "undermine the meeting." When this Investigator explained that [REDACTED] had been concerned about potential liability, Mr. Haworth said that he would "drop [REDACTED] from the meeting" if it happened again. He also threatened to quit as a Commissioner during his interview and said he wrote a "press release" that the Investigator was "not going to like." Mr. Haworth, however, would not provide further detail and never provided a copy of the press release he referenced to this Investigator.
3. On October 4, 2022, Mr. Haworth sent an email to [REDACTED] and the Town's [REDACTED]. In his email, Mr. Haworth expressed the Commission's concerns about [REDACTED] repeated errors and the fact that [REDACTED] was ten (10) minutes late signing onto the meeting. [REDACTED] said that he was initially on time, but technical difficulties caused his delay. This Investigator notes Mr. Haworth's email was civil and professional in tone. Several Commissioners had "no confidence" in [REDACTED], despite the fact [REDACTED] was working in this position for less than two (2) months. Mr. Haworth also felt communication issues existed with [REDACTED]. Mr. Haworth stated that he is available by phone, text, and email, even when he is working, but he explained [REDACTED] was not reaching out to him on a regular basis.
4. [REDACTED] responded to Mr. Haworth's October 4, 2022, email on October 11, 2022, and [REDACTED] stated [REDACTED] did not agree with Mr. Haworth's description of the meeting. In [REDACTED] email, [REDACTED] indicated that although Mr. Haworth said the Commissioners wanted [REDACTED] to be successful, their conduct toward [REDACTED] was not consistent with this goal.
5. On or about October 11, 2022, Mr. Lavalette, Ms. Isherwood, [REDACTED], and another Commissioner, Amy Desalvatore ("Ms. Desalvatore") attended a seminar with Conservation

officials from surrounding communities. At the end of the seminar, Ms. Isherwood was speaking to [REDACTED] of the Massachusetts Department of Environmental Protection (DEP). Ms. Isherwood explained she was speaking with [REDACTED] about concerns with the [REDACTED] and [REDACTED] role in Conservation. She and other Commissioners believed [REDACTED] should have little to no involvement in Conservation because [REDACTED] did not have authority over them.<sup>1</sup> Mr. Lavalette overheard part of the conversation and confirmed the topic of discussion. [REDACTED] also overheard the conversation, and [REDACTED] later reported it to the [REDACTED] as [REDACTED] believed Ms. Isherwood was speaking negatively about [REDACTED] to [REDACTED]. The [REDACTED] then shared this information with [REDACTED].

6. [REDACTED] called Mr. Lavalette and Ms. Isherwood to address their conversation with [REDACTED]. According to Mr. Lavalette, [REDACTED] said the Commission was "unprofessional," and the Commission "threw [REDACTED] under the bus" to a New Bedford Conservation official. Mr. Lavalette said he told [REDACTED] he had "no idea what [she was] talking about."

7. It was unclear who reported Ms. Isherwood's conversation with [REDACTED] to [REDACTED]. [REDACTED] did not want to disclose [REDACTED] reported the information because [REDACTED] was concerned the Commissioners would retaliate against [REDACTED]. During the call, [REDACTED] stated other people [REDACTED] knew were present at the seminar and [REDACTED] referenced the New Bedford Conservation official as an example. Ms. Isherwood and Mr. Lavalette were upset that [REDACTED] was not truthful with them about the source of the information, and they believed [REDACTED] was the source. Ms. Isherwood was upset that [REDACTED] relayed a "private discussion," and she believed [REDACTED] should have told [REDACTED] it was "none of his business." Ms. Isherwood did not believe she acted improperly by speaking to [REDACTED] about the [REDACTED], and she previously made calls to him about the issue. Ms. Isherwood subsequently called [REDACTED] to ask what he said to [REDACTED]. [REDACTED] told this Investigator [REDACTED] felt bad about lying to Ms. Isherwood but feared retaliation.

8. On or about October 12, 2022, [REDACTED] left Ms. Isherwood a voicemail. Ms. Isherwood reported the voicemail to the Commission Chair, Mr. Haworth, and stated she wanted to file a complaint against [REDACTED]. Ms. Isherwood said she felt "bullied and threatened" by the voicemail.

a. This Investigator listened to the voicemail from [REDACTED]. The content of the voicemail is written in full below. This Investigator finds [REDACTED] tone is firm but not aggressive or threatening in nature.

"Hey Karen, this [REDACTED] calling. Um, if you can, please give me a call back. Um, I'm having some issues and concerns about some of the stuff that we talked about yesterday and I guess at this point some of the issues that are coming back to

<sup>1</sup> Ms. Isherwood's opinion about Ms. Lopes Ellison's authority was incorrect. The issue of the Town Administrator's authority regarding Conservation matters is addressed in the Climate Assessment report.

the [REDACTED], and the Conservation, um, Commissioner in particular, I was told that you reached out to New Bedford, um, Conservation Agent there and had a discussion with them in regards to other stuff. Um, I just want you to know, at this point, in regards to personnel matters and things of that nature, you are at a very critical point of overstepping, and also overstepping the responsibility of the Conservation Commission. Um, some of the things that are going on can be seen in a very negative light, as well as retaliatory. I need everything that you guys do as Conservation Commissioners to be focused specifically on Conservation items and regulations in Fairhaven. Um, if you'd like to talk some more about it, we can. Um, I have Labor Counsel and I also have Town Counsel that's going to get involved in this, and it's gonna be bigger than what I wanted it to be, but at this point, I need all of the Commissioners to back down and back off. You cannot and don't have access to information that I have, and I need you guys to back down. If you need again to talk about it, please come and talk to me and call me back, but at this point, it's overstepping in more ways than is necessary and required. Thank you. Bye.

- b. [REDACTED] stated she left the voicemail because she was concerned about liability for the Town and believed the Commissioners were at risk of "violating labor laws, Open Meeting Law, employee rights, all of it." [REDACTED] was particularly concerned about potential retaliation against [REDACTED].
9. During her interview, Ms. Isherwood stated she stopped answering or helping [REDACTED] at certain points because he went to [REDACTED] with complaints or concerns regarding the Commissioners. Ms. Isherwood and the other Commissioners believe the [REDACTED] should approach them directly with any issues, but [REDACTED] did not feel comfortable doing so. Ms. Isherwood also said she would not have made comments to [REDACTED] during public meetings "if [REDACTED] hadn't made the complaint" to [REDACTED].
10. Mr. Haworth has served on several other Town boards, and he is in contact with many current Town employees. Mr. Haworth stated multiple times that Town employees approached him with complaints about [REDACTED] and was informed "half the Town is looking for new jobs" because of [REDACTED] actions. Mr. Haworth would not provide any specific information regarding these employees or complaints to this Investigator. He explained he runs one of the Facebook pages about Fairhaven and can see the names of employees making anonymous posts about [REDACTED]. Mr. Haworth referred to [REDACTED] as the "head of the snake" and said [REDACTED] would "work around" Town policies and procedures to get what she wants. Mr. Haworth said he spent time searching [REDACTED] on Google and called the Boards of Selectmen in the towns where she was previously employed. Again, Mr. Haworth would not provide any names or specific information to support his statements.
11. [REDACTED] owns a home located at [REDACTED] in Fairhaven. At one point, [REDACTED] was a full-time resident, but [REDACTED] home is now mainly a summer/seasonal residence. On December 23, 2022, [REDACTED] home and property were damaged in a storm. On December 25, 2022, [REDACTED] went to the home and saw the sand was displaced and there was damage to a ramp that was used to access [REDACTED] home. [REDACTED] called the Conservation Department on the following business day, Tuesday, December 27, 2022.

- a. [REDACTED] the [REDACTED] stated that [REDACTED] wanted to reattach the ramp and file a Notice of Intent with Conservation for the pilings that fell during the storm. [REDACTED] reportedly wanted to address the temporary fix for the ramp first, as it was a safety concern, and [REDACTED] stated [REDACTED] generally agreed with his plan. At that time, the [REDACTED] position was vacant, but [REDACTED] informed the new [REDACTED] of this plan when [REDACTED] started employment with the Town in January of 2023.
- b. [REDACTED] and Mr. Haworth met on [REDACTED] property on December 27, 2022. According to [REDACTED] Mr. Haworth said, "[y]our property's going to be condemned" due to erosion and storm damage. [REDACTED] said Mr. Haworth eventually agreed to let [REDACTED] perform the emergency repairs to the ramp.
- c. Thereafter, Mr. Lavalette issued a Cease and Desist Notice and told [REDACTED] contractor to stop working. The contractor reportedly tried to tell Mr. Lavalette the damaged ramp was a safety risk, but Mr. Lavalette said it was a summer home, which was currently unoccupied, and, therefore it was not an urgent concern. [REDACTED] and the contractor were concerned about the public walking along the beach near [REDACTED] property, and [REDACTED] feared the ramp could potentially fall and injure someone.
- d. On January 23, 2023, Mr. Haworth sent the following email to [REDACTED] and Ms. Isherwood:

"Good morning,

Hope you had a good weekend. I was thinking if [REDACTED] does repairs that do not involve the footings or the ground and just on the building itself then it is not an issue. If [REDACTED] does any work that involves the footings, the ground or any sort of activity that involves touching or disturbing the ground, duns, sand, footings etc... then [REDACTED] will be in violation of the cease and desist notice.

It was apparent that [REDACTED] or [REDACTED] representative had attempted to upright and correct the footing in the last photos that I had seen of the property. This type of work is a violation.

This is my opinion on this matter.

Thanks,

Geoff"

- e. [REDACTED] stated he went to the property and "it was clear [REDACTED] was just trying to support the ramp that goes around the building." Although [REDACTED] received approval from the [REDACTED], his contractor was uncomfortable

proceeding while the Cease & Desist Notice was posted. Accordingly, [REDACTED] requested a meeting with the Conservation Commissioners and the [REDACTED]. [REDACTED] sent Mr. Haworth an email on January 31, 2023, asking for his availability. Mr. Haworth did not respond until after the meeting took place on February 1, 2023.

- f. On February 1, 2023, [REDACTED] and [REDACTED] engineer met with [REDACTED] and [REDACTED] at Town Hall. [REDACTED] reviewed the engineer's plans and agreed [REDACTED] could perform the emergency repairs to ensure safety and two (2) egresses in the home, as long as no materials were going into the sand. [REDACTED] stated if the repairs touched only the building and not the sand, it would not be a Conservation issue. Because Conservation and Building had different opinions on the matter, [REDACTED] wanted some kind of record that the Town gave [REDACTED] approval to do the emergency repairs. They went to [REDACTED] office at which point [REDACTED] called Mr. Lavalette to join their meeting. Mr. Lavalette stated [REDACTED] "kind of demanded" he remove the Cease & Desist Notice and [REDACTED] allegedly tried to "intimidate" him. This Investigator notes Mr. Lavalette's statements are not consistent with the accounts of the other meeting attendees.
- g. When recounting this incident, Mr. Lavalette entirely omitted the fact that [REDACTED] was attempting to perform emergency repairs to an accessibility ramp. He also failed to mention that the [REDACTED] approved the emergency repairs, with the understanding they would not touch the sand and [REDACTED] would file the proper paperwork with Conservation related to the other issues on [REDACTED] land. Throughout the Conservation Climate Assessment and this investigation, Mr. Lavalette was not forthcoming and routinely told different versions of events to different people, including this Investigator.
- h. Mr. Lavalette told everyone in the meeting that Mr. Haworth "ordered" him to put up the Cease and Desist Notice, and only Mr. Haworth had the authority to remove it. [REDACTED] wanted to contact Mr. Haworth to be aware of the [REDACTED] decision and to ensure there would be no issues with Conservation. [REDACTED] and Mr. Lavalette called Mr. Haworth from Mr. Lavalette's cell phone. When Mr. Haworth answered, Mr. Lavalette informed him he was on speaker phone in [REDACTED] office. According to [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Mr. Haworth was immediately argumentative and stated he did not have time to take Conservation calls during business hours. At one point, the call disconnected. Mr. Haworth then immediately called back, but he continued to say he did not have time to discuss the issue. Other meeting attendees recalled that Mr. Haworth was talking over [REDACTED] and believed it took more time for him to argue about taking the call than it would have taken to answer their question.
- i. Mr. Haworth stated that [REDACTED] "raised her voice, berated him, and told him, 'This is bullshit' and 'You will talk to me now.'" [REDACTED] and [REDACTED] all stated that the conversation was tense, but they did not recall [REDACTED] yelling. Other witnesses reported that [REDACTED] said, "This is bullshit"

after they hung up with Mr. Haworth, apparently in reference to Mr. Haworth's refusal to speak to them.

- j. Mr. Haworth was frustrated by the phone call and believed that if [REDACTED] shared his January 23<sup>rd</sup> email, the situation would have been avoided. [REDACTED] was aware of the January 23<sup>rd</sup> email but did not believe it provided enough assurance for his contractors to move forward. Mr. Haworth believes [REDACTED] attempted to "go over [REDACTED] head" and go through the [REDACTED] to avoid Conservation regulations. [REDACTED] has interacted with [REDACTED] many times over the past few months. [REDACTED] believes [REDACTED] is trying to follow the regulations but is taking it one step at a time, as [REDACTED] also needed to file extensive paperwork with State agencies and pay a large Peer Review fee to the Town.
- k. [REDACTED] referred to Mr. Haworth's conduct as "bullying" and a "power trip." [REDACTED] said Mr. Haworth was "aggressive" and threatened to fine him "\$300 per incident." [REDACTED] stated [REDACTED] does not and has never intended to circumvent Conservation regulations. [REDACTED] explained he underwent knee surgery in January, and [REDACTED] was making phone calls and sending emails on the day of [REDACTED] surgery because [REDACTED] was attempting to resolve the issues on his property. [REDACTED] proactively reached out to out to Conservation right after the storm, which would not be consistent with the allegation [REDACTED] trying to circumvent their processes.

12.

[REDACTED]

13.

[REDACTED]

- 14. In November of 2022, [REDACTED] was informed by the owner of [REDACTED] that [REDACTED] did not want Mr. Lavalette to come onto [REDACTED] property for a site visit. This property owner allegedly filed a complaint against Mr. Lavalette in the past and allegedly said Mr. Lavalette had a "criminal record." [REDACTED] was unsure of how to proceed, so he called [REDACTED]. Mr. Lavalette stated that [REDACTED] directed [REDACTED] to go to the Fairhaven Police Station and request his "criminal record." [REDACTED] stated that [REDACTED] asked [REDACTED]

to request the police reports specific to that property owner's alleged prior complaints but did not request Mr. Lavalette's "criminal history."

15. [REDACTED] and her husband [REDACTED] own a home on the beach, located at [REDACTED] in Fairhaven. [REDACTED] use the property as a summer residence, and tenants currently occupy the property. The storm on December 23, 2022, washed sand and seaweed into the driveway, causing the driveway to be unusable. The tenants were on vacation in January of 2023, and [REDACTED] hired landscapers to perform work in their yard, including to move the sand from the driveway back to the beach.
16. On Saturday, January 28, 2023, Mr. Lavalette arrived at [REDACTED] property and ordered the four (4) landscapers to stop working immediately. The interaction that followed was concerning to [REDACTED], and they reported it to the Fairhaven Police and the [REDACTED] the following business day. Mr. Lavalette's description of the interaction differs greatly from [REDACTED]' account, however, [REDACTED] account was substantiated by the Ring camera footage shown to [REDACTED] and [REDACTED].
  - a. There was confusion regarding how Mr. Lavalette became aware of the alleged violations at [REDACTED] because Mr. Lavalette gave different accounts to [REDACTED], [REDACTED], and [REDACTED]. Mr. Lavalette told [REDACTED] he received a call from a "confidential source" informing him of illegal activity occurring on [REDACTED] property. He told [REDACTED] he was nearby on Cedar Street for another matter and heard machinery, so he was walking over to the property when a neighbor "flagged him down." [REDACTED] explained to Mr. Lavalette that his account did not match up to the Ring camera footage, but Mr. Lavalette maintained he was in the area when another neighbor informed him about the work being done at [REDACTED]. Mr. Lavalette told [REDACTED] he was investigating a complaint on [REDACTED] when he heard the machinery operating at [REDACTED].
  - b. Ultimately, it remains unclear exactly how Mr. Lavalette arrived at [REDACTED], but upon his arrival he believed violations existed and he told the landscapers to stop working immediately and leave the property. He mentioned the possibility of a \$25,000 fine multiple times during his visit. After he was on the property for several minutes, Mr. Lavalette walked around the house and eventually told the owner of the landscaping company that he was from Fairhaven Conservation, but it is unclear if he ever gave the owner his name. Mr. Lavalette was described as "aggressive" and was reportedly "yelling" at the landscapers.
  - c. The landscapers then left the property and called [REDACTED]. Soon thereafter, Mr. Lavalette returned with Mr. Haworth. As they were walking the property [REDACTED] arrived at the house, which was approximately thirty (30) minutes after they received the call from the landscapers. [REDACTED] told Mr. Haworth and Mr.

<sup>2</sup> Upon the advice of her attorney [REDACTED] did not want to turn the Ring camera footage over to [REDACTED] organ or this investigator. However, this investigator has relied on [REDACTED] police report and interviews with [REDACTED] and [REDACTED], who both viewed the footage.



Lavalette to leave. [REDACTED] believed they were trespassing because they did not clearly identify themselves. Mr. Haworth then reportedly said that if they failed to allow him on the property, they would be fined \$300 per day. Mr. Haworth also told [REDACTED] that he asked the landscapers to return to the house or they would fine the owners \$300 per day, despite the fact that Mr. Lavalette previously told the landscapers to leave the property.

d. [REDACTED] was speaking with Mr. Lavalette while [REDACTED] spoke with Mr. Haworth on the beach. While [REDACTED] was talking with Mr. Lavalette about the costs of fixing the issues on their property, Mr. Lavalette said, "If you think your fines are bad, I have \$1.4 million dollars of medical bills." According to [REDACTED], Mr. Lavalette shared that he had bladder cancer and had multiple surgeries. He also reportedly told her that his external reproductive organs did not work. [REDACTED] found the conversation very uncomfortable, but [REDACTED] felt [REDACTED] had to engage in the conversation because [REDACTED] was fearful of the fines that Mr. Lavalette and Mr. Haworth previously referenced multiple times.

e. [REDACTED] told Mr. Lavalette that [REDACTED] and [REDACTED] have experienced a number of issues with the house since purchasing it, including that it was supposed to be fully furnished but was empty at the closing. Mr. Lavalette told her he purchased his house from "some Orientals," and said words to the effect of, "You know those Orientals, Asians, Japanese, they're so smart they saved the legs off of all the furniture." [REDACTED] recalled Mr. Lavalette used the word "Orientals" repeatedly. [REDACTED] stated [REDACTED] normally would have addressed someone using that word, but, once again, [REDACTED] felt uncomfortable saying anything out of fear of the fines that Mr. Lavalette and Mr. Haworth threatened.

f. [REDACTED] tried to reach Conservation last summer about another issue and no one ever returned [REDACTED] call or email. Therefore, [REDACTED] explained, [REDACTED] was confused about how a neighbor could call Mr. Lavalette on a Saturday and get an immediate response. Mr. Lavalette reportedly said, "My friends can call me. I have eyes and ears all over this town, so they call me and I come." [REDACTED] asked if [REDACTED] could have his cell phone number to reach out to him in the future and he said no, because he said it was his personal phone. [REDACTED] then said words to the effect of, "So your friends can report on me, but I can't report on them?" Mr. Lavalette did not give a clear response. When [REDACTED] asked if it was legal for him to do that, Mr. Lavalette said he did not want to continue the conversation, and they walked over toward Mr. Haworth and [REDACTED].

g. [REDACTED] stated Mr. Haworth repeatedly threatened to fine them \$300 per day and [REDACTED] recalled he said multiple times that they would owe upwards of \$25,000 in fines and costs. Mr. Haworth told [REDACTED] they would have to hire an environmental engineer. When they questioned what they should ask the engineer to do, Mr. Haworth reportedly said they would need to figure that out, and he initially gave very them little specific guidance. At one point they asked Mr. Haworth if they could hire [REDACTED] (a local engineering firm), to which Mr. Haworth responded and said words to the effect of, "If you want us to deny everything." Mr.

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ATTORNEYS AT LAW

Haworth said the Town was working with [REDACTED] on another matter, which was not going well. Mr. Haworth recommended they contact "[REDACTED]" and look on the Town website to find their information.

- h. Mr. Lavalette repeatedly referred to [REDACTED] as the "tenant," despite [REDACTED] repeatedly correcting him and saying she was [REDACTED] and co-owner of the property. [REDACTED] questioned whether he assumed [REDACTED] was the tenant, rather than the owner, because [REDACTED] is a Black [REDACTED] while [REDACTED] is a white [REDACTED] and they were presuming [REDACTED] "could not afford to own the property."
- i. Near the end of their meeting, Mr. Haworth reportedly said he would not issue a three hundred dollar (\$300) per day fine because they were being cooperative. Mr. Haworth and Mr. Lavalette left a Cease & Desist Notice with [REDACTED] and said they would need to hire an engineer and attend the next Commission meeting. [REDACTED] explained to this Investigator that it has been almost a month, and they have not received any further information, nor have their alleged violations been put on the Commission's meeting agenda.
- j. [REDACTED] said Mr. Lavalette accused her of removing vegetation from her property. [REDACTED] said the vegetation was removed by a storm and [REDACTED] had videos showing that it was present immediately before the storm washed it away. [REDACTED] stated [REDACTED] worked with one of the previous [REDACTED] in the past regarding the vegetation on her property, and [REDACTED] understands the importance of what Conservation does. [REDACTED] admitted their current landscaper improperly put sand from the driveway onto the beach, which went against [REDACTED] instructions, and [REDACTED] was willing to take the necessary steps to fix the violations. Overall, [REDACTED] was upset by Mr. Lavalette's approach to the situation and his unprofessional behavior. [REDACTED] was troubled by Mr. Lavalette and Mr. Haworth's repeated threats of serious fines without any willingness to educate them or explain the issues.
- k. Mr. Lavalette told [REDACTED] that his conversation with [REDACTED] was "friendly," and that he did not believe the conversation was confrontational or inappropriate.

17. [REDACTED] called [REDACTED] and Leon Correy ("Mr. Correy"), a member of the Select Board, about [REDACTED] interaction with Mr. Lavalette and Mr. Haworth. [REDACTED] also went to Town Hall the following Monday to meet with [REDACTED]. While [REDACTED] was meeting with [REDACTED], [REDACTED] reportedly came into the office and told [REDACTED] that Mr. Lavalette had purchased a drone and was planning to use it to monitor and take aerial photos of properties in Town.

18. After meeting with [REDACTED], [REDACTED] went to the Conservation Office to speak with [REDACTED]. Mr. Lavalette entered the office and asked [REDACTED] how [REDACTED] was doing. [REDACTED] responded, "Not well," and said [REDACTED] was upset by their previous interaction at [REDACTED] property.

- a. According to Mr. Lavalette, he told ██████ to "calm down" and said, "We are all adults here, let's get this squared away." ██████ recalled Mr. Lavalette told ██████ had "no business" making calls to the Select Board or ██████, and if ██████ continued to do so, he would "turn ██████ file over to the State," and ██████ would be subject to much more serious fines.
- b. At that time, ██████ began recording the conversation on ██████ phone. ██████ made a comment to the effect of, "Keep going Gary, I'm recording now." Mr. Lavalette told this Investigator that he advised ██████ it was "illegal" for ██████ to record him in Town Hall. Mr. Lavalette left the office but returned soon after, at which point he told ██████ that he recently met with the ██████ and was given authorization to start fining residents. ██████ was confused about why Mr. Lavalette made this comment, particularly in front of ██████. ██████ believed he was attempting to intimidate ██████. ██████ said ██████ appeared "shaken up," and ██████ felt that Mr. Lavalette spoke to ██████ in a disrespectful tone.
- c. ██████ said ██████ has seen Mr. Lavalette drive by ██████ house on her security cameras on at least three (3) occasions.
- d. Mr. Lavalette said he did not mean to be intimidating when he mentioned handing ██████ file over to the State. He explained he was providing an "alternative" if ██████ did not want to deal with the Fairhaven Conservation Commission, but he also warned her that ██████ risked the possibility of larger fines by the State.
19. ██████ called Mr. Lavalette later that day to ask about his interactions with ██████. ██████ showed ██████ the video recording of the interaction at ██████ property. ██████ said words to the effect of, "█████ is a ██████ of color and you insulted ██████ and that is harassment," in response to Mr. Lavalette repeatedly referring to ██████ as the "tenant." Ms. Lopes Ellison said Mr. Lavalette made a comment regarding ██████, ██████, and Mr. Correy, and ██████ believed he was referencing the fact that ██████ a Black ██████ called two (2) Town officials who were also Black.
20. Mr. Lavalette told this Investigator he believed ██████ and ██████ were "using the Black card." Mr. Lavalette used the phrase "Black card" more than once. He also said, "That's gotta stop, you can't use that, some people call it the Black card. We have to stop that in our town, we are all humans, don't use that in any way, shape or form. That's gotta go, that's deplorable for a Town Administrator to think we would ever treat anyone different." Mr. Lavalette said he would like an apology from ██████.
21. On Tuesday, February 21, 2023, ██████ the owner of ██████ called the Conservation Office with a complaint about someone trespassing on ██████ land. This Investigator contacted ██████, and ██████ said ██████ received a call from ██████ neighbors informing ██████ that there was an individual on ██████ property with Police Officers on Sunday, February 19<sup>th</sup>. On Monday, February 20<sup>th</sup>, Mr. Lavalette came to ██████ house and informed her there were Conservation violations on her property related to a wood path, which leads to the beach.

22. Mr. Lavalette told [REDACTED] that someone was walking on her property and through [REDACTED] yard and called Mr. Lavalette to report the violations. He told [REDACTED] he came to the property the day before with a Police Officer. [REDACTED], believing someone was trespassing on her property, called the Conservation Office to find the name of the individual who called Mr. Lavalette so [REDACTED] could press charges against them for trespassing. Mr. Lavalette told this Investigator he discovered the violations himself while he was walking along the coastline. It is unclear why he told [REDACTED] that someone else had called him when he was the one who went onto her property and discovered the violations.

VI. CONCLUSION

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Complaints Against Mr. Lavalette

There is sufficient credible evidence that Mr. Lavalette violated the Town's Harassment Policy by stating [REDACTED] and [REDACTED] were attempting to "use... the Black card" when [REDACTED] made a complaint about Mr. Lavalette's conduct on January 20, 2023. The Harassment Policy prohibits unwelcome conduct based on race, including "slurs or other derogatory comments, objects, pictures, cartoons, or demeaning gestures connected to employee's membership in a protected group." Mr. Lavalette's use of the term "Black card" was a derogatory comment intended to imply that [REDACTED] and [REDACTED] were improperly raising the issue of race, which is certainly not the case. The fact that Mr. Lavalette made this comment directly to this Investigator—more than once—raises serious concerns about how he conducts himself and his treatment of members of the community.

There is also sufficient credible evidence that Mr. Lavalette violated the Town's Harassment Policy and the Town's Standards of Conduct Policy by referring to [REDACTED] as the "tenant" despite being corrected multiple times. The Standards of Conduct Policy Section 12-6 states, "Fairhaven employees must be fully committed to providing service excellence to every person who visits, works, or resides in the Town of Fairhaven by embodying the organization's core values: ethics, inclusion, integrity, accountability, positivity, helpfulness and collaboration." Mr. Lavalette's overall treatment of [REDACTED] does not align with these values. Mr. Lavalette's repeated reference to [REDACTED] as the "tenant" was a derogatory comment connected to [REDACTED] race. [REDACTED] believed Mr. Lavalette's assumption that [REDACTED] was the tenant, and [REDACTED] was the owner, was related to the fact that she is a Black [REDACTED] while [REDACTED] is a white [REDACTED]. This belief is consistent with Mr. Lavalette's other discriminatory comments, both to [REDACTED] and this Investigator.

There is sufficient credible evidence that Mr. Lavalette violated the Town's Harassment Policy and the Town's Standards of Conduct Policy by repeatedly using the term "Orientals" and making negative references to people of Asian descent. Mr. Lavalette's repeated use of a derogatory term and reference to racial stereotypes is unacceptable. Mr. Lavalette works with the public on behalf of the Town and his derogatory comments call into question whether he would treat property owners differently based on their race.

There is sufficient credible evidence that Mr. Lavalette violated the Town's Harassment Policy and the Town's Standards of Conduct Policy by making reference to his reproductive organs during his conversation with [REDACTED]. [REDACTED] found the conversation about Mr. Lavalette's health issues uncomfortable but felt pressured to engage in the conversation because [REDACTED] was fearful of the fines that Mr. Lavalette and Mr. Haworth referenced multiple times. It is highly inappropriate for a Town official to reference their reproductive organs when conducting business.

Mr. Lavalette also acted in an extremely unprofessional and threatening manner when he entered [REDACTED] property, yelled at the landscapers and threatened [REDACTED] and [REDACTED] with significant fines before explaining who he was and why he was on their property. Mr. Lavalette also threatened fines when he saw [REDACTED] at Town Hall and told her [REDACTED] "needed to stop" calling Town officials about their interaction. Although the Conservation Commission does have authority to issue fines for violations, the manner in which Mr. Lavalette and Mr. Haworth used the fines to threaten and instill fear in [REDACTED] and is extremely inappropriate. Mr. Lavalette also acted inappropriately by lying to [REDACTED], [REDACTED] and [REDACTED] about how he learned of the violations on [REDACTED] and [REDACTED] properties. This conduct was not in violation of the Harassment Policy because it was not related to any protected category. Nevertheless, the conduct is still unacceptable and unbecoming of a Town official.

Overall, Mr. Lavalette's conduct is extremely troubling. As explained in the Climate Assessment Report, Mr. Lavalette's habit of seeking out violations by patrolling, using Google Earth images, drone photos and through reports of his "eyes and ears" around Town raises serious concerns about selective, biased enforcement. This concern is further underscored by the harassing and derogatory conduct and comments described above. It is telling that Mr. Lavalette has told property owners that a "neighbor" called him rather than disclosing that he used Google Earth or entered their property without their knowledge. His untruthfulness tends to indicate that he knows his manner of seeking violations is either inappropriate or will be upsetting to property owners. He told [REDACTED] that his "friends" can contact him by cell phone to report things, but when asked, he refused to provide her with his phone number.

The manner in which Mr. Lavalette approaches residents and issues is extremely problematic. He believes he has unrestricted authority to enter private property as a Conservation Commissioner. Even if the Town's bylaws permit his entry onto private property under certain circumstances, it is inconsiderate and unsafe to do so without even attempting to speak with the homeowner first. [REDACTED] said that he has previously expressed concern for Mr. Lavalette's safety when he goes onto residents' property without permission and without identifying himself. Mr. Lavalette is acting as though he is law enforcement and aims to intimidate residents into believing he has broad authority by threatening them with serious fines.

CLIFFORD & KENNY, LLP

ATTORNEYS AT LAW

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



VII. RECOMMENDATIONS

This Investigator recommends that the following actions be taken as a result of the above-stated findings and conclusions:

- (1) The Board of Selectmen should consider removing Mr. Lavalette from his position on the Conservation Commission;
- (2) The Conservation Commission should receive training in harassment, discrimination and civility; and
- (3) All involved Town employees and officials should implement and follow the recommendations of the Workplace Climate Assessment in order to resolve the ongoing operational and communication issues and repair their working relationships.

Respectfully submitted,

/s/ Caitlin Morey  
Caitlin Morey, Esq.  
Clifford and Kenny, LLP  
31 Schoosett St., Unit 405  
Pembroke, MA 02359

CONFIDENTIAL - FOR G. LAVALETTE



# Exhibit 4

## Fairhaven Conservation Department Workplace Climate Assessment

### I. Scope of Review

The Town of Fairhaven ("Town") retained the services of Clifford & Kenny, LLP to conduct a Workplace Climate Assessment of the Town's Conservation Department ("Department"), including Department staff, as well as the Conservation Commission ("Commission"). In order to evaluate the current Workplace Climate, I conducted extensive interviews of Town Hall staff and four (4) members of the Commission. I also reviewed footage from Commission meetings, as well as many documents, including emails, agendas, and meeting minutes. This report is a summary of my findings and recommendations following my review of Department and Commission communication, job functions, training and operations.

During this assessment, complaints and cross-complaints of policy violations were raised against members of the Commission and Town Hall employees. Those complaints are being investigated and detailed in a separate confidential report, which may contain additional recommendations specific to the individuals involved.

### II. Department Overview

The Conservation Commission is a nine (9) member board appointed by the Select Board. Three (3) of the nine (9) Commissioners are Non-Voting Consultants. Geoff Haworth ("Mr. Haworth") is the Chair, Karen Isherwood ("Ms. Isherwood") is the Vice Chair, and Gary Lavalette ("Mr. Lavalette") is the Clerk. Mr. Haworth, Ms. Isherwood, Mr. Lavalette and Commission member Amy DeSalvatore ("Ms. DeSalvatore") were interviewed for this assessment, as they are the most active Commissioners.

The Conservation Department is staffed by a full-time Conservation Agent and a part-time Administrative Assistant, both appointed by the Town Administrator. At the time this assessment was initiated,

[REDACTED] He was hired in August of 2022 and resigned in December of 2022.  
[REDACTED]

### III. Findings

#### Challenge 1: Confusion Regarding Roles & Authority

The most significant issue in Conservation is the confusion regarding the authority of the Commission, the Town Administrator, and the Conservation Agent. Pursuant to Section A502-6 of the Town's bylaws, the Town Administrator shall:

(e) Manage and direct the daily reporting and supervision of all town departments under the jurisdiction of the board of selectmen, including: assessors, building commission, council on aging, police, civil defense, animal control officer, gas inspector, plumbing inspector, wiring inspector and weights and measures inspector, recreation, tree, planning, finance, finance director, collector, treasurer, accounting, veterans, town counsel, other committees appointed by and under the jurisdiction of the board of selectmen and the fire department, subject to section 42 of chapter 48 of the General Laws, but not including the school department or the public works department.

#### A. Supervision & Oversight of the Conservation Agent

The Commission is unclear on their authority as it relates to supervision of the Conservation Agent. The Agent is appointed by and reports directly to the Town Administrator. The Commission believes that they have at least some supervisory authority over the Agent and should be able to dictate how he executes and prioritizes his duties. The above-referenced section of the Town bylaws makes it clear that the Town Administrator is responsible for managing, directing and supervising the Conservation Commission and employees in that office.

Commission members expressed frustration with their level of involvement in the hiring process for the Agent. One (1) member was on the interview committee, but the ultimate authority to hire lies with the Town Administrator. Another member said that she believed the whole Commission should have been on the screening committee and that [REDACTED] acted in a "heavy-handed" manner by [REDACTED] without "adequate input" from the Commission. According to multiple Commission members, [REDACTED] was not their candidate of choice. Commission members also indicated that they would like to participate in the performance evaluation process for the Agent. Multiple Commissioners were upset that Town Hall did not consult them in hiring part-time volunteers to help organize and digitize old Conservation files.

[REDACTED] shared that Commission members advised him to de-prioritize his sustainability work and discouraged him from attending meetings that they believed were unrelated to his Conservation duties. The Conservation Office was moved to another location in Town Hall shortly after [REDACTED], and the Commissioners were unhappy with [REDACTED] spending time organizing and setting up the office because they believed his Conservation workload should have taken priority.

As the appointing authority, the Town Administrator has the ultimate authority to hire and supervise the Agent. It is appropriate for Commission members to communicate their expectations for matters such as agendas, preparation, and documentation for meetings, but ultimately, they do not have authority to dictate the allocation of the Agent's work hours. [REDACTED] did not appear

to be inherently opposed to Commission members being a part of the hiring process or sharing performance feedback on the Agent. However, she was concerned by some Commission members' treatment of the Agent, which is detailed in Section 2 below. The behavior of some Commission members toward the Agent caused [REDACTED] to be concerned that the Commission would mistreat and violate the personnel rights of the Agent. As a result, [REDACTED] attended a Commission meeting and contacted the Commissioners to communicate concerns about the employee's treatment and protect the Town from potential liability, which is appropriate and expected from the Town Administrator.

**B. Authority & Involvement of the Town Administrator in Conservation Matters:**

Multiple members of the Commission expressed concerns that [REDACTED] has "overreached" her authority in her involvement with Conservation. Commission members stated that the previous Town Administrator had almost no involvement with Conservation. When the new Agent was hired, he sought advice and assistance from his supervisor, [REDACTED], on several occasions.

One of the Agent's biggest concerns was regarding his workload, particularly regarding the preparation for Commission meetings. Meetings often last four (4) or five (5) hours and [REDACTED] reported that meeting packets can be up to two hundred (200) pages of which he had to print and compile copies for each Commission member. During [REDACTED] first two (2) meetings, Commission members noted minor issues with format, typographical errors, and communicated their preference for how the meeting documents were prepared. [REDACTED] suggested electronic meeting packets as a more efficient and environmentally friendly approach, especially considering that the meetings are all conducted remotely via Zoom.

The commentary toward [REDACTED] became increasingly critical, and as a result, [REDACTED] joined the October 3, 2022, Commission meeting to ensure that [REDACTED] personnel rights were not violated. During this meeting and in the prior meeting, Ms. Isherwood was critical of [REDACTED] preparation for the meeting. [REDACTED] was concerned that the commentary was approaching a complaint against [REDACTED], and that the comments were not an appropriate way to address perceived concerns about that employee's performance. [REDACTED] messaged the Chair, Mr. Haworth, and said that he needed to stop Ms. Isherwood from doing an evaluation of [REDACTED] in a public, recorded meeting. When asked about this interaction, Mr. Haworth said he would "put his big boy pants on" and "drop [REDACTED] from the meeting" if it happened again.

Mr. Haworth and Ms. Isherwood took issue with [REDACTED] comments and did not think she should have attended the meeting. However, as [REDACTED] supervisor and the Town Administrator, [REDACTED] is charged with protecting [REDACTED]'s rights as an employee and attempting to prevent actions that could incur liability for the Town. Pursuant to Section A502-6 of the Town bylaws, the Town Administrator "...has sole authority over the administration of personnel policies." [REDACTED] is not the Appointing Authority for the Commission and as such, cannot order them to take certain actions, but she can and should advise them of personnel rights and potential liability.

Commission members also cited incidents where they believe [REDACTED] overstepped her authority regarding Conservation enforcement. One incident was related to a site at [REDACTED]

██████████ was informed by a Select Board member that Mr. Lavalette wanted to conduct a site visit on the property with a number of other Town officials. ██████████ was aware that the Department of Environmental Protection (DEP) had an Order of Conditions on the property for years, and was concerned that the site visit would cause the Commission, and by association the Town, to be in conflict with DEP, so she asked Mr. Lavalette to hold off on the site visit until she could contact the DEP. When Mr. Haworth learned of this, he told Mr. Lavalette to disregard her request, but Mr. Lavalette agreed to wait. Once she spoke with the DEP, ██████████ emailed Mr. Haworth thanking him for his understanding while she got clearance from the DEP.

Commission members also referenced two (2) incidents where ██████████ directed the Agent or a Commission member to remove a Cease and Desist Notice from a property, after receiving complaints from the property owners. In one instance, ██████████ went to the property to remove the Cease and Desist Notice but was accosted by Mr. Lavalette in front of the resident. Mr. Lavalette admitted to saying, "Are you fucking kidding me?" to ██████████ during the confrontation. Mr. Lavalette and ██████████ confirmed that they met with ██████████ the following day and ██████████ confirmed that the Cease and Desist Notice could only be removed by a hearing, so she instructed ██████████ to put the notice back up. Cease & Desist Notices must be placed and removed through the proper process under Town bylaws and state law, however, as stated above, the Commissioners' assertions that the Town Administration is not permitted to have any involvement whatsoever is incorrect.

There have been three (3) recent complaints from residents regarding their interactions with the Commission, specifically Mr. Haworth and Mr. Lavalette. Those incidents are being separately investigated but are also relevant to this assessment because the Commissioners opposed ██████████ involvement. These residents had negative interactions with the Commission and contacted ██████████ for assistance.

Mr. Lavalette reported that ██████████ called him and "demanded" that he take down a Cease & Desist Notice on a property that had been damaged by a recent storm. Mr. Lavalette said that the Building Commissioner, property owner, architect and others were present in her office during this conversation. Mr. Lavalette stated that he could not do anything because the order came from Mr. Haworth. The Building Commissioner was involved and had approved the resident for emergency repairs to a ramp, as long as the repairs did not touch the ground, as that would have implications with Conservation. The resident proactively contacted Conservation immediately following the storm, and planned to follow the proper steps, but there was confusion about who had "jurisdiction" because the Building and Conservation Departments seemingly gave the resident conflicting guidance. ██████████ called a meeting and, in the end, reinforced what had been said by the Building Commissioner. The resident applied for the proper permits with Conservation, separate from the emergency ramp repair. Despite this, Mr. Haworth maintains that this resident was attempting to bypass Conservation regulations and "go over [Mr. Haworth's] head."

This incident was concerning because the Commissioners' description of events did not match the accounts by ██████████, ██████████ or the resident involved. Mr. Lavalette omitted the fact that this was an emergency repair to a ramp and that the Building Commissioner had authorized it under the belief that the emergency repair was not within the jurisdiction of Conservation. Both Mr. Haworth and Mr. Lavalette characterized the incident as ██████████ "overstepping," when in reality, she was responding to a resident complaint where two (2) Town departments were giving seemingly opposite guidance.

### C. Role & Authority of Individual Commissioners:

There appears to be confusion regarding the role and authority of individual Commissioners. Generally, members of elected and appointed boards and commissions only have authority when acting as a body, within a meeting. Mr. Lavalette stated that he has the authority to place Cease and Desist notices on a property when he sees a violation, but only Mr. Haworth, as the Chair can authorize the removal of said notices. Mr. Haworth stated that the notices can only be removed by a vote of the Commission.

Mr. Lavalette also stated that when he becomes aware of a potential violation, he will enter the property to inspect.<sup>1</sup> Recently, following resident complaints, he has entered property accompanied by a Fairhaven Police Officer. On February 19, 2023, he went to a resident's property to review a potential violation and decided to return the following day with a Fairhaven Police Officer. Mr. Lavalette said that he did not knock on the resident's door or attempt to speak with the resident on February 19<sup>th</sup>. Eventually, the resident made a complaint to Town Hall regarding a "trespasser" on her property who allegedly informed Mr. Lavalette about potential violations. Eventually, it was determined that there was no third-party trespasser, and Mr. Lavalette was the only one who was on her property prior to him returning with the Police Officer. Lavalette and Mr. Haworth believe that this action was authorized under the Town's Conservation Bylaw, Chapter 192-10.

The Commission's authority to enter private property is subject to a legal opinion from Town Counsel. In addition to concerns regarding their legal authority, it is unsurprising that the Commission received a complaint due to the manner in which they seek violations and approach residents. It is reasonable for residents to be concerned by unknown individuals walking around their property without notice. It is a common theme among the complaints from residents that their interactions with Commissioners are hostile and negative. Conservation has the difficult job of enforcing regulations that may be upsetting and costly for property owners. However, it is unhelpful and ineffective to treat all property owners as if they have committed intentional violations and it is not appropriate for Commissioners to engage in hostile or bullying behaviors.

### Challenge 2: Working Relationship Between the Commission and Town Hall

Over the past several months, the relationship between the Commission and Town Hall employees has deteriorated. As explained above, there are several complaints and cross-complaints under investigation. Although the investigation report is a separate, confidential document, I am including high-level, non-confidential findings here to address the overall working relationship.

The previous Conservation Agent resigned in May of 2022 and [REDACTED] was hired in August of 2022. It is evident that multiple Commissioners were unwilling to give [REDACTED] a chance to be successful in his role, largely because they did not have control of the hiring process.

Three (3) Commissioners stated that they felt [REDACTED] should not have been offered the position. As explained above, Commissioners nit-picked [REDACTED] in public, recorded meetings

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<sup>1</sup> Mr. Lavalette often becomes aware of potential violations through routine "patrols" around Town or reviewing Google Earth or drone photos. This practice is detailed under Challenge 3.

after less than two (2) months in the position. Members also said that they wanted to take a "vote of no confidence" against [REDACTED] after only seven (7) weeks on the job. When asked about this, Ms. Isherwood said, "It's not about his job duties, it's about his relationship with us, because of what he has done to me... he decided to run to [REDACTED]. Ms. Isherwood stated multiple times that she disagreed with [REDACTED] decision to go to his supervisor, [REDACTED], with his questions and concerns. This sentiment was echoed by other Commissioners.

Ms. Isherwood was [REDACTED] main point of contact and helped to on-board him. Ms. Isherwood stated that she stopped answering or helping [REDACTED] at certain points because he went to [REDACTED] with complaints or concerns regarding the Commissioners. Ms. Isherwood and the other Commissioners believe the [REDACTED] should approach them directly with any issues, but [REDACTED] did not feel comfortable doing so due to prior negative interactions between Conservation employees and Commissioners.

Multiple Town Hall employees and one (1) Commissioner indicated that Ms. Isherwood can be condescending in her communications. Ms. Isherwood acknowledged that although she does not raise her voice or use profanity, others have advised her about her "tone." Conservation employees stated that Ms. Isherwood frequently called the office and engaged them in lengthy conversations to micromanage their work, while simultaneously questioning why certain tasks were not done. When [REDACTED] raised this issue with Mr. Haworth, Mr. Haworth referenced Ms. Isherwood's age and said she has "bad days." Ms. Isherwood committed significant time and effort to assist [REDACTED] when he was first hired, but completely discouraged him from seeking guidance from or escalating issues to his own supervisor, [REDACTED].

Poor communication between Town Hall and the Commission is also contributing to the negative working relationship and creating an inefficient workflow. When there is an issue, oftentimes the Conservation Agent or Administrative Assistant will receive calls and emails from multiple Commissioners on the same matters. Some of the Commissioners have a habit of "stirring the pot" and gossiping. These Commissioners will share information with Town Hall employees or other Commissioners, some of which is inaccurate or heard third hand, which causes tension and distrust. Throughout this assessment, I have spoken with the Commissioners several times and on multiple occasions they shared third party information that turns out to be inaccurate, misrepresented, or taken out of context, particularly about interactions with [REDACTED]. Nearly every recent interaction between the Commissioners and Town Hall employees results in miscommunication, distrust, or further complaints against one another.

### **Challenge 3: Workload and Inefficiency**

There has been an ongoing issue regarding Conservation's workload, lengthy meetings, and difficulty meeting deadlines. Most Conservation business is governed by statutes with set timelines. The Conservation Department and Commission must hear issues and resolve matters in an efficient, timely manner. Due to a number of different factors, the Conservation Department has struggled to keep up with the high workload and deadlines at times.

One of the concerns raised by several people, including Town employees and residents, is that one of the Commissioners, Mr. Lavalette, regularly "patrols" Town looking for violations. Mr. Lavalette denied patrolling but said that he has "eight (8) zones" that he periodically drives around

and said that he has found approximately sixty (60) violations in the past eighteen (18) months. Mr. Lavalette also reported that he uses Google Earth images to review aerial images of properties in order to see if there are potential violations. Mr. Lavalette told Town employees that he purchased a drone and planned to use it to find and/or investigate violations. Putting aside the legality or efficiency of this practice, this raises concerns regarding potential bias in enforcement and contributes to an unmanageable workload for Conservation. Some residents are aware of this practice, and it has damaged the Commission's reputation in the community, as residents are concerned about bias and Commissioners acting almost like law enforcement. I asked Mr. Lavalette whether he or the Commission has considered pausing his "patrolling" in order to deal with the many matters already before them, rather than seeking out new violations, at least until they are able to catch up on the outstanding workload. He did not have a clear answer.

Conservation Commission meetings are typically held every three (3) weeks via Zoom. Meetings regularly last four (4) to five (5) hours and often only end when a Commissioner makes a motion to adjourn at 10 p.m. As explained above, the Commission expects detailed reports for each agenda item, prepared by the Conservation Agent in a specific manner to provide the Commissioners with all of the information they need for the meeting. These meeting packets are printed and compiled for individual Commissioners to pick up at Conservation ahead of their meetings. Conservation Department employees spend almost a full day preparing the packets before a meeting, which is significant for a department with only one (1) full-time and one (1) part-time employee. Again, [REDACTED] suggested electronic meeting packets, managed through Google Docs, but the Commissioners did not approve this practice.

Another significant source of conflict is the content of the meeting documents. The Commissioners, and Ms. Isherwood in particular, have specific expectations regarding the content of the meeting documents and do not feel that [REDACTED] was giving them the information they needed. Members also expressed frustration with typographical errors, late changes to meeting documents, and untimely preparation of the meeting packets. More than one (1) Commissioner felt that they communicated their expectations to [REDACTED], but he continued to repeat the same mistakes. [REDACTED] expressed that he was doing his best to prepare the documents and meet their deadlines, but was overwhelmed by the volume of work and the amount of feedback from multiple Commissioners. At that time, he was still very new to the position and could not prepare the information as quickly as the previous Conservation Agent. The Commissioners were concerned that missing or incorrect information could lead to missed deadlines or incorrect motions by Commission.

The preparation of meeting minutes is another source of inefficiency. [REDACTED] typically works nineteen (19) hours per week in the Conservation Department. Between attending meetings and writing meeting minutes, she is spending up to ten (10) hours per week on the meeting minutes, which were typically around ten (10) pages per meeting. [REDACTED] stated that Ms. Isherwood directed her to include more lengthy descriptions of discussions because she believed that is what Massachusetts Open Meeting Law requires. [REDACTED] suggested that the minutes include brief summaries and time stamps, as the meetings were recorded in full and available online, but this was not acceptable to the Commissioners.

There have also been concerns and confusion surrounding the availability and expectations of the Commissioners. Commissioners are volunteers and many have full-time jobs or other personal obligations, so they have varying availability during regular work hours. Mr. Haworth expressed frustration that [REDACTED] has asked him to attend urgent meetings at Town Hall,



particularly meetings that are scheduled on short notice. One more than one (1) occasion, a property owner has come to Town Hall to speak with [REDACTED], the Conservation Department, or the Building Department regarding an enforcement action on their property. [REDACTED] explained that one of her goals [REDACTED] is to emphasize the customer service aspect of working with the public. When a resident comes in with a question or concern, she wants to provide them with answers or assistance in the moment, when possible. Mr. Lavalette is frequently present at Town Hall and has made himself available for meetings or conversations, including some that have been scheduled with short notice. At times, Mr. Lavalette has joined these meetings but said only the Chair, Mr. Haworth, would be able to provide answers or take action.

### III. Recommendations

#### A. Questions Regarding Authority and Involvement of Town Council

In order to resolve the confusion around the authority of the Conservation Commission, individual Commissioners, and the Town Administrator, I recommend that the Town obtain written legal opinions from Town Counsel on the following matters:

1. Contents and length of meeting minutes, including the ability to include reference to timestamps of recorded meetings;
2. Authority of individual Commissioners to act regarding Cease & Desist notices;
3. Legality and recommendation regarding an individual Commissioner "patrolling" Town for violations and utilizing Google Earth or drone photos to enter property for the purposes of viewing potential violations; and
4. Authority of the Commission to revoke previous administrative approvals.

The Commissioners have been reminded that the Town Administrator is the Appointing Authority for the position of Conservation Agent and as a result, she has the authority to hire and give performance reviews. It is appropriate and recommended that at least one (1) member of the Commission be on the hiring committee or otherwise provide input in the hiring process. When preparing the Conservation Agent's performance review, the Town Administrator should contact the one (1) or two (2) Commissioners that the Agent works with most often to seek feedback. The Town Administrator has discretion as to how the feedback is incorporated into the Agent's performance review and the weight that it is given. If a Commissioner has a concern about the Agent's performance, they should first endeavor to speak directly with the Agent to discuss the issue. If there are ongoing or serious concerns, the Commissioner should share that information with the Town Administrator.

If there are issues of authority between Conservation and other Town departments, such as Building, Health, etc., Town Council should provide guidance on the particular issue at hand. Multiple Commissioners stated that they are unable to access Town Counsel when needed. As a cost-control measure, all requests to utilize Town Counsel currently require prior approval by the Town Administrator. If Conservation requests the involvement or opinion of Town Counsel, it should not be unreasonably withheld.

Ultimately, the biggest source of confusion is the Town Administrator's authority regarding Conservation matters. The language in Section A502-6 of the Town's bylaws, which was voted at

Town Meeting and approved by the legislature, shows a conscious decision by the Town to centralize authority under the Town Administrator. The Commission must accept the vote of the Town and recognize the Town Administrator's authority under the bylaw. The Commissioners mentioned several times that the former Town Administrator had very little involvement in Conservation matters, and they believe that this supports the ongoing narrative that [REDACTED] is frequently "overstepping." Even if the former Town Administrator opted not to exercise the authority granted under the bylaw, it does not prevent [REDACTED] from doing so. This does not mean that the Town Administrator can or should direct everything that the Commission does, but she has a responsibility to intervene when concerns are raised. The Town Administrator also has sole authority over the administration of personnel policies, which apply to all Town employees as well as volunteer officials.

## **B. Development of Protocols & Standard Operating Procedures**

The Conservation Department should develop standard operating procedures (SOPs) for critical and common tasks. The SOPs should be drafted by the Conservation Agent and Administrative Assistant, with input from one (1) to two (2) designated Commissioners. The development of SOPs should be a collaborative process that results in clear, agreed-upon expectations for all parties.

### **1. Meeting Packet and Preparation:**

Currently, the preparation of meeting packets is taking an excessive amount of time for the Conservation Department staff. [REDACTED] stated that he utilized the template of previous Agents or Interim Agents, but the Commission was not satisfied with contents or format. The Conservation Agent, Administrative Assistant and one (1) or (2) designated Commissioners should jointly develop templates, as well as an SOP that outlines what details must be included in reports, when the reports are due to Commissioners, if/when Commissioners will provide final comments, and when/how the packets will be distributed.

I highly recommend that the Commission reconsider [REDACTED] suggestion of using a shared drive rather than printing hard copies. The share drive allows for real-time updates to documents and saves time and resources from preparing printed packets. As an environmentally focused board, it does not reflect well that the Commission utilizes hundreds of printed pages for each meeting.

I also recommend that the Commission reconsider holding all meetings via Zoom. In-person meetings often help foster stronger working relationships and more civil communication. Even if most meetings remain on Zoom, the Commission should consider occasional in-person meetings.

### **2. Meeting Agendas & Expectations During Meetings:**

As stated above, Commission meetings often run four (4) to five (5) hours and Conservation is handling a very large number of issues. In order to keep up with

statutory deadlines and run efficient meetings, the Commission should consider limiting the number of violations to be reviewed and placing pre-determined time limits for certain agenda items. Some projects are more complicated and may require longer discussion, but pre-determined timelines can help ensure that the Commission has the ability to hear and consider issues in a timely manner.

Additionally, the Conservation Agent, Administrative Assistant, and one (1) or (2) designated Commissioners should jointly develop an SOP regarding what is expected of the Conservation Agent *during* Commission meetings. With a new Conservation Agent starting in February, it would be helpful to clarify the expectations of the Commission from the outset. The SOP should include topics such as: responsibility for hosting the Zoom meeting, what information should the Agent have regarding each type of agenda items, when is the Agent expected to do historical research on a property or topic, etc. If the Commissioners expectations are clear, the Conservation Agent will be better able to deliver what is needed and assist the Commissioners in conducting effective, efficient meetings.

3. Meeting Minutes:

Following the legal opinion by Town Counsel referenced above, the Administrative Assistant should develop an SOP regarding the preparation of meeting minutes. The SOP should provide a template, description of what content is needed, timelines and the process for review and approval of the minutes.

4. Site Visit Protocol:

The Site Visit SOP should include the proper procedures for scheduling and conducting site visits. The SOP should clarify who attends a site visit, the role of each individual, and identify who is responsible for any documentation or follow-up. The Commissioners have determined that Thursday mornings work best for site visits, so the Agent and Conservation Department staff should make every effort to schedule site visits during that time period. If there are situations where a site visit must be conducted at another time, the Agent should contact all parties via email to find a mutually agreeable time.

5. Responding to Resident Complaints and Inquiries:

The Town and Conservation Commission should agree upon a process for responding to resident complaints and inquiries. The Commission is charged with enforcing the provisions of the Wetlands Protection Act, and enforcement actions can lead to costly and/or unwanted outcomes for property owners. It is not uncommon for Conservation Commissions to be the subject of resident complaints, even when the Commissions actions are completely valid, so it is critical that the Town has an agreed-upon, consistent process for addressing these concerns.

Recently, two (2) residents came to Town Hall in person to submit complaints regarding individual Commissioners to the Town Administrator. Those complaints are being investigated separately, but are relevant to this assessment because they reveal a

misalignment in the complaint process between the Commission and Town Hall employees.

If a Town Hall employee receives a complaint that involves a substantive decision by the Commission on a matter that falls within the Commission's authority, Town Counsel shall review the complaint to determine what, if any, next steps are necessary. If the complaint involves the conduct of a Commissioner or Town employee, the complaint should be forwarded to Human Resources and the Town Administrator to determine whether any Town policies have been violated and determine what, if any, next steps are necessary. As stated above, the Town Administrator has sole authority over the administration of personnel policies and as such, should be notified if there are complaints or potential policy violations.

When a resident calls or comes to Town Hall to discuss an issue, the person receiving the complaint should take the resident's contact information, as well as necessary factual information, and inform the resident that they will look into the matter and follow up in a timely manner. Most complaints or issues require further information gathering and follow-up with at least one Town Department, so the issues often cannot be resolved immediately. If the matter involves multiple employees or Departments, it may be appropriate for the Town Administrator to facilitate and/or attend a meeting to discuss the issue. Meetings and calls should be scheduled appropriate notice and consideration for all parties' schedules. If a citizen complaint involves an urgent matter, such as a safety concern, every effort should be made to resolve the issue as quickly as possible. Town employees and officials must find the appropriate balance between answering residents' concerns in a timely manner and ensuring that they have the necessary information and parties involved to resolve the issue.

### **C. Clarify On-Boarding Process and Expectations for New Conservation Agent**

A new Conservation Agent has been hired in February of 2023. The Commissioners and Town Administrator must clearly establish the process and expectations for training the Agent and delivering any necessary feedback. As stated above, the Town Administrator is the appointing authority and supervisor for the Conservation Agent. However, the Conservation Agent is charged with executing the policies and decisions set forth by the Commission on the matters within their authority, and in order to do so, the Commission must provide guidance and feedback at times.

If and when a Commissioner needs to address an issue with the Conservation Agent, the Commissioner should first speak with the Agent one-on-one to clearly explain the issue and discuss a solution. If there are repeated issues or major concerns, those should be passed along to the Town Administrator to be addressed. The Commissioners should not attempt to review the Agent's performance or address complaints in public meetings. The implementation of SOPs will help clarify the Commission's expectations regarding certain duties and should reduce confusion between the Commissioners and the Conservation Department staff.

All Town employees and officials must commit to working together in a productive manner. In the past, Commissioners did not give the previous Agent enough time to be fully trained

before making comments about taking a "vote of no confidence." Conservation Agent is a highly specialized position that takes time to learn and master. Commissioners must be willing to collaborate with Town employees, particularly those who are new to their positions. Otherwise, the Conservation Department will be facing further turnover and vacancies, which will not help the Commission in the performance of its duties.

#### **D. Improving Working Relationship Between Town Hall and the Commission**

As stated above, there are multiple ongoing complaints and cross-complaints against the Commissioners and Town employees that are being investigated separate from this assessment. The findings and recommendations from these investigations may lead to additional recommendations for individual employees or officials, beyond those detailed in this report.

All Town employees and Commissioners must commit to following the recommendations set forth above, including the SOPs and legal opinions from Town Counsel. First and foremost, the Commissioners must treat Conservation Department employees with respect and clearly communicate their expectations. Commissioners cannot penalize or punish Conservation employees for seeking guidance from their own chain of command. Conservation employees should seek to clarify any confusion regarding the Commission's expectations and work with the Commission in accordance with the SOPs referenced above.

The Town Administrator has authority over Conservation employees, but ultimately, cannot make substantive decisions regarding matters governed by the Wetlands Protection Act. Any issues or complaints from residents should be handled in accordance with the SOP referenced above, and the Town Administrator should make every effort to schedule necessary meetings in advance so that a Commissioner may attend.

One of the biggest concerns from this assessment is the Commissioners general opposition to any involvement by other Town Departments. The Commission does not work in a vacuum and, at times, they must collaborate with the Building Department, Town Administrator, or other boards and offices within the Town. Mr. Haworth and Ms. Isherwood expressed indifference when they were informed that some of their actions could have led to liability for the Town. Mr. Haworth recently advised Mr. Lavalette to refuse to meet with the Town Administrator and told the new Conservation Agent that he should not forward any Conservation complaints to the Town Administrator's office. This is unacceptable. The Commissioners have not demonstrated a willingness to repair the working relationship or work collaboratively, but they must commit to doing so in order to establish a functional Conservation Department and Commission.

#### **E. Improving Interactions with Residents**

The recent increase in resident complaints regarding Conservation is concerning. There are multiple, unrelated residents reporting that their interactions with Commissioners have been hostile and negative. Mr. Lavalette continues to patrol and aggressively seek out new violations, despite the fact that Conservation has a backlog of work to manage. When he finds these

violations, he treats residents as though they are criminals and appears to act almost as if he were law enforcement.

Some residents and property owners have contacted the Fairhaven Police regarding their interactions with Mr. Lavalette and his unauthorized entry onto their property. Entering a resident's property without notice, accompanied by Police Officers, is likely to lead to a confusing and negative response from the resident. One of Fairhaven's Police Sergeants advised Mr. Lavalette that entering private property without notice to the owner is a serious safety risk. In one instance, Mr. Haworth accused a resident of intentionally trying to bypass Conservation regulations, when in fact the resident proactively contacted Conservation the business day after storm damage occurred.

Overall, the Commission's approach to property owners is hostile and adversarial from the outset, which has unsurprisingly led to a number of negative interactions. These interactions lead to complaints, and the Commission must be willing to reflect on their approach, rather than questioning the Town Administrator's involvement in and response to said complaints. The Commission has a difficult and often unpopular job to do, but Commissioners should first approach property owners from a place of education, professionalism, and respect. As a tool to improve upon this, I recommend that the Commissioners, along with any other interested board or committee members, attend trainings on Harassment, Discrimination and Professional Conduct.

Respectfully submitted,

/s/Caitlin Morey

Caitlin Morey, Esq.  
Clifford & Kenny, LLP  
31 Schoosett Street, Unit 405  
Pembroke, MA 02359  
(781) 924-5796

# Exhibit 5



Fairhaven Police Department  
Incident Report

Incident #: 23-121-OF  
Call #: 23-1129

Date/Time Reported: 01/31/2023 1406  
Report Date/Time: 02/01/2023 1417  
Occurred Between: 01/28/2023 0900-01/30/2023 1500  
Status: No Crime Involved

Reporting Officer: Sergeant Daniel Corgan

Signature:

**PERSONNEL**

1 LAVALETTE, GARY ELWIN M W 70

Military Active Duty: N

BODY: NOT AVAIL.

DOB:

LICENSE NUMBER: MA S80677032

PCF #: N/A

COMPLEXION: NOT AVAIL.

PLACE OF BIRTH: NOT AVAIL.

ETHNICITY: NOT HISPANIC

[APPEARANCE]

GLASSES WORN: NO

EMPLOYER/SCHOOL: CONSERVATION COMMITTEE

**LOCATION**

LOCATION TYPE: Other/Unknown  
17 TURNER AVE  
FAIRHAVEN MA 02719

Zone: ZONE 1

1 CITIZEN COMPLAINT OF PUBLIC OFFICIAL

**PERSONNEL**

1 DUBOIS, KARRYN A REPORTING PARTY F B 46

DOB:

2 DUBOIS, DOUGLAS J REPORTING PARTY M W 55

DOB:

2 CAMARA, KELLY B WITNESS F W 41

DOB:



Fairhaven Police Department  
Incident Report

Page: 2  
02/09/2023

Incident #: 23-121-OF  
Call #: 23-1129

NO.	NAME	RELATIONSHIP	SEX	AGE	STATUS
4	LOPES ELLISON, ANGELINE [REDACTED]	WITNESS	F	B	00 NOT AVAIL
	DOB: NOT AVAIL				
5	HAWORTH, GEOFFREY A [REDACTED]	PARTICIPANT	M	N	44
	DOB:				
	EMPLOYER: HAWORTH PROPERTY SERVICES				

On Monday, 1/30 at approximately 1:05 hours, I, Sergeant Daniel M. D'Agan, met with Kamryn and Doug DuBois at the Fairhaven Police Department conference room in order to take a complaint against a member of the town's Conservation Committee, Gary Lavalette. The DuBois's are owners of the property located at [REDACTED] and told me that they had an interaction with Lavalette when he came to their property on Saturday 1/28/23 and confronted a landscaping company that they had hired.

The property at [REDACTED] is beach front property and during a storm on December 23, 2022 experienced a storm surge that brought seaweed, sand and water from the beach past their property and into the street. As a result of this surge their driveway was left with a significant amount of sand and seaweed making it unable to be used. Doug stated that they are currently renting out the property to a single mother who was not able to use the driveway and they wanted to have the sand and seaweed removed and brought back to the beach where it came from.

The DuBois's hired Lawn and Order Landscaping to come and bring the sand and seaweed from the driveway and yard and return it to the beach. The company arrived on Saturday and brought equipment including a skid steer bucket machine to the property to move the debris back to the beach. As they were working on the property that morning Lavalette arrived at the property, and as witnessed by myself on video footage, without identifying himself prior, began to order the landscapers off of the property, telling them to cease working and informing them that what they were doing was subject to a \$25,000 fine. As the video shows the workers do cease working and began to move their machines and equipment off the property while Lavalette remained on scene, taking photos of the property and the work the crew had done.

At some point the landscapers called Doug and informed him what was going on at the home and since he was on his way to the property already, he arrived while Lavalette was still on scene. The DuBois's claim that they felt intimidated by Lavalette and also Geoff Heworth, chairperson of the Conservation Committee, who had also arrived on scene. The DuBois's did not know what had occurred at the home and believed that no work was being done on the beach as Lavalette claimed, as the purpose of the landscapers was to remove the debris left in the driveway from the storm surge. Doug told me that Geoff and Gary began to insinuate that they were subject to multiple fines for changing the topography of the beach, removing beach vegetation and would need to replace the sand on the beach and hire someone to assess the grain pattern of the sand for the proper match.

Both Kamryn and Doug were taken aback by the conversation and the monetary fines that were mentioned as they believed that nothing was being done to the beach and that it was simply moving the debris from the driveway. Lavalette told them that they would be receiving the cease and desist order in hand for being "pleasant" however he had the right to place it on their door. Kamryn was concerned by Lavalette's behavior during this interaction as he seemed to mention many times about fines and his ability to do so, and that if they did not like dealing with him he would go to the state with the issue, insinuating in her mind that it would be heavier fines and penalties.

Kamryn asked Lavalette how he even came to be there at their home on the weekend and he stated that he received a call from a confidential source that there was illegal work being done on the beach however would not reveal his source. He told her that he often goes out on Saturdays to investigate complaints and was in the area of [REDACTED] earlier and made his way to her property after being called by his confidential informant.

Kamryn was also concerned by some things that Lavalette said. She stated he was erratic, and brought up such things as his own health, the Asian neighbors which he referred to as "Orientals", and told her a story about buying his house from "Orientals" and all the furniture being so low because they are so short. Kamryn had concerns that a public official interacting with the community should not be mentioning things of this nature or using racially insensitive words such as "Orientals". Kamryn also was upset by the fact that while Doug had made it clear multiple times to Lavalette that Kamryn was his wife, he continued to refer to her as "your tenant" even after being corrected. The DuBois's were also concerned that Lavalette told them multiple times that he could go

on their property whenever he wanted as an commission me... and by law he had that right.

After her interaction with Lavalette on Saturday and still feeling uneasy about whether fines were going to be levied against her and also out of concern for the overall tone and context of the interaction that day, Kamryn decided to go to Town Hall on Monday to speak with the conservation agent as well as the town administrator to voice her concerns and answer questions about what the next steps would be regarding removing the stop work order and any infractions brought to the conservation committee.

Kamryn met with Kellie Camara, the interim Conservation Agent, and talked to her about what had occurred that day and her concerns about Lavalette's behavior. I was able to speak with Camara about what occurred that day and she told me that Lavalette came into her office around 0900 hours to fill her in on what happened on [redacted] on Saturday. He told her that he was in the area investigating a complaint at [redacted] and heard machinery operating on [redacted]. He told Camara that he went to that property and saw work being done and contacted Geoff Haworth. He then told her that they had a good conversation with the DuBois's, that they understood what the violations were and that he issued a cease and desist order.

After Lavalette left, Kamryn came to talk to Camara about what had occurred and ask questions around 1100 hours. Coincidentally I happened to be outside of town hall at this time speaking to Chief Michael Myers about an unrelated issue when Lavalette pulled up to town hall. He told us that he was there because "he was in trouble again with the town Administrator" and also asked the chief about getting bylaw violation books so they could issue fines as was voted at town meeting.

Lavalette then went into the conservation officer while Kamryn was there and according to both Kamryn and Camara was acting odd. They stated he seemed surprised to see her there and was referencing that he had just spoken to the police chief and would be going to get a citation book so he could hand out fines. He said that he thought they had a good interaction on Saturday and discussed their personal health issues including saying that his reproductive organs did not work anymore after cancer. Camara stated she felt uneasy by the interaction between Kamryn and Lavalette and that he did mention that if she did not like dealing with the committee here in town the issue could be brought to the state. Kamryn felt that Lavalette was trying again to intimidate her by insinuating more fines being brought by the state should he decide to bring the issue to them.

After that interaction Kamryn went to the Town Administrators office to report that again she had an interaction with Lavalette and again was made uncomfortable by him and his words and behavior. After reporting this behavior to the Town Administrator, Lavalette was told to be at a meeting at 1500 hours with Camara in the T.A. office to discuss what had occurred both Saturday and today. At the conclusion of the meeting between Kamryn and T.A. Angeline Lopes-Ellison, Kamryn came to the police station to have these incidents documented should anymore issues arise.

On Friday, February 3 I went to town hall to speak with Lopes-Ellison however while she was unavailable at the time I did speak with Lavalette who was in Camara's office. I asked him about what happened and he gave me his account of what happened. He told me that he was on [redacted] on another matter when he heard machinery on the beach and walked over to the property when he was flagged down by a neighbor reporting that machinery was "tearing up the beach". I informed him that I had seen video from the property and I know he drove there and got out and immediately started to order people off the property and asked if he would like to change his story. He told me he was in the area and was told by a neighbor about the work and drove over. Lavalette told me he is not an enforcement agent, however I did tell him that I heard him talking about fines and issuing cease and desist orders and he agreed that those actions would be an enforcement action.

Lavalette told me that he receives his directions from Haworth who is the chair of the board and called him and was told to shut the work down. He told me that he was shocked that the DuBois's were making a complaint as they had a good conversation and they appeared to have a good understanding of what violation occurred and the next step of hiring an engineer and appearing before the board. He said that they had a friendly tone and

discussed any things involving their health issues and that he did not think that any of the conversation was confrontational or inappropriate. I asked him about the repeated mentioning of bringing the issue to the state and Lavalette told me that it was not meant to be intimidating it was meant to give them the alternative that if they chose not to deal with the Fairhaven Conservation Commission they could go to the state and risk the possibility of heavy fines or simply work with them to resolve the issue. He told me that the landscapers did in fact change the topography of the beach that could push water onto other property in the area and that an engineer would need to come in and sand of the same granular makeup would need to be brought in to fix the damage caused.

I told Lavalette that after watching video of him arriving at the property and also of him speaking to the DuBois's that he may need to change his approach to dealing with people as he appeared to be aggressive towards the workers when ordering them off the property. I also warned him about entering private property without notice as though he may have the right under the law it is not a safe practice that even the police take heed when doing for safety reasons. I finally warned him about interacting with citizens and to make sure he is using proper language and tone and to keep his interactions brief and oriented to the matter at hand and not to go off on private matters when on Commission business.

Later that morning I met with Angeline Lopes-Ellison in her office to discuss the incidents with Lavalette. She told me that she is currently dealing with several issues involving Lavalette and that she was aware of this incident. She told me that Lavalette does not have the right to enter private property whenever he wanted and he had to give 24 Hour notice to the homeowner prior. We discussed what occurred that day and she told me about her meeting with Kamryn and after hearing her concerns met with Lavalette however he just didn't seem to grasp what she was trying to convey regarding citizens complaints against him.

I contacted Kamryn DuBois's via phone on Sunday February 5 and told her that I had since spoken to everyone involved and would be completing this report. She told me that she wanted to report that since going to the station on Monday to report Lavalette he has been seen driving by the property daily on her Ring Cam, she knows its his truck based on make, color, bedcover, and other specific markings. She is even more uncomfortable with this behavior and does not know the intention of this or if he may be looking to fine them further for reporting him to the town administrator and police. I informed her that I would speak to Lavalette about the behavior but to keep documenting these incidents.

Kamryn also told me that the videos that were shown to me will be held to be added to this report un after receiving the complaint from the Conservation Commission after advising legal counsel. Both Kamryn Doug have completed written affidavits which will also be attached to this report.

Respectfully Submitted,

Sergeant Daniel M. Dorgau/082  
Fairhaven Police Department

# Exhibit 6

# TOWN OF FAIRHAVEN, MASSACHUSETTS



## PERSONNEL POLICIES AND PROCEDURES MANUAL

The policies and procedures outlined herein are subject to change without notice provided that the changes are made in accordance with federal and state laws and town bylaws. The Town of Fairhaven, Massachusetts reserves the right to layoff any employee whenever such action becomes necessary by reason of shortage of funds, lack of work, the abolition of a position, a material change in duties or organization or for any other appropriate reasons. These policies are a guide only, and it is not the intent of the Town to grant any employee any contractual commitment, expressed or implied, by its adoption. The employment relationship between the employee and the Town is at will and may be terminated by either party at any time.

## **1.0 General Provisions**

- 1-1. Authorization
- 1-2. Purpose and Applicability
- 1-3. EEO Statement
- 1-4. Rules of Interpretation
- 1-5. Definitions
- 1-6. Amendment of Policies
- 1-7. FLSA Statement

## **2.0 Administration of Policies**

- 2-1. Responsibilities/Select Board
- 2-2. Responsibilities/Personnel Officer (Town Administrator)
- 2-3. Responsibilities/Human Resources Director (Delegated Authority by the Town Administrator)

## **3.0 Equal Employment Opportunity**

- 3-1. EEO Policy
- 3-2. Equal Pay Law

## **4.0 Affirmative Action Statement**

- 4-1. Policy and Statement
- 4-2. Affirmative Action Officer

## **5.0 Recruitment and Appointment**

- 5-1. Policy
- 5-2. Eligibility
- 5-3. Recruitment
- 5-4. Appointment
- 5-5. Pre-placement Medical Examinations
- 5-6. Reason for Rejection
- 5-7. Failure to Report
- 5-8. Immigration Law Compliance

## **6.0 Promotions/Transfers**

- 6-1. Promotions
- 6-2. Notification
- 6-3. Methods of Selection (Promotional Level)

## **7.0 Performance Reviews**

- 7-1. Coverage
- 7-2. Policy
- 7-3. Step Increases

7-4. Appeals

**8.0 Orientation and Probation**

8-1. Policy

8-2. Orientation

8-3. Probationary Period

**9.0 Classification Plan**

9-1. Policy

9-2. Contents of Classification Plan

9-3. Responsibility

9-4. Classification of New Positions

9-5. Reclassification of Positions and Periodic Reviews

**10.0 Compensation Plan**

10-1. Policy

10-2. Coverage

10-3. Responsibility

10-4. Cost of Living Adjustment

**11.0 Group Insurance**

11-1. Eligibility

11-2. Policy

11-3. Consolidated Omnibus Budget Reconciliation Act or COBRA

11-4. Other Employee Benefits

**12.0 Standards of Conduct**

12-1. Policy

12-2. Receipt of Gifts

12-3. Conflict of Interest

12-4. Training

12-5. Dress Code

12-6. Customer Service Expectations

12-7. Prohibited Employment Relationships

12-8. Statements to Media

**13.0 “Whistleblower” Policy**

13-1. Purpose

**14.0 Disciplinary Policy and Procedures**

14-1. Policy

14-2. Reasons for Disciplinary Action

14-3. Discipline Procedures



**15.0 Harassment Policy/Sexual Harassment/Workplace Bullying**

- 15-1. Introduction
- 15-2. Workplace Bullying
- 15-3. Complaints
- 15-4. Investigation
- 15-5. Disciplinary Action
- 15-6. State and Federal Remedies
- 15-7. Cooperation and Liability

**16.0 Workplace Violence**

- 16-1. Policy and Statement
- 16-2. Work Environment
- 16-3. Firearms Policy

**17.0 Training and Education**

- 17-1. Policy

**18.0 Safety**

- 18-1. Policy
- 18-2. Procedures
- 18-3. Responsibilities of Department Directors and Employees.
- 18-4. Disciplinary Action
- 18-5. OSHA

**19.0 Personnel Records**

- 19-1. Centralized Record Keeping
- 19-2. Contents of Records
- 19-3. Access to Records
- 19-4. Release of Information

**20.0 Alcohol and Drug Testing Policy**

- 20-1. Policy
- 20-2. Applicability
- 20-3. Drug/Alcohol Prohibitions
- 20-4. Reporting
- 20-5. Reasonable Suspicion and Testing
- 20-6. Impairment leading to injury

**21.0 Drug Free Workplace**

- 21-1. Policy

**22.0 Tobacco-Free Workplace**

- 22-1. Policy
- 22-2. Complaint Procedure

22-3. Sanctions

**23.0 Americans with Disability Act and Reasonable Accommodations Policy**

23-1. Policy

23-2. Reasonable Accommodations Policy

23-3. Dispute Procedure 4

**24.0 Fitness for Duty Evaluation Policy**

24.1. Purpose

24.2. Application

24.3. Policy

24.4. Procedures

**25.0 Pregnant Workers Fairness Act**

25-1. Policy and Statement

25-2. Lactation Policy

25-3. Lactation Room

25-4. Scheduling

25-4. Equipment

**26.0 Holidays**

26-1. Coverage

26-2. Recognized Holidays

26-3. Terms of Holiday Pay

26-4. Office Closure for Occasional Holidays

**27.0 Vacation**

27-1. Coverage

27-2. Vacation Policy

27-3. Scheduling and Accrual

27-4. Unpaid Leave of Absence

**28.0 Sick Leave**

28-1. Coverage

28-2. Policy

28-3. Full-time Employees

28-4. Part-time Employees

28-5. Extension of Sick Leave

28-6. Notification

28-7. Certification of Illness

28-8. Sick Bonus Incentive

**29.0 Personal Days**

29-1. Coverage

- 29-2. Policy
- 29-3. Use of Personal Time

**30.0 Longevity Policy**

- 30-1. Policy and Coverage
- 30-2. Early Retirement Notification (grandfathered)

**31.0 Compensatory and Flex Time**

- 31-1. Overtime/Compensatory Time
- 31-2. Flextime Policy
- 31-3. Flextime Eligibility
- 31-4. Flextime Requirements

**32.0 Bereavement Leave**

- 32-1. General Policy

**33.0 Military Leave**

- 33-1. General Policy

**34.0 Jury Leave**

- 34-1. General Policy

**35.0 Family and Medical Leave Act**

- 35-1. Coverage
- 35-2. Policy

**36.0 Parental Leave**

- 36-1. Policy
- 36-2. Amount of Leave
- 36-3. Requesting Parental Leave
- 36-4. Scheduling Parental Leave
- 36-5. Pay/Benefits

**37.0 Small Necessities Leave**

- 37-1. Policy and Coverage
- 37-2. Definitions
- 37-3. Leave Entitlement
- 37-4. Notice
- 37-5. Substitution of Paid Leave

**38.0 Domestic Violence Leave**

- 38-1. Policy
- 38-2. Notice and Documentation
- 38-3. Confidentiality

38-4. Employer Responsibilities

**39.0 Worker's Compensation**

39-1. Policy

39-2. Procedure

39-3. Reporting

39-4. Lost Time

**40.0 Retirement**

40-1. Policy

**41.0 Vehicle Use**

41.1 Purpose

41.2 Applicability

41.3 Categories of Municipal Vehicle Use

41.4 Vehicle Assignment and Authorization

41.5 Report of Accidents

41.6 Registering and Insuring a Vehicle

41.7 Identification and Procurement of Municipal Vehicles

41.8 Fringe Benefit Tax Reporting

41.9 General Rules Governing Municipal Vehicle Use

41.10 Special Circumstances

41.11 Sanctions

**42.0 Travel**

42-1. Purpose

42-2. General Policy

42-3. Approving Authority

42-4. Procedure

42-5. Reimbursable Expense Guidelines

42-6. Vacation and Spouse Travel

42-7. Travel Expense Report

**43.0 Acceptable Use Policy – Computer, Technology, Email, Cell phone, Internet, Social Media**

43.1. Policy

43-2. Social Networking

43-3. Mobile Devices

**44.0 Severe Weather Policy**

44-1. Policy and Statement

44-2. Designation of Emergency Closing

44-3. Emergency operations Team

44-4. Procedures for all employees

44-4. Essential Personnel

44-6. Pay and Leave Practices

Attachment Town Forms

Employee Acknowledgement Form

## 1.0 General Provisions

1-1. *Authorization.* These policies are promulgated in accordance with the authority granted by the Personnel Bylaw Chapter 61 of the Town Code (Appendix A), and §A502-6 Town Administrator Special Act (Appendix B). In the case of a conflict between the provisions of these policies and the provisions of any collective bargaining agreement or other duly authorized employment agreement, the provisions of the collective bargaining or employment agreement shall prevail. In addition, if there is a case of a conflict between the provisions of these policies and Federal, State and Town laws or by-laws, such as MGL Chapter 31(Civil Service), MGL Chapter 48, Section 42 (Strong Fire Chief's Act, so called) and MGL Chapter 41, Section 97A (Strong Police Chief's Act, so called) then the provisions of those laws and by-laws shall take precedence.

1-2. *Purpose and Applicability.* The purpose of these policies is to establish a system of personnel administration with policies and procedures governing employment with the Town of Fairhaven, Massachusetts. Nothing in these policies shall be construed to create a contract or term of employment between the Town and an individual employee. Except as otherwise prohibited by law, the Town reserves the right to modify, amend or discontinue any of the provisions herein.

These personnel policies, procedures, and provisions apply to all employees, volunteers, and elected officials of the Town of Fairhaven, except the Fairhaven Public Schools, and where specifically modified by an applicable collective bargaining agreement or individual employment contract.

These policies are consistent with the following merit principles:

1. Recruitment, selection, and classification of personnel shall be based on ability knowledge, education, and skill under fair and open competition.
2. Fair treatment of all applicants and employees shall be guaranteed in all aspects of the personnel system which shall be administered without regard to age, race, color, creed, gender, sexual orientation, national origin, political affiliation, disability or other non-merit factors and with proper regard for privacy and constitutional rights.
3. Retention and advancement of employees shall be determined on the basis of their performance. Where otherwise appropriate, a reasonable effort may be made to assist employees with inadequate performance. If, following such effort, inadequate performance cannot be corrected, separation shall occur.

1-3. *Equal Employment Opportunity (EEO) Statement.* Under Title VII of the Civil Rights Act of 1964 and related federal nondiscrimination laws, the Town of Fairhaven does not discriminate against employees and applicants based on race, color, religion, sex, age, national origin, citizenship status, disability, genetic information, and veteran status. The Town of Fairhaven also abides by the Commonwealth of Massachusetts nondiscrimination laws including: protections based on marital status, criminal convictions, sexual orientation, gender identity, and gender expression. The Town is committed to providing employment opportunities without regard to race, color, religion, sex, age, national origin, citizenship status, disability, genetic information, veteran status, and other personal characteristics. It is the Town's intent to attract a wide pool of diverse applicants and to help ensure that managers and employees abide by federal and state nondiscrimination laws.

1-4. *Rules of Interpretation.*

(a) These policies are intended to be in accordance with all applicable State and Federal laws, collective bargaining agreements, and civil service rules. In the event of inconsistencies in the applicable State or Federal law, collective bargaining agreement or civil service rule shall apply.

(b) Words imparting the singular number may extend and be applied to several persons; words imparting the masculine gender shall include the feminine gender.

1-5. *Definitions.*

The following definitions shall apply:

"Affirmative Action," the commitment to the recognition, development, and utilization of the abilities of members of protected groups. Affirmative action is a process used to achieve the purpose and spirit of anti-discrimination laws.

"Americans with Disabilities Act," the federal law enacted in 1990 to ensure non-discrimination in employment against qualified individuals with disabilities.

"Appointing authority" shall mean any Board or Official authorized by General Law or otherwise to hire or fire employees.<sup>1</sup>

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<sup>1</sup> The Town Administrator Act A502-6, section 2(i) provides as follows: "with the approval of the Select Board, (the Town Administrator) shall appoint and remove all department heads under the direct control of the Town Administrator. Each department head, with the approval of the Town Administrator, shall appoint and remove all department staff within their respective departments.

“Automobile allowance,” that amount approved by the Town Administrator to compensate an employee for regular and routine use of a personal automobile.

“Select Board,” elected by the citizenry, the Chief Executive Officers of the Town.

“By-law,” the Personnel Bylaw (Chapter 61 of the Town Code) adopted by the Town of Fairhaven, MA.

"Grade" shall mean a group of positions sufficiently similar with respect to essential functions, authority, and responsibilities.

“Collective Bargaining Agreement” shall mean a contract in writing between the employer (Town of Fairhaven) and a bargaining unit, setting forth the terms and conditions of employment.

"Compensation" shall mean the salary or wages earned by an employee by reason of service in the position, but does not include allowances for expenses authorized and incurred as incidents to employment.

"Department Director" shall mean the employee responsible for supervising a department's operations and activities.

“Discrimination,” unequal treatment or categorization of individuals on a basis other than individual merit such as race, sex, age, color, religion, marital status, national origin, sexual orientation, or disability.

“Equal Employment Opportunity,” a course of action that ensures that hiring and other employment decisions are made solely on an individual’s merit and qualifications, without regard to race, color national origin, sex, age, religious or political affiliation, physical disability, sexual preference, or veteran status.

"Employee" shall mean an employee of the Town of Fairhaven, MA occupying a position in the classification plan including persons who are on authorized leave of absence.

- *Seasonal Employees.* An employee who is hired into a position for which the customary annual employment is six months or less and for which the period of employment begins each calendar year in approximately the same part of the year, such as summer or winter. Seasonal employees are not eligible for benefits.



- *Exempt.* Exempt employees are paid on a salaried basis and are not eligible to receive overtime pay, compliant with the Fair Labor Standards Act.
- *Non-exempt.* Non-exempt employees are paid on an hourly basis and are eligible to receive overtime pay for overtime hours worked compliant with the Fair Labor Standards Act.
- *Regular, Full-Time.* Employees who are not in a temporary status and work a minimum of 35 hours weekly and maintain continuous employment status. Generally, these employees are eligible for the full-time benefits package and are subject to the terms, conditions, and limitations of each benefits program.
- *Regular, Part-Time.* Employees who are not in a temporary status and who are regularly scheduled to work fewer than 35 hours weekly, but at least 20 hours weekly, and who maintain continuous employment status. Part-time employees are eligible for some of the benefits offered by the Town and are subject to the terms, conditions, and limitations of each benefits program. Regular, Part-Time employees who work less than 20 hours per week who were hired prior to the adoption of these policies and are receiving benefits may continue to receive those benefits.
- *Temporary, Full-Time.* Employees who are hired as interim replacements to temporarily supplement the workforce or to assist in the completion of a specific project and who are temporarily scheduled to work the Town's full-time schedule of 35 hours per week or more for a limited duration not more than six (6) months. Employment beyond any initially stated period does not in any way imply a change in employment status.
- *Temporary, Part-Time.* Employees who are hired as interim replacements to temporarily supplement the workforce or to assist in the completion of a specific project and who are temporarily scheduled to work fewer than 35 hours weekly for a limited duration not more than six (6) months. Employment beyond any initially stated period does not in any way imply a change in employment status.
- *Probationary employee,* the first six (6) months of employment for all employees during which time an employee is required to demonstrate ability to meet acceptable standards of performance prior to permanent appointment to a position.

- *Management Employees*, those employees who are responsible for a Department or Division and who are expected to work the required number of hours to fulfill the responsibilities of their positions. Managers are not necessarily required to work the same regularly scheduled work hours as non-management employees.
- *Non-represented employee*, an employee whose title is not contained in a collective bargaining unit.
- *Retired Employee*, shall mean an employee who meets town and/or county requirements to be eligible for retirement benefits from the Town of Fairhaven.
- *Call Firefighter*, shall mean a trained firefighter who responds to emergencies as needed on a part-time basis.

“General Laws,” the General Laws of the Commonwealth of Massachusetts.

“Intermittent leave,” time away from the job taken in separate blocks of time due to a single illness or injury.

“Minority,” a person with permanent residence in the United States who is Black, Hispanic, Native American, Alaskan Native, Asian or Cape Verdean.

"Human Resources Director" shall mean the person responsible for overseeing the day-to-day administration of the personnel/HR system for the Town of Fairhaven. The Town Administrator shall delegate this authority to his/her appointed Human Resources Director. The Human Resources Director is responsible for the day-to-day administration of the Human Resource Department.

“Pre-Employment Documentation,” information, forms, or other similar materials submitted by a candidate prior to his/her beginning employment with the Town.

“Promotions” A promotion shall be defined as a change to a position at a higher level of duties and responsibilities in the same or a different class of positions.

“Reasonable Accommodation,” a modification or adjustment to a job, employment practices, or work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity.

“Reclassification,” a change made to a position title within the Classification Plan as a result of a change in duties to be performed.

“Supervisor,” any individual to whom an employer has given the authority to direct and control the work performance of the affected employees.

"Town" shall mean the Town of Fairhaven, Massachusetts.

“Town Administrator,” the Chief Administrative Officer of the Town appointed by the Select Board.

“Undue Hardship,” an action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the department.

1-6. *Amendment of Policies.* Amendment to these policies shall be by the Select Board, as recommended by the Town Administrator, in accordance with the Personnel Bylaw.

1-7. *FLSA Statement.* In order to be properly classified as an exempt Executive, Administrative Professional, Computer, or Highly Compensated employee under the Fair Labor Standards Act (“FLSA”), an employee must generally satisfy three tests: (1) duties; (2) minimum salary threshold; and (3) salary basis. Generally, the FLSA requires employers to pay non-exempt employees not less than one and a half times their regular rates of pay for all hours worked over 40 hours in a workweek with certain allowed departures from this provision for Police and Fire Department employees

Non-exempt employees shall be compensated at 1½ times his/her hourly rate for hours worked in excess of an eight (8) hour workday or forty (40) hour workweek. Working time includes all time, except mealtime, during which an employee is required to be on the employer's premises or at any prescribed workplace. Refer to section 31 for policies on compensatory time accrual and use.

## **2.0 Administration of Policies**

2-1. *Responsibilities/Select Board.* A Town Administrator shall be appointed by the Select Board and he/she shall serve as the Personnel Officer for the Town, responsible for the overall administration of the Town’s personnel system. The Town Administrator may delegate personnel tasks and objectives to the Human Resources Director, but the responsibility of all personnel decisions will reside with the Town Administrator. The appointment of the Human Resources Director shall be subject to Select Board approval.

2-2. *Responsibilities/Personnel Officer/Town Administrator.*

1. Ensure that the Town (i) maintains an effective personnel system, (ii) monitors the effectiveness of policies, procedures, and practices, as approved by the Select Board (iii) and reports in accordance with the Town Bylaws;
2. Formulate and review the classification plan and the compensation plan, and recommend the same to the Select Board;
3. Evaluate and classify positions, review requests for reclassification, and cause a review of all positions in the classification plan at appropriate intervals in accordance with proper personnel practices, and recommend the same to the Select Board;
4. Monitor the implementation and practices of the Town's personnel policies; and
5. Provide advice and assistance to the Town officials, department heads, supervisory personnel and employees on all aspects of personnel policies and practices.
6. Serves as contract negotiator with all Town collective bargaining units (excluding School units) on behalf of the Select Board. For the Board of Public Works (BPW), Police and Fire collective bargaining agreements, a member of the BPW and the Public Works Superintendent, Police Chief and Fire Chief shall participate in their department's collective bargaining process on the administrative bargaining team.

*2-3. Responsibilities/Human Resources Director.* (Delegated authority by the Town Administrator)

1. Ensure that the Town acts affirmatively to provide equal opportunities for all persons regardless of age, race, color, creed, gender, sexual orientation, national origin, political affiliation, or disability in entry level and promotional positions and to provide fair and equal treatment in all aspects of personnel management.
2. Ensure that recruitment, selection, appointment, retention, discipline and separation of employees is consistent with the Personnel Bylaw and the personnel policies.
3. Supervise the maintenance of a centralized personnel record-keeping system according to state and federal law.
4. Participates in collective bargaining as a member of the administration, providing advice and research for the resolution of contracts, agreements, grievances, etc.

5. Provide advice and assistance to the Select Board, Town Administrator, department heads, appointing authorities, supervisory personnel and employees on all aspects of personnel management.
6. Provide daily maintenance of the classification plan and salary schedule, and ensure application and periodic review of personnel policies, and ensure that administration of a problem resolution system are accomplished in ways that are consistent with the Bylaw and these policies. The Human Resources Director shall bring to the Town Administrator's attention issues or matters requiring his/her attention in the administration of these policies.
7. Provide orientation and onboarding of all new employees under the Select Board/Town Administrator's purview.
8. Conduct exit interviews with employees to gauge and report on issues affecting employee engagement and retention

### **3.0 Equal Employment Opportunity**

3-1. *Equal Employment Opportunity Policy.* The Town of Fairhaven commits itself to the principles and practices of equal employment opportunity, in compliance with Titles VI and VII of the Civil Rights Act of 1964; Executive Order No. 227 as amended; MGL Chapter 151B; and all other applicable Federal and State laws and regulations.

3-2. *Equal Pay Law.* The Town of Fairhaven complies with the Massachusetts Equal Pay Act (MEPA) which provides that "No employer shall discriminate in any way on the basis of gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work." The law defines "comparable work" as work that requires substantially similar skill, effort, and responsibility, and is performed under similar working conditions. The full law is described here: M.G.L. c. 149, § 105A ("MEPA").

### **4.0 Affirmative Action Statement**

4-1. *Policy and Statement.* It is the policy of the Town of Fairhaven to provide equal employment opportunities without regard to race, color, religion, sex, national origin, age, disability, marital status, veteran status, sexual orientation, genetic information or any other protected characteristic under applicable law. This policy relates to all phases of employment, including, but not limited to, recruiting, employment, placement, promotion, transfer, demotion, reduction of workforce and termination, rates of pay or other forms of compensation, selection for training, the use of all facilities, and participation in all company-sponsored employee activities. Provisions in applicable laws providing for bona fide occupational qualifications, business necessity or age limitations will be adhered to by the Town where appropriate.

As part of the Town's equal employment opportunity policy, the Town of Fairhaven will also take affirmative action as called for by applicable laws and Executive Orders to ensure that minority group individuals, females, disabled veterans, recently separated veterans, other protected veterans, Armed Forces service medal veterans, and qualified disabled persons are introduced into our workforce and considered for promotional opportunities.

Employees and applicants shall not be subjected to harassment, intimidation or any type of retaliation because they have (1) filed a complaint; (2) assisted or participated in an investigation, compliance review, hearing or any other activity related to the administration of any federal, state or local law requiring equal employment opportunity; (3) opposed any act or practice made unlawful by any federal, state or local law requiring equal opportunity; or (4) exercised any other legal right protected by federal, state or local law requiring equal opportunity.

The above-mentioned policies shall be periodically brought to the attention of supervisors and shall be appropriately administered. It is the responsibility of each department head to ensure affirmative implementation of these policies to avoid any discrimination in employment. All employees are expected to recognize these policies and cooperate with their implementation. Violation of these policies is a disciplinary offense.

*4.2 Affirmative Action Officer.* The Affirmative Action Officer has been assigned to direct the establishment and monitor the implementation of personnel procedures to guide our affirmative action program throughout the Town of Fairhaven. A notice explaining the company's policy will remain posted.

## **5.0 Recruitment and Appointment**

*5-1. Policy.* The Town is an equal opportunity employer. The Town shall make every effort to attract and employ qualified persons. Every person regardless of age, race, color, creed, gender, sexual orientation, national origin, political affiliation, disability or other non-merit factors applying for employment in the Town will receive equal treatment and proper regard for privacy and constitutional rights. Persons shall be recruited from a geographic area as wide as necessary to assure that qualified candidates apply for various positions. The recruitment, selection and promotion of candidates and employees shall be based solely on job related criteria as established in the position descriptions and in accordance with proper personnel practices. The Town does not have a residency requirement for any positions, but civil service positions may have a radial residency requirement.

*5-2. Eligibility.* All qualified persons shall be eligible for employment with the Town, subject to any statutory requirements or limitations.

5-3. *Recruitment.* Department directors have a major role in recruitment and selection of personnel. The qualifications, classification and salary range for the positions are established in accordance with the Town's Classification and Compensation Plan and any pertinent collective bargaining agreements. Department directors, upon the identification of a vacancy or upon the authorization of a new position, must prepare a job vacancy notice. The job vacancy notice must include: the job title, major duties of the position, qualifications, salary ranges, closing date for applications, application instructions, and AA/EEO/ADA statement.

(a) *Notice of Vacancies/Advertising.* The Human Resources Director and the appointing authority review and approve all job notices prior to advertisement and posting. Recruitment for a position shall not begin until the job vacancy is reviewed by the Town Administrator and Human Resources Director. Notices of vacant positions are posted internally for seven (7) business days on the bulletin board located outside the Human Resources Department in the Town Hall and will also be posted on the bulletin boards in the individual departments. Vacancies shall also be posted on the Town's Human Resources webpage, and may be posted on social media and/or the 311 telephone system, as recruitment outreach necessitates.

If internal posting does not result in a qualified internal candidate, then the position will be posted/advertised externally, including online on the Town's website, trade journals, and/or in the local newspapers. Advertising for entry-level positions should be adequate to ensure that a sufficient number of qualified applicants apply for available vacancies.

(b) *Position Descriptions.* The position description on file in the Human Resources Department is the official description of the duties of the position. The appointing authority/department head will prepare the job posting based on the official job description, grade, and current salary information. The Town employment application is attached as Appendix F.

(c) *Applications.* All candidates applying for employment in the Town shall complete an official employment application form and return the form to the Human Resources Department prior to the end of the working day of the closing date specified for the position announcement. Each applicant shall sign the form, and the truth of all statements shall be certified by the applicant's signature.

(d) *Methods of Selection.* The Human Resources Department and/or the appointing authority will establish selection procedures in order to determine the candidate's fitness and ability to perform in the position. These may include one or more of the following:

1. Interview
2. Oral interview panel
3. Evaluation of experience and training
4. Written examination
5. Practical (or performance) test
6. Evaluation of experience and training
7. Pre-employment physical examination (pursuant to state and federal laws)

The Town shall provide individuals with disabilities the reasonable accommodations they need to be interviewed. (Reasonable accommodations might include a sign language interpreter, written rather than oral responses, large print or Braille material, or an accessible location.) Interviews should be held in offices or conference rooms that are private and easily accessible to individuals with disabilities.

*(f) References and Background Checks.* Verification of reference and background information provided by candidates on application forms or resumes and in interviews normally is the responsibility of the Human Resources Department or the Department Director if authorized by the Town Administrator. In reviewing qualifications and backgrounds of candidates for certain positions, such as jobs involving financial accountability or security-related issues, the Town can use the services of outside investigative agencies to conduct credit or background checks on individuals. In conducting such checks, the Town complies with all notices, authorizations, and other requirements of federal and state law and maintains the strict confidentiality of all reports and records related to such investigations. Credit checks shall only be conducted with prospective or current employee's knowledge. Background criminal checks will only be conducted on employees after they have been offered and accepted a position, and said offer and acceptance shall be contingent upon background check. In addition to background checks, the Town reserves the right to fingerprint onboarding employees, subject to state and federal law.

*(g) Application Records.* The application, reference checks, and related documents submitted shall be maintained by the Human Resources Department for the period required by law. The Town shall, to the extent possible, maintain the confidentiality of the application.

5-4. *Appointment.* All appointments shall be made in writing by the Appointing Authority. The written notice of appointment shall include the weekly salary (grade and step), the starting date, and any conditions of employment not covered in these personnel



policies. Copies of the notice of appointment shall be provided to the Human Resources Director.

All vacancies are posted in the Town Hall to ensure that, if interested, other town employees may apply and receive fair consideration for the position. No person shall be appointed, promoted, demoted, advanced, or held back on any basis, or for any reason other than qualification, merit and fitness for service.

*(a) Regular Appointment.* A regular appointment indicates that an employee is to work for the Town in either a regular full or regular part-time capacity on a regular or continuing basis. Every employee who receives this type of appointment shall serve a probationary period following the original appointment in accordance with the provisions of these policies. Upon certification of the department head or Appointing Authority that the employee satisfactorily completed the probationary period, the employee's status of employment shall be changed from probationary to regular.

*(b) Temporary Appointment.* When a position in the Town service is a seasonal employee, a temporary employee, or a temporary part-time employee, the Appointing Authority may appoint from among the best-qualified candidates who will accept employment under these conditions. Employees hired under this type of appointment will be paid on an hourly basis and shall not be eligible for any benefits offered by the Town.

*5-5. Pre-Placement Medical Examinations.* Persons selected for employment with the Town, after receipt of notice of appointment and prior to the starting date of employment may be required to undergo a medical examination relating to the essential functions of the position. The examination shall be at the expense of the Town by the physician or medical institution selected or approved by the Town. The examining physician shall advise as to whether or not, in the opinion of the physician, the applicant is fit to perform with or without reasonable accommodations the essential functions and/or duties of the position for which appointment has been made or the Appointing Authority shall withdraw the offer of employment. A report of the medical examination of any person hired shall be maintained as a permanent part of the Town records. Police and Fire candidates will be subject to physical ability tests and any other required state examinations.

*5-6. Reasons for Rejection.* The Appointing Authority may reject any applicant who does not possess the minimum qualifications required for the position or any applicant that has not filed by the announced closing date. Further, an application shall be rejected if the applicant made a false statement of any material fact or practiced any deception or fraud. Written notice of rejection shall be given to the applicant from the Appointing Authority.

5-7. *Failure to Report.* An applicant who accepts a job offer and fails to report to work on the date set by the Appointing Authority, may be deemed to have declined the appointment and the offer of employment may be withdrawn.

5-8. *Immigration Law Compliance.* The Town of Fairhaven complies with all federal immigration laws and regulations and is committed to providing a workplace free from discrimination, including any discrimination based on national origin or citizenship status. In cases of business need, the Town may sponsor foreign nationals for nonimmigrant (temporary) or immigrant (permanent) visas. The Town employs only U.S. citizens and foreign nationals who are authorized to work in the United States. All employees are asked on their first day of work to provide original documents verifying the right to work in the U.S. and to sign a verification form required by federal law (Form I-9). If the applicant's right to work in the U.S. cannot be verified within three (3) days of hire, the Town must terminate the individual's employment.

(a) *Requests.* A hiring manager that is considering recruitment of foreign workers must contact the Human Resources Director prior to commencing action. All requests for immigration sponsorship will be handled by the Town Administrator.

(b) *Offer of Employment.* Any offer of employment to a foreign national under a nonimmigrant program is considered temporary and is subject to the terms and conditions of the specific program's work authorization. Holders of nonimmigrant visas can be appointed only for the time period permitted under the individual's visa. The Town's sponsorship of a foreign national for a temporary visa does not obligate or guarantee that the Town will sponsor the foreign national for lawful permanent residency.

## 6.0 Promotions/Transfers

6-1. *Promotions.* When an employee is promoted or transferred to a higher-grade position, he/she shall enter it at the minimum step for that position. If his/her existing pay is higher than the minimum step of the new position, he/she will advance to the next step above his/her present pay. He/she may also receive a one-step increase at the new grade at the time of promotion, if the department head recommends, in writing, that qualifications and performance warrant it and if the Town Administrator approves it.

6-2. *Notification.* Notices of promotional positions shall be posted on the Human Resources Office bulletin board (located outside the HR Office) and on the Human Resources section of the Town website. Interested employees shall bid for the position, using forms prescribed the Human Resources Director.

6-3. *Methods of Selection (Promotional Level)*. The Human Resources Director working in cooperation with the Appointing Authority, shall establish any one or a combination of selection procedures in order to determine the candidates' ability to perform in the higher-level position:

1. Interview
2. Evaluation of past performance
3. References
4. Tests

The Town shall provide individuals with disabilities the reasonable accommodations they need to be interviewed. (Reasonable accommodations might include a sign language interpreter, written rather than oral responses, large print or Braille material, or an accessible location.) Interviews should be held in offices or conference rooms that are private and easily accessible to individuals with disabilities. Any applicants requiring accommodations shall do so through the ADA Coordinator.

## 7.0 Performance Appraisals

7-1. *Coverage*. The Performance Appraisal system will apply to all non-represented administrative, clerical and professional staff.

It is the policy of the Town that all full-time and permanent part-time employees will be evaluated on an annual basis. Additionally, employees who are nearing the end of the probationary period will be evaluated in order to make a determination as to whether the employee should be retained on a permanent basis. (*Appendix C: Performance Appraisal System*)

7-2. *Policy*. Supervisors of Town employees are expected to conduct annual performance appraisals of those individuals working under their direction. Performance appraisals should accomplish the following:

1. Provide specific feedback on performance;
2. Clarify expectations (job duties, standards, objectives);
3. Identify strengths and opportunities for improvement/growth;
4. Provide the basis for decisions relative to pay;

Copies of the performance appraisal procedures are available through the Human Resources Department and attached to these policies.

7-3. *Step Increases*. Step increases will not be granted unless a positive performance appraisal has been conducted by an employee's supervisor.

7-4. *Appeals.* An employee may submit a written appeal to the supervisor of the person conducting their performance review, if the employee believes he/she was not given a fair review, or if they wish to dispute the outcome of the review.

## 8.0 Orientation and Probation

8-1. *Policy.* The Town Administrator or Human Resources Director shall inform new employees of their rights, responsibilities, duties, and obligation. Performance of all new employees must meet acceptable work standards.

8-2. *Orientation.* The Human Resources Director shall:

- (a) notify the new employee of a starting date, time and designated location for starting work.
- (b) thoroughly explain all the benefits and options the employee is entitled to, assist the employee with completion of appropriate forms, and provide the employee with a copy of these personnel policies.
- (c) provide on-site orientation regarding specific rules, regulations, policies, and procedures of the employee's assigned department including the safety policies and procedures.
- (d) facilitate conflict-of-interest training between the new employee and the Town Clerk, who will provide the new employee with a copy of MGL 268A (Conflict of Interest Law) and 940 CMR 29.01-29.11 (Open Meeting Law) and will arrange for the new employee to complete online training through the State Ethics Commission within thirty (30) days of commencing employment with the Town. The Town Clerk shall retain proof of conflict of interest training completion and acknowledgment for the new employee.

8-3. *Probationary Period.* All newly appointed and promoted employees shall be required to successfully complete a probationary period to begin immediately upon the employee's starting date or promotion and to continue for a six (6) month period (unless otherwise defined by the employee's collective bargaining agreement), which may be extended by the number of days the employee may be absent from work. The probationary period shall be utilized to help new and promoted employees effectively achieve performance standards. The probationary period shall be used by the supervisor to observe and evaluate the employee's performance against such standards. Upon expiration of the probationary period, the supervisor shall notify the Appointing Authority, Town Administrator or Human Resources Director that:

(a) the employee's performance meets satisfactory standards and the individual will be retained in the position for the remainder of the term for which they have been appointed or for an indefinite term whichever is the case; however, the employment remains on "at-will" status; or

(b) the employee's performance, due to extenuating circumstances, requires additional observation and the probationary period will be extended an additional three (3) months (which is not to exceed beyond three (3) months and is non-renewable); or

(c) the employee's performance was unsatisfactory, and that removal, reassignment, or demotion may occur.

The employee may be removed by an Appointing Authority if it is revealed that the employee intentionally falsified or withheld information relating to their application for employment, was unable or unwilling to perform the required duties, or displayed conduct, habits or dependability which did not merit continuing the employee in the position. The employee may not appeal the removal.

## **9.0 Classification Plan**

9-1. *Policy.* The Town Administrator, with the approval of the Select Board, shall establish a uniform system for the classification of positions based on similarity of duties performed and the responsibilities assumed so that the same qualifications may reasonably be required, and the same schedule of pay may be equitably applied to all positions in the same grade. No employee may be appointed to a position not included in the classification plan, except in situations where there is a temporary, seasonal, or ad hoc staffing need; such a determination will be made by the Town Administrator. A copy of the most current non-union classification shall be on file at all times in the Human Resources office and shall be made available on the Human Resources section of the Town website.

The classification plan shall cover and include all Town departments and positions in the Town service other than positions filled by popular election or covered by a collective bargaining agreement. The Town Administrator shall establish classifications that relate to compensation.

9-2. *Contents of the Classification Plan.* The classification plan shall consist of the following:

(a) *Position Descriptions.* Each position shall have a written description. The description shall consist of a statement describing the purpose of the work, essential job functions and responsibilities; the required minimum knowledge, skills, training, abilities, experience and necessary special qualifications.

(b) *Position Titles.* The title of position shall be the official title of that position, and shall be used for administrative purposes such as payroll, budget, financial and personnel forms and records. No person shall be appointed or promoted to any position in the Town under a title not included in the classification plan.

9-3. *Responsibility.* The Human Resources Director shall have the primary responsibility for the administration and day-to-day maintenance of the classification plan. The Human Resources Director shall, under the policy direction of the Town Administrator, conduct the following:

(a) Complete studies of proposed new positions and recommendations to the Town Administrator on: allocations to existing classes; establishment of a class of positions; or deletion of a class of positions.

(b) Provide for studies of existing positions when there has been substantial change in the duties and responsibilities that justify consideration of possible reclassification.

(c) Conduct periodic studies and request such assistance as may be needed to assure that the classification plan remains uniform and current.

(d) Require the submission of position analysis questionnaires or any other related information when considered necessary for the proper maintenance of the plan.

(e) Develop forms and procedures to determine the proper classification of each position.

(f) Make routine revisions to job descriptions content as requested by the Appointing Authority.

9-4. *Classification of New Positions.* The Appointing Authority proposing the creation of a new position shall provide the Human Resources Director with a description of the essential functions and responsibilities, skills, knowledge, abilities, and other work performance requirements of a proposed position in sufficient detail to enable the Town Administrator and Human Resources Director to recommend an appropriate classification. Final approval of the new positions lies with the Select Board.

9-5. *Reclassification of Positions and Periodic Reviews.* Positions may not be reclassified without a review and approval of the Town Administrator and Select Board. If a department director feels that a reporting position has changed significantly, he/she may, in writing to the Town Administrator, request a position analysis and grade review. The position analysis and grade review will be conducted with authorization from the Town Administrator. If the Town Administrator chooses to not conduct the review, he/she will

reply to the requesting department director, in writing, within 30 days, explaining his/her reasoning for not conducting the position review.

## **10.0 Compensation Plan**

10-1. *Policy.* The Town Administrator, with the approval of the Select Board, shall annually review a compensation plan for the existing classification plan. The compensation plan shall be directly related to the classification plan and shall consider: relative responsibilities between various classes; wage rates for comparable types of work; economic conditions in the labor market and fiscal policies of the Town. All employees shall be paid in accordance with the rates in the compensation plan. The Human Resources Director shall work with the Town Administrator in establishing the compensation plan for adoption by the Select Board.

10-2. *Coverage.* All employees shall be employed and paid in accordance with the rates established in the compensation plan for the position classification to which the appointment is made.

10-3. *Responsibility.* The Town Administrator shall have the responsibility for the day-to-day administration of the compensation plan.

10-4. *Cost of Living Adjustment.* A cost-of-living adjustment (COLA) will be made to the entire salary schedule (compensation plan) periodically including those employees at maximum grade pay rate, as recommended by the Town Administrator and approved by the Select Board, subject to availability of funds. To the extent possible, the COLA will be determined by the Department of Labor's Consumer Price Index (i.e. rate of inflation).

10-5 *Compensation for Police and Fire Department Ranking Officers.* Police and Fire Departments will continue to set wages of their ranking officers as follows:

Chief: 2.0 times the base salary of the highest paid Patrol officer/Fire Fighter  
Deputy Chief: 1.8 times the base salary of the highest paid Patrol Officer/Fire Fighter  
Captain: 1.8 times the base salary of the highest paid Patrol Officer/Fire Fighter  
Lieutenant: 1.3 times the base salary of the highest paid Patrol Officer/Fire Fighter

Ranking officers will also be eligible to receive educational incentive pay consistent with their respective collective bargaining agreements

## **11.0 Group Insurance and Benefits**

11-1. *Eligibility.* All of the benefits contained within this section are available to Regular full-time employees only. New hires eligible for health, dental, and life insurance, must enroll within 30 days of hire. Employees with a separation in service are considered new hires under this policy.

11-2. *Group Insurance Policy.* The Town offers one or more plans of group life/health insurance. Eligible employees pay 40% of the monthly premium costs of each group insurance and the Town pays 60% of the monthly premium costs of each group insurance. The Town also pays 60% of the monthly group health insurance for retired employees.

11-3. *Consolidated Omnibus Budget Reconciliation Act of 1985 or COBRA (Enacted in 1986).* On April 7, 1986, a Federal law was enacted (Public Law 99 - 272, Title X) requiring that most employers sponsoring group health plans offer employees and their families the opportunity for a temporary extension of health coverage (called "continuation coverage") at group rates (100 percent plan contribution plus 2 percent administration fee) in certain instances where coverage under the plan would otherwise end. This policy is intended to inform employees, in a summary fashion of certain rights and obligations under the continuation coverage provisions of the new law.

(a) Employees covered by one of the Town's health insurance plans have a right to choose continuation coverage if the employee loses his/her group insurance coverage because of a reduction in hours of employment or the termination of employment for a period not to exceed 18 months.

(b) Enrolled spouses of an employee covered by the Town's health insurance have a right to choose continuation coverage for any of the following reasons: the death of spouse; or, spouse becomes eligible for Medicare.

(c) Dependent child of an employee covered by the Town's health insurance has the right to continuation coverage if group health coverage under the Town is lost for any of the following reasons: death of parent; parents' divorce or legal separation; a parent becomes eligible for Medicare;

Under the law, the employee or a family member has the responsibility to inform the Town of a divorce, legal separation, or a child losing dependent status under the Town's health insurance. Department managers have the responsibility to notify the Town Administrator of the employee's death, termination of employment or reduction in hours, or Medicare eligibility.

11.4. *Other Employee Benefits.* Other benefits available to Town employees include group dental insurance, group life insurance, Fairhaven Contributory Retirement System, deferred compensation, optional life insurance (whole, cancer, short-term disability, and other), Flexible Spending Accounts (FSA), and certain wellness reimbursements. For a



current listing of benefits, please contact the Human Resources Officer. Some benefits are available only at hire and/or at open enrollment. The Town of Fairhaven reserves the right to right to modify, amend or terminate these benefits at any time and for any reason.

## **12.0 Standards of Conduct/Conflict of Interest**

12-1. *Policy.* The Town of Fairhaven expects all employees to conduct themselves and Town business in a manner that reflects the highest standards of ethical conduct, and in accordance with all federal, state, and local laws and regulations. This includes avoiding all real and potential conflicts of interest. Town employees shall recognize that the chief function of local government is to serve the best interests of all people, and shall conduct themselves in a manner that maintains public confidence and trust.

Town employees are prohibited from engaging in any conduct that could reflect unfavorably upon the Town. Town employees shall avoid any action, which might result in or create the impression of using public office for private gain, giving preferential treatment to any person, or losing complete impartiality in conducting Town business. Employees are expected to keep in mind that they are public employees and are to conduct themselves in a manner that in no way discredits the Town, public officials or fellow employees.

Employees have responsibility to the Town, first and foremost, and must remember that they are obligated to consider any possible financial or legal ramifications of any action that could be in conflict with this policy and could cost the Town financially or cost the Town in its reputation.

12-2. *Receipt of Gifts.* Employees are prohibited from soliciting any gift, gratuity, favor, entertainment, loan or any other item of monetary value from any person who is seeking to obtain business with the Town, or from any person within or outside the Town employment whose interests may be affected by the employee's performance or non-performance of official duties. In all matters relative to receiving or accepting gifts, employees shall refer to, and abide by, the Massachusetts Conflict of Interest Law, Ch. 268A.

12-3. *Conflict of Interest.* In accordance with Mass. General Law, Chapter 268A, no employee shall maintain an outside business or financial interest, or engage in any outside business or financial activity which interferes with their ability to fully perform job responsibilities or furnish products, materials, or services to the Town.

12.4 *Training.* Ethics training and testing shall be required of all employees within (30) days of commencing employment with the Town, and every two (2) years thereafter. Proof of said testing (certificate) shall be furnished by the employee to the Human Resources Department and Town Clerk.

See Commonwealth of Massachusetts MGL 268A on Ethics:  
<http://www.mass.gov/ethics/web268A.htm>

12-5. *Dress Code.* Dress and grooming standards can vary depending on the type of work and level of public/client/customer contact. The Town of Fairhaven expects all employees to use good judgment and maintain a neat, clean appearance. Employees who have questions about dress or grooming standards should ask their manager for clarification. Managers can specify additional or alternative dress and grooming standards based on their department's business needs and health or safety concerns. The Town will accommodate employees' dress and appearance practices that are based on religion.

Employees who work in the field and engage with the public shall be required to display identification as a Town employee. The identification can be photo identification with name, title, and department displayed on, or outside, the employee's clothing or a shirt/jacket displaying the Town seal and department name. Any clothing purchased in compliance with this section must first be approved by the supervisor. All clothing costs shall be budgeted each year and paid out of departmental budget.

12-6. *Customer Service Expectations.* Fairhaven employees must be fully committed to providing service excellence to every person who visits, works, or resides in the Town of Fairhaven by embodying the organization's core values: ethics, inclusion, integrity, accountability, positivity, helpfulness and collaboration. Part of this excellent customer service is the expectation of availability. It is expected that department heads will make every attempt to avoid office closure, scheduling paid-time-off, lunches, and breaks accordingly to allow their offices to remain open during posted Town Hall hours. If a department does not have sufficient staff to remain open during normal business hours, the department director shall so notify the town administrator at least 24 hours in advance of the possible closure and the town administrator shall either assign staff from other departments to provide office coverage or cause to be placed notices on the office doors of where assistance can be provided and the time that the office will reopen.

12-7. *Prohibited Employment Relationships.* The hiring of relatives is prohibited if their employment results in creating a supervisor/subordinate relationship between a relative and an employee. If a direct supervisory or managerial relationship would be established, relatives of a currently employed worker cannot be considered as applicants for an open position. The Town will not consider hiring an employee's relative if that would create an actual conflict of interest or the appearance of a conflict of interest. This bars hiring or employing an employee's relatives in any position that has an auditing or management relationship to the employee's job.

(a) *Definition of Relatives.* For the purposes of this policy, relatives include a spouse, parent, child, sibling, in-law, grandparent, grandchild, aunt,

uncle, cousin, step-relative, or any individual with whom an employee has a close personal relationship, such as a former or current spouse, domestic partner, co-habitant, or significant other.

- (b) *Changes in Relationships.* Employees who marry or establish a close personal relationship can continue in their current positions as long as a prohibited employment relationship is not created. If one of the prohibited situations does occur, the Town will attempt to find another suitable position within the Town to which one of the employees can transfer. All practical efforts will be made to arrange such a transfer at the earliest possible time. If accommodations of this nature are not feasible, the employees are permitted to determine which of them resigns. If neither employee advises the Town of their resignation, the Town reserves the right to determine which party will be discharged.
- (c) *Reporting.* Employees who become subject to this policy's provisions due to marriage or beginning of a close, personal relationship, must inform their supervisor and the Human Resources Director as soon as practical.
- (d) *Questions on Policy.* All questions and issues relating to the employment of relatives should be addressed to the Human Resources Director. All decisions and personnel actions taken as a result of this policy must be reviewed and approved by the Town Administrator.

12-8. *Statements to Media.* All media inquiries regarding the Town and its operations should be referred to the Town Administrator's office. Only the Town Administrator is authorized to make or approve public statements on behalf of the Town, except in matters relative to public safety, or departments not included as reporting to the Town Administrator or Select Board. Department heads and public safety representatives will make every effort to include and notify the Town Administrator of any public outreach efforts, especially those of an urgent nature, and the Town Administrator will, in turn, keep the Select Board notified of important messages. Employees authorized to make media statements are reminded of their Open Meeting Law responsibilities.

No elected official may use official Town letterhead to send a letter without prior approval of the entire elected board on which he/she sits.

### 13.0 "Whistleblower" Policy

13-1. *Purpose.* This policy is adopted pursuant to and in accordance with the Massachusetts Whistleblower Protection Act, 1992, Massachusetts General Laws,

Chapter 149 (the “Act”) and is designed specifically to protect such conduct and provide such remedies as are set forth in the Act.

It is the policy of the town:

- (a) To encourage the reporting by its employees of improper governmental action taken by town officers or employees; and
- (b) To protect town employees who have reported improper government actions in accordance with this policy.

The Town of Fairhaven encourages the reporting of improper governmental action taken by any town officers or employees, and the reporting of retaliatory actions for such reporting. The Town encourages initial reporting to the Town Administrator to allow for expeditious resolution of all such matters and to minimize any adverse impacts of the improper action. If the Town Administrator is the subject of an employee’s concern, then the reporting shall be done by the employee to the chair of the Select Board.

#### **14.0 Disciplinary Policy and Procedures.**

14-1. *Policy.* All employees are responsible for observing regulations necessary for proper operation of departments in the Town.

14-2. *Reasons for Disciplinary Action.* Disciplinary action may be imposed upon an employee for failure to fulfill the responsibilities of his or her position. Sufficient cause for disciplinary action shall include, but is not limited to:

- (a) Incompetence or inefficiency in performing assigned duties.
- (b) Unwillingness to perform one or more critical elements of the position.
- (c) Refusal to perform a reasonable amount of work or violation of any reasonable official order or failure to carry out any lawful and reasonable directions made by a proper supervisor.
- (d) Habitual tardiness or absence from duty.
- (e) Violation of the Town’s Drug & Alcohol-Free Workplace Policy
- (f) Willful misuse, misappropriation, negligence, or destruction of Town property or conversion of Town property to personal use or gain.
- (g) Fraud in securing appointment.

- (h) Disclosure of confidential information.
- (i) Abuse of sick leave or absence without leave.
- (j) Conviction of a felony.
- (k) Violation of safety rules, practices and policies.
- (l) Engaging in unlawful harassment. (see 15.0)
- (m) Falsification of time sheets.
- (n) Insubordination
- (o) Violation of Town personnel policies.
- (p) Any situation or instance of such seriousness that disciplinary action is warranted.

14-3. *Discipline Procedures.* Unless an employee's position is governed by a collective bargaining agreement, the Town reserves the right to discipline employees in the manner that management deems appropriate. When corrective and disciplinary action is necessary, the Town will aim to implement discipline in progressive stages, from minor to severe. Such action is intended to be from a less severe to more severe corrective action in order to bring about the necessary change in work habits. Some instances of misconduct may require severe disciplinary action in the first instance, up to and including discharge from employment with the Town.

The provisions of this Article shall not be applied in an arbitrary or capricious manner.

Progressive disciplinary actions may include, but are not limited to, oral reprimand, oral reprimand with notation to the personnel file, written reprimand, suspension with pay, suspension without pay, demotion and discharge.

## **15.0 Unlawful Harassment Policy/Sexual Harassment/Workplace Bullying**

15-1. *Introduction.* It is the goal of the Town of Fairhaven to promote a workplace that is free of unlawful harassment, sexual harassment, discrimination, and hostile work environments in any form. The Town will not tolerate unlawful harassment, sexual harassment, and/or discrimination of employees occurring in the workplace, or in other settings in which employees may find themselves in connection with their employment. Further, any retaliation against an individual who has complained about unlawful harassment, sexual harassment, and/or discrimination, or retaliation against individuals

for cooperating with an investigation of an unlawful harassment, sexual harassment, and/or discrimination complaint is similarly unlawful and will not be tolerated.

15.1.1. *Definitions.*

- A. **Unlawful Harassment** – Unlawful harassment is unwelcome conduct that is based on race, color, religion, gender (including pregnancy), gender identity/expression, national origin or ancestry, age (40 or older), disability, genetic information, military status, or sexual orientation. Harassment becomes unlawful where:
  - a. Enduring the offensive conduct becomes a condition of continued employment
  - b. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive
- B. **Sexual Harassment** – Sexual harassment is unlawful harassment based on a person's sex. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature, and/or offensive remarks about a person's sex. Both victim and the harasser may be either a man or a woman, and the victim may be the same sex.
- C. **Discrimination** – Discrimination is any decision that is made or action taken that is motivated by a bias because of an employee's age, disability, gender, gender identity/expression, genetics, military status, national origin or ancestry, race or color, religion, retaliation, sexual orientation, or political affiliation.
- D. **Hostile Work Environment** – A Hostile Work Environment is created when any unlawful discrimination or unlawful harassment becomes severe or pervasive, the endurance of which becomes a condition of continued employment

Employees are protected from harassment and discrimination on the basis of their race, color, religion, national origin, ancestry, sex, age, handicap (disability), and participation in discrimination complaint-related activities, sexual orientation, gender identity, genetics, or active military or veteran status. Prohibited behavior includes slurs or other derogatory comments, objects, pictures, cartoons, or demeaning gestures connected to employee's membership in a protected group.

To achieve our goal of providing a workplace free from unlawful harassment, sexual harassment, and/or discrimination, the conduct that is described in this policy will not be tolerated. Because the Town of Fairhaven takes allegations of unlawful harassment, sexual harassment, and/or discrimination seriously, we will respond promptly to complaints of this type of conduct where it is determined that such inappropriate conduct has occurred, will act promptly to eliminate the conduct and impose such corrective

action as is necessary, including disciplinary action where appropriate up to and including termination.

This policy shall apply to all employees, appointees, elected officials and volunteers of the Town of Fairhaven, MA. Any individual violating this policy shall be subject to appropriate discipline.

While this policy sets forth the Town's goals of promoting a workplace that is free of unlawful harassment, sexual harassment, and/or discrimination, the policy is not designed or intended to limit the Town's authority to discipline or take remedial action for workplace conduct which the Town deems unacceptable, regardless of whether that conduct satisfies the definition of unlawful harassment, sexual harassment, and/or discrimination.

*15-2. Workplace Bullying.* The Town has a "zero tolerance" for bullying. Bullying harms employees, employers, and the organization by creating a disrespectful, unhealthy, and nonproductive work environment. The Town of Fairhaven expressly prohibits any form of employee bullying. The Town prohibits unwelcome conduct, whether verbal, physical, or visual, and includes any discriminatory employment action and any unwelcome conduct that affects someone because of that individual's protected status.

While bullying encompasses a wide range of conduct, some examples of specifically prohibited conduct include: ethnic slurs or epithets; racial jokes; unwanted or unwelcome physical contact; malicious gossip; displaying, storing, or transmitting offensive or harassing materials at work or while using the Town's equipment or facilities.

Further, any harassing conduct that occurs using electronic communication equipment and media, such as through email or social media, is a serious offense and violates the Town's Equal Employment Opportunity policies, including the harassment policy.

*15-3. Complaints.* If an employee believes that he or she has observed or has been subject to discriminatory, unlawful harassment, and/or sexual harassment, the employee has the right to file a complaint with the Town. This can be done in writing or orally. An employee wishing to file a complaint should contact the Department Head and/or the Human Resources Director, and/or the Town Administrator. If the Town Administrator is the subject of an employee's complaint, then the reporting shall be done by the employee to the chair of the Select Board.

*15-4. Investigation.* The Town will promptly investigate any and all allegations in a fair expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Investigations will include a private interview with the person filing the complaint and with the witnesses. Interviews will also be conducted with the person alleged to have committed the

discriminatory, unlawful, and/or sexual harassment. All parties will be informed as to the results of the investigation. If it is determined that inappropriate conduct has occurred, the Town will act promptly to eliminate the offending conduct, and where it is appropriate the Town will also impose disciplinary action.

15-5. *Disciplinary Action.* If it is determined that inappropriate conduct has been committed by one of the Town's employees, the Town will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as the Town deems appropriate under the circumstances.

15-6. *State and Federal Remedies.* In addition to the above, employees who believe that they have been subject to sexual harassment may file a formal complaint with either or both of the following government agencies: The United States Equal Opportunity Commission, and the Massachusetts Commission Against Discrimination. Using the Town's complaint process does not prohibit employees from filing complaints with these agencies. Each of these agencies has a short time period for filing complaints (EEOC - 300 days; MCAD - 6 months).

The complaint forms are attached to this personnel policy manual as Appendix C.

The U.S. Equal Employment Opportunity Commission  
JFK Federal Office Building  
Room 475 Government Center  
One Congress Street, 10<sup>th</sup> Floor  
Boston, MA 02114  
(617) 565-3200

The Massachusetts Commission Against Discrimination  
Boston Office:  
One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 994-6000

Springfield Office:  
424 Dwight Street, Room 220  
Springfield, MA 01103  
(413) 739-2145



Worcester Office:  
22 Front Street  
Fifth Floor, P.O. Box 8038  
Worcester, MA 01641  
(508) 799-6379

*15-7. Cooperation and Liability*

- All employees shall cooperate in investigations of harassment and discrimination.
- All employees shall participate in the Town's efforts to prevent and eliminate harassment and discrimination.
- Employees may be *personally liable* if they engage in harassing or discriminatory behavior.

**16.0 Workplace Violence**

*16-1. Policy and Statement.* The Town is committed to providing a work environment free from workplace violence. The Town will not tolerate acts of violence committed by or against employees or members of the public on town property, or during the performance of town business, regardless of location.

The purpose of this policy is to establish a standard that will encourage and foster a workplace that is characterized by respect and healthy conflict resolution; to reduce the potential for violence in and around the workplace; to mitigate the negative consequences for employees who experience or encounter violence in the workplace; and to ensure that appropriate resources are available to employees who may be victims of workplace violence.

*16-2. Work Environment.* It is the policy of the Town to promote a safe environment for its employees. The Town is committed to working with its employees to maintain a workplace that is free from violence, threats of violence, harassment, intimidation, and other disruptive or aggressive behavior.

For the purposes of this policy, "workplace" is defined as:

- Any Town owned or leased property, including surrounding areas such as sidewalks, walkways, driveways and parking lots under the Town's ownership or control.
- Any location where Town business is conducted;
- Town vehicles or private vehicles being used for Town business;

In addition, workplace violence can occur at any location if the violence has resulted from an act or decision made during the course of conducting Town business.

Violence, threats, harassment, intimidation, and other disruptive or aggressive behavior in the workplace will not be tolerated. All reported incidents will be taken seriously and will be dealt with appropriately. Such behavior can include not only acts of physical violence, but also oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm.

For the purposes of this policy, the word “violence” shall mean an act or behavior that:

- is physically injurious or abusive;
- a reasonable person would perceive as obsessively directed (e.g., an intensely focused grudge, grievance, etc.) and reasonably likely to result in harm or threats of harm to persons or property;
- consists of a communicated or reasonably perceived threat to harm another individual or in any other way endanger the safety of the individual;
- is a behavior or action that a reasonable person would perceive as intimidating;
- involves carrying or displaying weapons, destroying property, or throwing objects in a manner reasonably perceived to be threatening; or
- consists of a communicated or reasonably perceived threat to destroy property

Individuals who commit such acts may be removed from the premises and may be subject to criminal prosecution. Employees may also be subject to disciplinary action, up to and including termination.

The Town needs the cooperation of all employees to implement this policy effectively and to maintain a safe workplace. Employees should not ignore violent, threatening, harassing, intimidating, or other disruptive behavior. Employees who observe or experience such behavior by anyone on town property should report the incident immediately to a supervisor or department head, whether or not the alleged offender is an employee. Supervisors and department heads who receive such reports should contact the Town Administrator immediately for a response. Threats or assaults that are of an emergency nature and require immediate attention should first be reported to the Police Department via 911.

**16-3. Weapons Policy.** The Town prohibits the possession or use of dangerous weapons at the workplace. For the purposes of this policy, “workplace” has the same definition as in Section 16-2. All Town employees are subject to this policy, including contract workers and temporary employees. Police Department personnel or other employees who are authorized to carry weapons as part of his or her job function are excluded from this policy.

“Dangerous weapons” includes firearms, explosives, knives, and other weapons that might be considered dangerous or that could cause harm.

Possession or use of a weapon in the workplace is prohibited whether or not the employee is licensed to carry the weapon. Use of other objects by employees, such as, but not limited to, pocketknives, razors, hammers, etc., in a dangerous or potentially dangerous manner is also prohibited.

Department heads and supervisors are responsible for receiving reports of dangerous weapons or incidents of violence in the workplace, assessing situations, making judgments as to appropriate responses, responding to reports of dangerous weapons or workplace violence, and initiating the investigation process. Department heads shall submit all reports to the Town Administrator.

To the extent the Town is in compliance with Federal and State laws, the Town reserves the right at any time and at its discretion to search with reasonable suspicion all Town owned or leased vehicles and all vehicles, plus packages, containers, etc., entering its property, for the purpose of determining whether any weapon is being, or has been, brought onto its property or premises in violation of this policy.

## **17.0 Training and Education**

*17-1. Policy.* The Town encourages employees to develop their job-related skills. Employees who have successfully completed their six-month probationary period and who have received appropriate approval from their supervisor should seek training opportunities, professional development, conferences, webinars, and any other development opportunities, to the extent their operational budget allows.

## **18.0 Safety**

*18-1. Policy.* The Town shall provide and maintain safe working conditions. The Town has implemented a variety of policies designed to ensure a safe and healthy workplace. Employees are expected to act with the utmost regard for the safety and health of their co-workers and themselves at all times. Failure to comply with the Town's safety and health policies can result in disciplinary action, up to termination.

*18-2. Procedures.* As appropriate, employees shall be provided with necessary safety equipment and clothing. Employees shall be required to wear and use safety equipment at all times while undertaking the work for which the equipment is furnished. There shall be no exceptions.

*18-3. Responsibilities of Department Directors and Employees.*

(a) Department directors and supervisors shall: assume responsibility for safe working areas; recommend correction of deficiencies noted in work procedures, facilities, safety clothing or equipment; ensure the availability and utilization of appropriate protective clothing and equipment; observe working conditions and

field procedures to prevent possible safety hazards; and investigate and report all accidents promptly.

(b) Each employee shall: observe all safety rules, operating procedures, and safety practices; use personal protective equipment; report unsafe areas, conditions, or other safety problems; report all accidents promptly to the appropriate supervisor.

18-4. *Disciplinary Action.* Employees violating safety rules, practices and policies may be subject to disciplinary action.

18-5. *OSHA.* The Town of Fairhaven complies with all applicable health and safety laws, including G.L. c. 149 §6 ½ and 454 CMR 25.00, which apply Federal Occupational Safety & Health Administration (OSHA) standards to Massachusetts municipal workplaces.

The Occupational Safety and Health Act and state workers' compensation laws require employers to keep records and reports of illnesses and injuries on the job. All accidents, regardless of their severity, should be reported immediately to the Human Resources department.

Senior management is actively involved with employees in establishing and maintaining an effective safety and health program. Managers work with employees in ongoing safety and health program activities, including:

- promoting Safety and Health Committee participation;
- providing safety training and health education/training; and
- reviewing and updating workplace safety and health rules.

## 19.0 Personnel Records

19-1. *Centralized Record Keeping.* The Human Resources Director shall be responsible for assuring the establishment and maintenance of personnel records as may be required by law, and are necessary for effective personnel management. All employees shall comply with and assist in furnishing records, reports and information as may be requested by the Human Resources Director. The Town complies with all federal and state records management laws and regulations, including those regarding personnel files and job references.

The Town of Fairhaven retains and can use records for employees and applicants through all phases of employment and as allowed under federal and state laws and regulations. When hired, an employee personnel file is created by the Town's Human Resources Department, where general employee records are kept. Employees can request access to

certain record information anytime via the Human Resources Department for individual employees. Applicants' recordkeeping files are kept separately from those of employees.

All medical records and files from employees and applicants are kept separately from all other records and are only available for in-person review.

Employee records that generally can be reviewed in person include: employment applications, including Form I-9; personnel action forms, including those for hiring, promotions, salary changes, and job title changes; Form W-4 and related tax withholding information; warnings, reprimands, and other documents related to disciplinary actions (excluding documents prepared in connection with ongoing investigations); medical records; and fringe benefit forms and pension and retirement enrollment and election forms.

19-2. *Contents of Records.* The Human Resources Department shall assure the establishment and proper maintenance of an individual personnel file for each employee, which shall include, but not be limited to, the following:

- (a) The employment application.
- (b) A copy of all background investigation reports.
- (c) A report of all personnel actions reflecting the original appointment, promotion, demotion, reassignment, transfer, separation, or layoff. Results of proficiency tests, history of employment and correspondence directly related to the employee's past employment record, reclassification or change in the employee's rate of pay or position title, commendations, records of disciplinary action, training records, performance evaluations, college transcripts, certifications, and other records that may be pertinent to the employee's employment record.

Employees have the right to receive a copy of any adverse records that are placed in the employee's personnel file. If an employee disagrees with any information in their personnel record, the employee may respond to the material by filing a written statement explaining their position, which shall be attached to the original document and placed in the personnel file.

19-3. *Access to Records.* Employee requests to view or obtain copies of their personnel records will be granted in accordance with G.L. c. 149, §52C

See Massachusetts General Laws on Personnel Records:  
[http://www.mass.gov/legis/laws\\_mgl\\_149-52c.htm](http://www.mass.gov/legis/laws_mgl_149-52c.htm)

## **20.0 Alcohol and Drug Testing Policy**

20-1. *Policy.* The purpose of this Policy is to outline the responsibilities of employees, supervisors and managers with regard to alcohol and drug testing of employees.

20-2. *Applicability.* The policy applies to all employees employed by the Town of Fairhaven, unless other provisions exist within an applicable collective bargaining agreement.

20.3. *Reasonable Suspicion and Testing.* If a supervisor believes that an employee's behavior or actions may indicate drug and/or alcohol impairment, that employee may be subject to discipline. Observations by the employer must be made during work hours and must be reported to the department head or Town Administrator for a second opinion. Speech and behavior are factors in determining reasonable suspicion. The supervisor and/or second party (department head or Town Administrator) must directly observe the behavior in question, and may not rely solely on third party reports of alcohol or drug misuse. If the accused party wishes, a representative of their union (if applicable) or a trusted co-worker, may observe them and accompany them throughout the alcohol/drug testing/reasonable suspicion process.

A written, signed report must be completed by the supervisor who determines reasonable suspicion. In addition, the employee will be required to submit to drug and alcohol testing to be performed by a vendor retained by the Town to perform the drug and alcohol testing on employees. Employees ordered to submit for a drug or alcohol test shall comply. If the testing must be conducted off premises, then a ride will be arranged for the employee. Failure to submit to testing will constitute insubordination and will be subject to appropriate discipline, up to and including termination.

- First positive test or finding of impairment – Thirty (30) day suspension without pay, unless the employee has accrued vacation leave, personal leave, or sick leave, in which case such suspension shall be with pay to the extent of total accrued time; such leave will be charged to the accrued time in the same order listed herein. The suspension with pay shall be contingent on the Employee completing the required treatment program mandated by the Town's employee assistance program.
- Second positive test or finding of impairment - discharge.

20.6. *Impairment Leading to Injury.* If an employee is found to be impaired by the use of alcohol, marijuana, prescription drugs (not prescribed by the employee's physician), and/or an illegal narcotic, and said impairment is found to be related to an injury to that employee, a fellow employee, or any other person, that employee shall be subject to immediate discharge.

## **21.0 Drug and Alcohol-Free Workplace**

21-1. *Policy.* The Town of Fairhaven recognizes and acknowledge that substance abuse, including the abuse of alcohol and drugs, is serious and it has a detrimental effect on the professional and personal lives of its employees and the community. Because the Town of Fairhaven is committed to being part of the solution to such problems and in order to ensure the safety of the workplace, its employees and the public, this policy is hereby established. The Town of Fairhaven has established a Drug Free Workplace Policy to comply with the Drug Free Workplace Act. The following conduct is prohibited while working, operating a Town vehicle, being present on Town-owned or operated premises, or conducting Town business off-site:

- The unlawful use, possession, manufacturing, distribution or dispensing of an illegal drug (including drug paraphernalia)
- Being impaired when reporting for work or while on duty due to the use or misuse of illegal narcotics, marijuana, prescription narcotics, alcohol, or any combination thereof. Employees found to be impaired while on duty may be subject to immediate discharge.

This policy does not prohibit employees from the lawful use and possession of prescribed medications. Employees must, however, consult with their doctors about the medications' effect on their fitness for duty, and ability to work safely. Employees may be required to report to their supervisor the use of any drugs prescribed by a physician that may impact that employee's ability to carry out his/her duties.

As a condition of employment, the terms of this policy must be adhered to, and the violation of this prohibition shall result in disciplinary action, including but not limited to one or more of the following personnel actions against the employee:

- (a) Mandatory participation and successful completion of a substance abuse rehabilitation or assistance program approved by the Town.
- (b) Unpaid leave of absence pending successful completion of a program described under (a) above.
- (c) Suspension and/or termination from employment.

The severity of any personnel action shall be decided by the Town Administrator, with the approval of the Select Board in accordance with established personnel policies. Any employee who violates these prohibitions also risks legal prosecution.

As a further condition of employment, the employee must notify the Town Administrator of any criminal drug statute conviction for a violation occurring within the workplace no later than five days after such conviction.

The Town will, from time to time, update, amplify and reinforce its policy set out above through the dissemination of drug education and awareness material and programs, which may necessitate the employee's attendance at lectures, seminars, or films.

All employees are advised that marijuana is still an illegal controlled substance under federal law and use or possession of marijuana while on duty may result in discharge, even if the employee is in possession of a valid Massachusetts Medical Marijuana card or permit. Employees testing positive for marijuana may be subject to disciplinary action when appropriate.

## **22.0 Tobacco-Free Workplace**

22-1. *Policy.* The purpose of this policy is to ensure that the Town offers a smoke-free and tobacco-free environment for its workers and citizens in and around Town owned and/or operated buildings. Further, that all municipal vehicles and municipal worksites remain smoke and tobacco free.

Tobacco products prohibited in this policy include but are not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization.

It shall be prohibited for employees utilize any and all tobacco products in the following areas:

1. In any Town owned or Town operated building;
2. Within 200 feet of any Town owned or operated building;
3. Any Town worksite or Town work location;
4. Any vehicle owned, operated, leased or utilized by the Town for Town business;

22-2. *Complaint Procedure.* Any employee who is being exposed to tobacco in the workplace may submit a complaint in writing to his or her Department Head. The Department Head must respond to the employee within ten (10) working days after receipt of the complaint.

22-3. *Sanctions.* Any employee who continues to knowingly violate this policy may be subject to disciplinary action up to and including termination.

## **23.0 Americans with Disabilities Act and Reasonable Accommodations Policy**



23-1. *Policy.* The Town of Fairhaven does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. The Town will comply with the Americans with Disabilities Act (ADA), the Massachusetts Fair Employment Practices Law (MFEPL), and all other applicable state and local laws, and is committed to providing equal employment opportunities to qualified individuals with disabilities. The Town's ADA Coordinator has been designated to monitor compliance with the non-discrimination requirements in the Section 504 regulations and the Americans with Disabilities Act regulations as implemented by the Equal Employment Opportunity Commission and the Department of Justice.

23-2. *Reasonable Accommodations Policy.* The Town will engage in an interactive process with employees or applicants in order to provide "reasonable accommodations" to employees who are receiving Worker's Compensation or who are otherwise eligible under the ADA.

"Reasonable accommodations" are limited accommodations which allow the employee to perform the essential functions of his/her position. In accordance with the ADA, accommodations that impose an undue hardship on the Town are not considered reasonable and will not be granted. A permanent reassignment or transfer of an employee will not be considered a reasonable accommodation.

Employees who believe they are in need of an accommodation should contact the Human Resources Director. Upon receiving a request for an accommodation from the employee or prospective employee capable of performing the essential functions of the position involved, the Town will engage in a timely, good faith and interactive process with the employee or applicant to determine an effective, reasonable accommodation to enable the employee or applicant to perform the essential functions of the position.

The Town may require the employee or applicant to provide documentation from an appropriate health care or rehabilitation professional about the need for a reasonable accommodation or the extension of a previously agreed upon accommodation.

The Town prohibits any form of retaliation, discipline, reprisal or intimidation against any employee or applicant who has made a good faith request for an accommodation or who has been granted an accommodation under this policy.

## **24.0 Fitness for Duty Evaluation Policy**

24.1 *Purpose.* This policy establishes the standards, procedures, and safeguards under which the Town of Fairhaven may require an employee to undergo a fitness for duty evaluation, and the applicable process pertaining to such evaluations.

24.2. *Application.* This Policy shall apply to all employees of the Town of Fairhaven. Employees whose employment is governed by a collective bargaining agreement are subject only to the provisions of this policy that are not specifically regulated by law or their collective bargaining agreement. Situations governed by G.L. c. 152 (workers compensation) or G.L. c. 41, §111F (injured on duty leave for police and fire) may have different requirements.

24.3. *Policy.* It is the Policy of the Town to promote a safe and productive work environment for its employees and the citizens it serves by ensuring that its employees can safely perform the essential functions of their positions. This policy is to be construed in a manner consistent with applicable law, including the Americans with Disabilities Act.

24.4. *Procedures.*

- A. Introduction – A fitness for duty evaluation constitutes a medical examination and therefore, in compliance with the Americans with Disabilities Act, any such examination is strictly limited to determining whether an employee can perform the essential functions of his or her position. Any such inquiry must be made with reference to the actual job duties of the individual who is to be examined. Any decision with respect to fitness must be made with consideration of whether the employee can perform the essential functions of the job.
  
- B. Grounds for Requiring a Fitness for Duty Evaluation – A department director or supervisor may submit a request to the Town Administrator, requesting a fitness for duty evaluation be conducted when: (1) an employee’s conduct creates a reasonable belief that a threat to health or safety of the employee or others, or to Town property, exists; or (2) there is objective evidence that the employee cannot perform the essential job functions. Employees returning from leave under the Family and Medical Leave Act (FMLA) may be asked to provide a Fitness for Duty clearance from their health care provider. The grounds for seeking a fitness for duty evaluation may become evident from a department director’s or supervisor’s observations and/or receipt of a reliable report of an employee’s possible lack of fitness for duty. Observations may include, but are not limited to, difficulties with manual dexterity, memory, coordination, alertness, speech, vision acuity, concentration, response to criticism, interactions with co-workers and supervisors, outbursts, hostility, violent behavior, suicidal or self-harm statements, change in personal hygiene, and/or reasonable suspicion (via odor or observation) of drug or alcohol abuse. The Police and Fire Chief’s may order a fitness for duty evaluation consistent with prevailing collective bargaining agreements and civil service regulations.

- C. Medical Evaluation – Fitness for duty evaluations are performed by a Town-selected physician, paid for by the Town, and may include, without limitation, a health history, physical and/or psychological examination, alcohol and drug testing, and any medically indicated diagnostic studies. The purpose of the evaluation is to determine if the employee can perform the essential functions in a safe manner and if there is need for restrictions or accommodations. If it appears that the employee’s condition constitutes a disability, the Town will address any requested accommodations/modifications and whether there is a likelihood that the employee can perform the essential functions of the job with or without reasonable accommodations.
- D. An employee’s medical information obtained by the Town shall be maintained in a confidential manner in accordance with applicable law. When conducting a fitness for duty evaluation, the Town-selected physician will require the employee to sign appropriate consent forms that permit appropriate reporting as to the employee’s fitness, recommendations with respect to fitness, and any limitations and restrictions placed on the employee arising from the employee’s health condition. The Town shall not disclose information about any health condition of the employee to third parties without the written consent of the employee, or where disclosure is otherwise permitted by law.

## **25.0 Pregnant Workers Fairness Act**

25.1. *Policy and Statement.* The Town does not discriminate based on pregnancy or related conditions, including, but not limited to, lactation and the need to express breast milk for a nursing child.

The Town shall provide reasonable accommodations requested by employees for their pregnancy or related conditions, including but not limited to lactation or the need to express breast milk for a nursing child if the employee requests such an accommodation. However, the Town may deny such an accommodation if the accommodation would impose an undue hardship (as defined in Section 1-5) on the Town’s business. The Town also does not reject applicants because of their pregnancy or related conditions if they can perform their essential job functions with reasonable accommodations, unless these accommodations would impose undue hardship on the Town’s business.

Reasonable accommodations may include, but are not limited to:

1. more frequent or longer breaks;
2. time off to attend to a pregnancy complication or recover from childbirth with or without pay;
3. acquisition or modification of equipment or seating;
4. temporary transfer to a less strenuous or less hazardous position;
5. job restructuring;
6. private non-bathroom space for expressing breast milk; or

7. assistance with manual labor.

Upon receiving a request for an accommodation from the employee or prospective employee capable of performing the essential functions of the position involved, the Town will engage in a timely, good faith and interactive process with the employee or prospective employee to determine an effective, reasonable accommodation to enable the employee or prospective employee to perform the essential functions of the employee's job or the position to which the prospective employee has applied. The Town requires the employee or prospective employee to provide documentation from an appropriate health care or rehabilitation professional about the need for a reasonable accommodation; however, the Town will not require documentation for the following accommodations:

1. more frequent restroom, food or water breaks;
2. seating;
3. limits on lifting more than 20 pounds; and
4. private non-bathroom space for expressing breast milk.

The Town also requires documentation for an extension of the accommodation beyond the originally agreed to accommodation.

The Town shall provide this notice to new employees at or before the start of their employment and to existing employees within 10 days after they provide notice of their pregnancy or related conditions.

*25.2. Lactation Policy.* Employees who are nursing can take reasonable break periods during the workday to express breast milk.

*25.3. Lactation Room.* For the convenience and privacy of nursing mothers, the Town provides a lactation room that is located off the Human Resources Office. The lactation room is cleaned daily and regularly stocked with supplies by our cleaning staff.

*25.3. Scheduling.* To ensure privacy, nursing mothers can reserve the lactation room at a convenient break time via the human resource office.

## **26.0 Holidays**

*26-1. Coverage.* Regular full-time and regular part-time employees. Seasonal, full-time temporary, and part-time temporary employees are not eligible for holiday compensation. Part-time employees hired after December 31, 2019 working under 20 hours per week are not eligible.

*26-2. Recognized Holidays.* The following holidays shall be recognized by the Town on the day on which they are legally observed by the Commonwealth of Massachusetts, and on these days employees, without loss of pay, shall be excused from all duty except in

cases where the appointing authority determines that the employee is required to maintain essential Town services:

The following shall be deemed paid holidays:

New Year's Day  
Martin Luther King Day  
President's Day  
Patriot's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Day After Thanksgiving  
Christmas Day

On the day before Christmas, the day before New Year's and on Good Friday, an employee will work one-half of the employees' workday with no time off for lunch, as long as it does not interfere with the operation of the office. When Christmas and New Years are on a Thursday, the following Friday is a full day off. When Christmas and New Year's fall on a Tuesday, the preceding Monday is a full day off.

As is customary for municipal offices in the Commonwealth of Massachusetts, holidays falling on Sunday are legally observed on the following Monday. Holidays falling on a Saturday are legally observed on the preceding Friday.

26-3. *Terms of Holiday Pay.* Non-exempt employees who are scheduled to work on a holiday, or who are requested by their supervisor to work on a holiday, shall receive their regular hourly rate in addition to an extra day's pay for the first eight (8) hours and shall be compensated at a one and one-half rate for hours in excess of eight (8) hours, or the employee may request compensatory time off in lieu of overtime pay, with approval by their department director and in accordance with the Town's Compensatory and Flex Time Policy. For the New Year's Day, Thanksgiving Day, and Christmas Day holidays, non-exempt employees shall be compensated at a one and one-half hourly rate for all hours worked in addition to an extra day's pay.

Holiday pay shall be granted provided the employee was in full pay status on the regularly scheduled working day preceding and following the holiday in accordance with other provisions of these policies or was officially and appropriately absent.

26.4. *Office Closure for Occasional Holidays.* When Independence Day falls on a Thursday or a Tuesday, the Town Administrator may elect to close the Town Hall on the

following Friday or preceding Monday. If the Town Hall offices are closed, any affected employee shall be required to use a vacation or personal day to take the time off. If the employee does not have vacation or personal time, or does not want to use accrued vacation or personal time, he/she shall be afforded the opportunity to work under the supervision of his/her department head.

**27.0 Vacation**

27-1. *Coverage.* Vacation pay is granted to all regular full-time and regular part-time employees regularly working twenty or more hours per week. Part-time employees shall accrue vacation on a pro-rated basis. Seasonal full-time, temporary full-time, seasonal part-time, and temporary part-time are not eligible for vacation pay. Regular, Part-Time employees who work less than 20 hours per week who were hired prior to the adoption of these policies and are receiving benefits may continue to receive those benefits.27-2. *Vacation Policy.* Vacation pay is granted to all full-time employees for each vacation year (12 months) completed in accordance with the following plan:

Time Employed:	Length of Vacation:
0-6 months	0 days
6 months to year 2	10 days (for the entire 18 months covered)
After 2 <sup>nd</sup> year	10 days each year
After five years	15 days each year
After ten years	20 days each year
After fifteen years	25 days each year

27-3. *Scheduling and Accrual.* Vacations may only be taken with prior approval of the department directors. Vacation time shall have the prior approval of the Appointing Authority. Vacation pay will not be granted in lieu of vacation.

Employees who leave the Town’s employ for military service and return to the Town’s employ at the completion of such service shall be given credit towards vacation for the time in service.

Supervisors will make every effort to allow employees to take their vacation when they wish. However, the Supervisor reserves the right to deny vacation for a specific period if it is not deemed to be in the best interest of the Town. When an employee requests vacation leave, the supervisor and/or appointing authority will approve vacation requests for such time(s) that best serves the public interest. An employee must take all accrued vacation time within one year of its accrual. Vacation time cannot be carried over to the next year.

Employees who resign or retire in good standing will receive compensation equivalent to earned vacation allowance, provided they have been in the continuous service of the Town for six (6) months. An employee cannot receive pay in lieu of taking vacation time, unless the employee is retiring or resigning from their position.

The Town Administrator has the authority to provide additional vacation leave to an employee as part of an onboarding or retention package. The Town Administrator also has the authority to allow employees to carryover vacation balances, as requested in writing prior to the employee's anniversary date, on a case-by-case basis.

## **28.0 Sick Leave**

*28-1. Coverage.* Regular full-time and regular part-time employees regularly working 20 or more hours per week. Seasonal full-time, temporary full-time, seasonal part-time, and temporary part-time are not eligible for sick leave. Regular, Part-Time employees who work less than 20 hours per week who were hired prior to the adoption of these policies and are receiving benefits may continue to receive those benefits.

*28-2. Policy.* The intent of the sick day policy is to provide salary continuation during an employee's reasonable period of absence due to bona fide illness or injury. While sick days are intended to cover an employee's own illness or injury, a maximum of five (5) sick days may be used for an immediate family member's illness each fiscal year. If leave beyond five (5) days is needed to care for an immediate family member, the employee should refer to the FMLA policy.

*28-3. Regular Full-time employees.* Each full-time employee shall accumulate sick leave at the rate of one-and-one-quarter (1.25) days for each month of employment, not to exceed a total accumulation of 120 (one hundred and twenty) days.

*28-4. Part-time employees. Regular* Part-time employees shall be entitled to sick leave on the same basis as full-time employees, provided, however, that such leave shall be prorated according to the number of hours of work per full-time week in which such employee is required to work.

*28-5. Extension of Sick Leave.* Extended sick leave may, at the discretion of the Town Administrator or Appointing Authority, be granted to an employee after all of an employee's sick leave and vacation leave have been used.

*28-6. Notification.* Sick leave will commence on the date that notification of the employee's sickness, injury or quarantining is given to the department head by the employee or the employee's family or physician.

*28-7. Certification of Illness.* After four consecutive days of absence or if an employee's use of earned sick time evidences a pattern or practice of abuse, a department head may

request a physician's statement, which certifies the employee's inability to perform normal work duties during the period of their absence. Additionally, the department head may arrange for a Town-retained physician to examine an employee and submit a medical evaluation to determine whether the employee is fit to return to duty.

28-8. *Bonus Incentive.* Bonuses for not using sick time during the Town's fiscal year will be awarded as follows:

Zero (0) days absent:	\$400
One (1) day absent:	\$325
Two (2) days absent:	\$250
Three (3) days absent:	\$175
Four (4) days absent:	\$125
Five (5) days absent:	\$75
More than five (5) days absent:	\$0

Payment will be made via payroll in the week ending June 30 of each year. Use of sick leave pending a determination of a worker's compensation claim will not be considered sick leave use, if the worker's compensation claim has been approved for payment and the employee has been approved for payment and the employee has been recredited with his/her sick leave. An employee is eligible for a sick leave bonus incentive after one full year of employment.

28-9. *Sick Time Buy-Back.* As of June 30 of each year, an employee shall be paid one-half of his sick leave credit earning during that year which is in excess of 960 hours. Payment shall be determined by the employee's basic daily salary or wage and shall not include any recognition for overtime compensation which the employee may have received for the year. Except for the payments outlined in this section, accrued but unused earned sick time under this policy will not be paid when an employee is separated from employment with the Town.

28-10 *Sick Time Buy-Back upon termination of employment.* In the event of death, retirement or voluntary resignation, employees hired prior to the date of the adoption of these policies shall receive a sick time buy out at ½ the daily rate at the time of their separation, not to exceed 480 hours. Employees hired after the date of the adoption of these policies shall receive this buy out for retirement or death only.



## 29.0 Personal Days

29.1. *Policy.* A regular, full-time employee and regular part-time employees regularly working 20 or more hours per week in continuous employment who has completed six (6) months of service, shall be entitled to three (3) personal days each fiscal year. Personal days may be taken in one (1) hour increments (21 hours for employees typically working 35 hours a week; 24 hours for employees typically working 40 hours a week). Unused personal time cannot be carried over into the next fiscal year. Employees must give their supervisor 48 hours' notice, when requesting personal time, unless an emergency requires less than 48 hours' notice in which case the employee will provide notice as soon as reasonably possible. Seasonal full-time, temporary full-time, seasonal part-time, and temporary part-time are not eligible for personal days. Regular, Part-Time employees who work less than 20 hours per week who were hired prior to the adoption of these policies and are receiving benefits may continue to receive those benefits.

29-2. *Unpaid Leave of Absence.* Leave for personal reasons, other than those in 27-29, may be granted with approval of the appointing authority, but shall be without pay or benefits. Such leave shall be reported to the Human Resources Director or the Town Administrator or other appointing authority in writing and shall not exceed two (2) calendar weeks. A minimum of one year's continual service is required for an employee to be eligible for an unpaid leave of absence.

## 30.0 Longevity Policy

30-1. *Policy and Coverage.* This policy applies to all non-represented, regular full-time, and regular part-time employees. To be eligible, an employee must have completed his/her continuous length of service before December 1. Longevity payments are awarded each year as follows:

After:	5 years of service	\$350
	6 years of service	\$350
	7 years of service	\$350
	8 years of service	\$400
	9 years of service	\$450
	10 years of service	\$500

Employee longevity payment continues beyond 10 years, increasing by \$50 each year.

For part-time employees working 20 or more hours per week, any longevity payments granted under the terms of this policy will be pro-rated on the basis that their part-time service bears to full-time service.

Payments under this provision will be made in a lump sum payment on the first payroll of December. Upon separation of service, employees eligible for a longevity payment shall receive a pro-rated amount of said payment.

Employees eligible to receive longevity who leave the Town in good standing and return to work within two years will be entitled to receive credit for prior service for the purpose of calculating continuous service for longevity. The length of the absence shall not be included in the calculation of continuous service.

Interruption of employment for the purpose of performing military service under orders shall not be deemed a break in continuous employment with the Town for the purpose of determining longevity eligibility.

*30-2. Early Retirement Incentive.* Upon written notice of intent to retire, an employee who has or will have had at least twenty (20) years with the Town on the effective retirement date, will receive additional compensation added to their base salary according to the following schedule:

With three (3) years advance notice: \$2,500 each year

With two (2) years advance notice: \$2,500 each year

With one (1) year advance notice: \$2,500 each year

Written notice of intent to retire must be accepted by the Select Board and Retirement Board no later than February 1 of the first, second, or third year preceding retirement. Payment will become effective in July of the fiscal year following notification and will be added to the regular base pay in the number of paychecks for that specified fiscal year. Payroll deductions for retirement will not be taken for this early retirement incentive payment.

If the employee fails to retire on the specified date, the stipend will be returned to the Town of Fairhaven by withholding amounts of money from regular paychecks until the total amount of monies advanced are repaid to the Town.

Employees hired after the date of the adoption of these policies shall not be eligible for early retirement incentive payments, unless such a provision exists within an applicable collective bargaining agreement.

### **31.0 Compensatory and Flex Time**

*31.1 Overtime/Compensatory Time.* Payment for overtime shall be in accordance with the terms of the Fair Labor Standards Act. If an assignment requires work in excess of forty (40) hours per week, or eight (8) hours a day, overtime work must be authorized in advance by the employee's supervisor.

Non-exempt employees shall be paid 1½ times their regular hourly rate for the hours worked in excess of an eight (8) hour work day or forty (40) hour work week (used vacation/sick/personal time does not count towards forty (40) hour total). Compensatory time may be taken in lieu of overtime pay, at a rate of time and one-half, only by mutual agreement of both employee and supervisor prior to overtime hours being worked. If such an agreement is made, then the compensatory time shall be taken within five (5) months of being earned. After five (5) months from the date of accrual, compensatory time may not be used and the employee will be paid overtime for the accrued time. Employees shall not accrue more than forty (40) hours of compensatory time during a fiscal year. An employee is eligible to be paid for any unused compensatory time upon termination or retirement.

Certain supervisory, professional and administrative employees are exempt employees and are not eligible for overtime pay.

*31.2 Flextime Policy.* Fairhaven's policy is to give exempt employees the opportunity to request occasional adjustment of their schedules, depending on individual and departmental needs, and with the prior consent of their department heads, with the understanding that the average workweek will include 40 hours of work, and that work schedules must meet the demands and needs of the department.

*31.3 Flextime Eligibility.* Full-time employees who have completed at least six months of employment are eligible to work flextime. Employees who have been disciplined within the last 12 months cannot participate in a flextime arrangement.

*31.4 Flextime Requirements.* Employees interested in flextime must discuss such arrangements with their supervisors. If flextime is feasible and employees are eligible, employees must propose specific arrangements using a "Flextime Scheduling Request and Evaluation Form," which is available from the Human Resource Department.

Flextime arrangements are approved by the supervisor and the Town Administrator on a case-by-case basis. Flextime arrangements might not be feasible within some departments or for certain positions within departments. Seasonal or cyclical changes in workloads also might restrict the ability of departments to offer flextime during certain times of the year. Supervisors initially determine feasibility of specific flextime arrangements, with final approval by the Town Administrator.

## **32.0 Bereavement Leave**

*32-1. General Policy.* Regular full-time and regular part-time employees, who are eligible, shall be entitled to be excused from duty with pay for not more than three (3) days to attend a funeral and for other personal business caused by death in the immediate family. The members of the immediate family shall include the following: parent, child, spouse, brother, sister, step children, grandparent, grandchild, parent-in-law, or other person residing in the same household as the employee. For the death of a current

brother-in-law, current sister-in-law, current daughter-in-law, current son-in-law, two (2) days shall be granted. For the death of a niece or nephew aunt or uncle one (1) day shall be granted. No payment shall be made for any day's absence during the bereavement period in which the employee is not regularly scheduled to work, e.g. Saturday, Sunday, or holidays. Portion of unused bereavement leave may be used for probate court hearings, or will readings, as long as two (2) days advance notice is given to the department director. If requested in writing, the Town Administrator may grant one (1) day of bereavement leave for relatives or family members not previously listed.

### **33.0 Military Leave**

33-1. *General Policy.* Federal and state laws require that veterans and reservists be granted certain employment rights. The Town of Fairhaven will comply with all applicable laws and regulations governing initial active duty for training, inactive duty training (such as weekend drills) and temporary and long-term active duty. The Town has accepted MGL Chapter 33 Section 59 for governance in Military Leave matters for all Town employees. MGL Chapter 33, Section 59 is available here: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleV/Chapter33/Section59>

### **34.0 Jury Leave**

34-1. *General Policy.* Employees called for jury duty shall be paid for the amount equal to the difference between the compensation paid for the normal working period and the amount paid by the court excluding allowance for travel. The amount due the employee shall be certified by the Payroll Administrator upon presentation of proper evidence for monies received for jury duty. In the event that a Town employee is called to serve on a grand jury, the employee is required to report to work on any regular work days that he or she is not required to report to the grand jury.

### **35.0 Family and Medical Leave Act**

35-1. *Policy.* Under this policy, the Town will grant leave in accordance with the Family and Medical Leave Act (FMLA). Any terms not specifically defined in this policy shall follow the definitions set out in the language of the FMLA.

The FMLA provides that the Town may grant up to twelve (12) weeks of leave during a 12-month period to eligible employees. "Twelve-month period" shall mean "rolling period" measured backward from the date an employee uses any leave under this policy. An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

Employees may take FMLA leave on an intermittent basis or reduced work schedule.

While an employee is on FMLA leave, the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

Upon return from FMLA leave, employees are entitled to be restored to the same position that the employee held when the leave started, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment, provided the employee returns to work as required under this policy.

Any employee that is absent due to illness or injury for more than five (5) consecutive days will receive notice of FMLA rights and an application for FMLA leave.

*35-2. Eligibility.* In order to be eligible to take leave under the Family and Medical Leave Act (FMLA), an employee must have worked for the Town for at least twelve (12) months and provided at least 1,250 hours of service during the twelve (12) month period before the leave is to commence.

Eligible employees may take leave under the FMLA for the following reasons:

1. The birth of a child or placement of a child for adoption or foster care;
2. To bond with a child (leave must be taken within one year of the child's birth or placement);
3. To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
4. For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
5. For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

*35-3. Requirements.* Employees are required to substitute any accrued but unused paid vacation or personal leave for unpaid FMLA Leave. Accrued sick leave must also be used to care for the employee's own serious health condition. The use of paid time off runs concurrently with FMLA leave and does not extend the 12 or 26 weeks (whichever is applicable) of the FMLA leave period. Upon depletion of available paid leave, FMLA leave becomes unpaid leave. FMLA eligibility renews over a 12 month "rolling" period, measured backward from the date an employee uses any family and medical leave.

Parental Leave runs concurrently with FMLA Leave.

*35-4. Notice, Certification and Return from Leave.*

Generally, employees must notify Human Resources thirty (30) days in advance of their intent to use FMLA Leave. If it is not possible to give 30 days' notice, the employee must notify Human Resources as soon as possible.

Employees do not have to share a medical diagnosis but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform Human Resources if the need for leave is for a reason for which FMLA leave was previously taken or certified.

The Town may require a certification or periodic recertification supporting the need for leave. If the Town determines that the certification is incomplete, the Town will provide a written notice indicating what additional information is required. The employee will be required to report periodically to the Town on his or her status and intent to return to work and the date when the return can be expected, if known.

Employees on FMLA leave due to their own serious health condition must submit certification from the health care provider that the employee is able to resume work, i.e.; is fit for duty, and may be required to attend a fit-for-duty medical examination before they can return to work.

### **36.0 Parental Leave**

**36-1. *Policy.*** Eligible employees can take parental leave for the birth of their child and to care for their newborn child; or the placement of a child with them for adoption or foster care. In order to be eligible for Parental Leave, an employee must have completed three (3) consecutive months of full-time employment with the Town.

**36-2. *Amount of Leave.*** Employees can take up to three (3) months of unpaid parental leave in a 12-month period for the birth of a child or placement of a child under the age of 18, or under the age of 23 if the child is mentally or physically disabled, for adoption with the employee who is adopting or intending to adopt the child or for the placement of a child with an employee pursuant to a court order. An employee who either has multiple births or adopts more than one (1) child at the same time is entitled to three (3) months of leave for each child. If two spouses or domestic partners work for the Town, they can take a combined total of six (6) months of parental leave.

Parental leave taken under this policy runs concurrently with FMLA leave.

**36-3. *Requesting Parental Leave.*** Employees requesting parental leave must give at least two (2) weeks advance notice of the anticipated date of departure and intention to return to work to their supervisors. Employees who are unable to provide at least two (2) weeks

advance notice of their need for leave (for example, because of a change in circumstances or a medical emergency) must notify their supervisors as soon as practicable.

*36-4. Scheduling Parental Leave.* Parental leave can be taken all at once or, under certain circumstances, on an intermittent or reduced leave schedule. Intermittent leave is parental leave taken in separate blocks of time. A parental leave reduced leave schedule is a work schedule that reduces employees' usual number of working hours per workday or workweek. Employees will be informed whether they can take intermittent leave or a reduced leave schedule when they apply for parental leave.

Employees who request intermittent leave or a reduced leave schedule must arrange medical treatments and appointments to minimize work disruptions. The Town can transfer such employees temporarily to positions that permit them to take intermittent leaves or reduced leave schedules with limited work interruptions.

*36-5. Pay/Benefits.* The Town recognized holidays are paid as holiday leave if they occur during parental leave. Employees accrue vacation, sick, and personal time during parental leave. The employee may elect to use paid time off for the purposes of continuing wages. In the event that the employee uses paid time off, the employee shall use sick time first, then vacation and personal time if he/she exhausts his/her paid sick time.

The Town maintains group health plan benefits for employees on parental leave. Employees must pay their premium copayments while they are on parental leave. Employees who do not return to work from parental leave and those who lose coverage due to nonpayment of premium copayments can continue their group health insurance coverage under COBRA.

Employees who return from parental leave will be reinstated to their former positions or to positions with equivalent pay, benefits and other employment terms and conditions.

Taking parental leave does not count as a break in service for pension or retirement plan purposes.

### **37.0 Small Necessities Leave**

*37-1. Policy and Coverage.* Employees who have worked for the Town for at least twelve (12) months and have provided at least 1250 hours of service during the twelve (12) month period before small necessities leave is requested.

*37-2. Definitions.*

- (a) "Son or daughter" shall mean a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent. The son or daughter must either be under eighteen (18) years of age, or older and incapable of self-care because of mental or physical disability.

- (b) "Elderly relative" shall mean an individual of at least sixty (60) years of age who is related by blood or marriage to the employee.
- (c) "School" shall mean a public or private elementary or secondary school, a Head Start program assisted under the Head Start Act, or a children's day care facility licensed under M.G.L. Chapter 28A.

37-3. *Leave Entitlement.* The Town will provide all eligible employees up to twenty-four (24) hours unpaid leave in a twelve (12) month period, in addition to any FMLA leave, for any of the following purposes:

- (1) to participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as parent-teacher conferences or interviewing for a new school; or
- (2) to accompany the son or daughter of the employee to routine medical or dental appointments, such as checkups or vaccinations; or
- (3) to accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to the elder's care, such as interviewing at nursing or group homes.

Leave may be taken in increments of less than one (1) hour. Employees must use any available accrued paid leave prior to taking Small Necessities Leave.

Employees utilizing leave shall be entitled to be restored to the position held when the leave commenced or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

37-4. *Notice.* If the necessity for leave is foreseeable, the employee shall provide his/her department head with not less than seven (7) calendar days' written notice prior to the date the leave is to begin, indicating the date, the number of hours of leave, and the purpose for which the leave is requested. If the necessity for leave is not foreseeable, the employee shall provide such notice as soon as possible under the circumstances of the particular case. Where leave is not foreseeable and the employee's notice is verbal, the employee shall complete and submit a written notice as soon as possible. The Town may require that a request for leave be supported by certification, such as documentation from a school administrator.

### **38.0 Domestic Violence Leave**

38-1. *Policy.* Employees are entitled to up to 15 days of unpaid leave from work in any 12-month period if, as defined by applicable law: (i) the employee, or a family member of the employee, is a victim of abusive behavior; (ii) the employee is using the leave from work to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child



custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee; and (iii) the employee is not the perpetrator of the abusive behavior against such employee's family member.

An employee seeking leave under this policy must exhaust all annual or vacation leave, personal leave and sick leave available to the employee, prior to requesting or taking leave under this policy, unless otherwise provided by the Town.

*38-2. Notice and Documentation.* Except in cases of imminent danger to the health or safety, an employee seeking leave from work under this policy must provide to the Town with appropriate advance notice of the leave. If there is a threat of imminent danger to the health or safety of the employee or the employee's family member, the employee is not be required to provide advanced notice of leave; provided, however, that the employee must notify the Town within three (3) workdays that the leave was taken or is being taken pursuant to this policy.

Such notification may be communicated by the employee, a family member of the employee or the employee's counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee in addressing the effects of the abusive behavior on the employee or the employee's family member.

If an unscheduled absence occurs, no negative action will be taken against the employee if the employee provides any of the documentation described in (1) to (7) below within 30 days from the unauthorized absence or within 30 days from the last unauthorized absence in the instance of consecutive days of unauthorized absences.

Employees must provide documentation that the employee or employee's family member has been a victim of abusive behavior and that the leave taken is consistent with this policy. However, an employee will not be required to show evidence of an arrest, conviction or other law enforcement documentation for such abusive behavior. Employees must provide such documentation within a reasonable period after the Town requests documentation relative to the employee's absence. An employee may satisfy this documentation requirement by providing any of the following documents:

1. A protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against the employee or employee's family member.
2. A document under the letterhead of the court, provider or public agency which the employee attended for the purposes of acquiring assistance as it relates to the abusive behavior against the employee or the employee's family member.
3. A police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior complained of by the employee or the employee's family member.

4. Documentation that the perpetrator of the abusive behavior against the employee or family member of the employee has: admitted to sufficient facts to support a finding of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive behavior and which is related to the abusive behavior that necessitated the leave under this section.
5. Medical documentation of treatment as a result of the abusive behavior complained of by the employee or employee's family member.
6. A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee or the employee's family member in addressing the effects of the abusive behavior.
7. A sworn statement, signed under the penalties of perjury, from the employee attesting that the employee has been the victim of abusive behavior or is the family member of a victim of abusive behavior.

38-3. *Confidentiality.* Information related to the employee's leave under this policy will be kept confidential and will not be disclosed, except to the extent that disclosure is: (i) requested or consented to, in writing, by the employee; (ii) ordered to be released by a court of competent jurisdiction; (iii) otherwise required by applicable federal or state law; (iv) required in the course of an investigation authorized by law enforcement, including, but not limited to, an investigation by the attorney general; or (v) necessary to protect the safety of the employee or others employed at the workplace.

38-4. *Employer Responsibilities.* The Town will not coerce, interfere with, restrain or deny the exercise of, or any attempt to exercise, any rights provided under this policy or to make leave requested or taken hereunder contingent upon whether or not the victim maintains contact with the alleged abuser. The Town will not discharge or in any other manner discriminate against an employee for exercising the employee's rights under this policy. The taking of leave under this policy will not result in the loss of any employment benefit accrued prior to the date on which the leave taken under this policy commenced. Upon the employee's return from such leave, to the extent required by applicable law, the employee will be entitled to restoration to the employee's original job or to an equivalent position.

### **39.0 Worker's Compensation**

39-1. *Policy.* The Town of Fairhaven is committed to providing a work environment that is safe for all employees. If a work-related injury occurs, the procedures contained within must be followed to ensure compliance. This policy applies to all Town employees, excluding public safety employees (full-time police officers and firefighters).

39-2. *Procedure.* The first priority after an accident or injury is to assure that the employee involved receives the first aid that is necessary. If medically appropriate, 911

should be called immediately. Employees with life threatening work-related injuries should be taken to the nearest emergency room appropriate for the care necessary. After an employee is released from the emergency room, employees must schedule an appointment with the Town's medical provider. Employees may elect to see their own medical provider instead; if the employee elects to see his/her own medical provider, the employee must inform the provider that he/she is being seen for a work-related injury.

*39.3. Reporting.* An employee injured on the job must report the injury to their supervisor immediately and fill out an accident report (see Human Resources for the accident report). The accident report begins the claims process and should be done immediately. Accident reports must be submitted to the Human Resources office within 24 hours of the emergency, unless the incident caused loss of consciousness, death, or dismemberment; in that case, reporting should be done as immediately as possible (within eight [8] hours). If the employee is unable to fill out the accident report due to the injury, the employee's supervisor is responsible for filling out the accident report and submitting it to Human Resources. The Human Resources department will not be able to process worker's compensation claims or lost wages without an accident report.

*39.4. Compensation.* Once an employee is absent five (5) days due to a work-related accident, and once said employee will be out of work as determined by a medical provider for a longer period of time, the employee will be placed on worker's compensation benefits in accordance with MGL Ch. 152. These five (5) days will be paid out of the employee's accrued sick leave benefit. If the employee remains out of work for a continuous twenty-one (21) days, those five (5) days will be reinstated to the employee's leave bank.

In accordance with MGL Chapter 152, the employee may supplement their regular weekly worker's compensation wage with accrued benefit leave (sick, vacation, personal time), up to, but not exceeding, typical weekly wages.

Employees shall not engage in any other employment or occupation while on paid sick leave, Workers Compensation leave or injured on duty status pursuant to G.L. c. 41, §111F.

#### **40.0 Retirement**

*40-1. Policy.* All eligible employees (as defined by the Fairhaven Contributory Retirement System) must join the System, pursuant to Mass. General Laws and other Special Acts of the General Laws. This is a contributory retirement system. Retirement age is mandated by the System for its member. Employees may contact the Retirement Administrator in the Treasurer's Office for additional information regarding retirement.

#### **41.0 Town Vehicles**

#### 41-1. *Purpose*

The purpose of this policy is to set forth the guidelines under which town vehicles will be authorized to Town personnel and the guidelines under which Town vehicles may be used. This policy is used to supplement additional policies which may exist within each department.

41-2 *Applicability*. The provisions of this policy apply to all municipal employees, excluding employees whose employment is regulated by a collective bargaining agreement, who are subject only to provisions in this policy that are not specifically regulated by their collective bargaining agreement.

#### 41-3. *Categories of Municipal Vehicle Use.*

- **Work Use Only:** Vehicle is used at work only and remains at issuing department's location at the end of the employee's work shift (applies to personnel whose duties require the use of a town vehicle during their shift).
- **Work and Commuting Use:** Vehicle is used at work and for commuting back and forth to the employee's primary residence (applies to certain personnel whose duties require them to be on-call to regularly respond to work during nights and weekends).
- **24-Hour Use:** Vehicle may be used at all times of the day for professional and personal use due to the 24/7 nature of the employee's duties (applies to certain public safety personnel).

#### 41-4. *Vehicle Assignment and Authorization*

- A. **General Assignment:** The general assignment of municipal vehicles may require employee access to municipal vehicles, either during the work shift or on a 24-hour, on-call basis. Town vehicles are not personal vehicles and are not for personal use. Town vehicles should be viewed as belonging to the citizens of the Town and are assigned solely for the purposes consistent with providing services to those citizens.

The assignment of municipal vehicles during work time is based upon job descriptions. Appointing authorities who have municipal vehicles available for this purpose may assign such vehicles in a manner consistent with departmental workload and employee function. The Town Administrator shall inform the Select Board of his/her vehicle assignment, which shall be approved by the Select Board. The assignment of vehicles may be rescinded at any time by the Town Administrator or appointing authority department manager.

- C. **Change of Authorization:** The Town Administrator or department head, with approval by the Selectmen, may rescind and/or change an existing vehicle assignment, including 24-hour use and work shift, and use authorization whenever

an applicable position becomes vacant; the authorized is misused; an employee is on leave (paid or unpaid) or when the position's duties are changed to a significant degree to warrant such reassignment or at the discretion of the Town Administrator or department head. The Town Administrator may also seek to change or modify the existing authorized use of a municipal vehicle for any incumbent union employee during collective bargaining.

*41-5. Report of Accidents.* Whenever a municipal vehicle is involved in an accident, or subject to damage, or in the event an employee's personal vehicle is damaged during an approved, work-related trip, the employee operating the vehicle is required to immediately notify his/her immediate supervisor. The supervisor is to contact the Town Administrator's office and complete the appropriate insurance forms.

The town does not assume responsibility for accidents, damage, or other negative impacts on personal vehicles when operated for the purpose of municipal business.

*41-6. Registering and Insuring a Vehicle.* Whenever a new vehicle is purchased and registered, the Town Administrator's office must be notified and appropriate paperwork completed immediately to add the vehicle to the Town's insurance policy.

*41-7. Identification and Procurement of Municipal Vehicles.* All municipal vehicles, except certain police vehicles, shall be conspicuously marked as a Town of Fairhaven vehicle with the name of the department on both sides of the vehicle and shall have municipal license plates. In the event that an employee uses his/her own vehicle for routine, work-related travel, he/she shall obtain a magnetic identifying plaque or any other municipal car marker as approved by the employees Department Director (paid for out of their departmental supplies line) and shall affix said temporary markers, for the duration of said business-related trip(s). Failure to identify a vehicle on Town business is a violation of this policy and is subject to disciplinary action.

The Town Administrator, with the permission of the Selectmen, may grant special exception to this rule if sufficient written justification is presented by the department head.

*41-8. Fringe Benefit Tax Reporting.* Federal and State law requires employers to include "Fringe Benefit Income" on employee W-2 forms submitted to the IRS and DOR. Such fringe benefits include the employee's use of an employer-provided vehicle for commuting purposes (commuting rate is established by the IRS and subject to change by the IRS). The Town shall use this method for tax reporting purposes.

Employees using Police, Fire, and other Public Safety vehicles may be exempt from the fringe benefit income reporting requirements as specified by IRS requirements.

*41-9. General Rules Governing Municipal Vehicle Use.*

1. Municipal vehicles may only be used for legitimate municipal business and if applicable, authorized commuting purposes and other approved uses. If commuting use is authorized, then it is limited to travel to, and from, the employee's principal residence and place of work. The vehicle should be driven over the most direct route taking into account road and traffic conditions. Other approved uses shall be authorized by the department head.
2. Municipal vehicles other than those designated for 24-hour use are to be used to transport individuals who are engaged in municipal business. Passengers shall be limited to Town employees and individuals who are directly associated with Town work activity (committee members, consultants, contractors, etc.).
3. Vehicles should contain only those items for which the vehicle is designed. The Town shall not be liable for the loss or damage of any personal property transported in the vehicle.
4. Employees are expected to keep municipal vehicles clean, free of household trash (e.g. coffee cups, wrappers, etc.) and to report any malfunction or damage to their supervisor immediately.
5. Employees assigned vehicles are expected to park such vehicles in safe locations.
6. Employees (both drivers and passengers) must wear seatbelts in vehicles so equipped during operation of the vehicle.
7. Employees must turn the municipal vehicle ignition off, remove keys and lock municipal vehicle when unattended unless the vehicle is being used in the performance of its duties.
8. All operator of vehicles that require a CDL license must be tested for drugs and alcohol as provided by US DOT regulations and the Town's Drug and Alcohol Policy (23.0)
9. Employees may not operate municipal vehicles while under the influence of alcohol, illegal drugs, or any controlled substances that may interfere with effective and safe operations.
10. Employees may not operate municipal vehicles while texting.
11. Town employees will comply with current state law required in the use of cell phones in vehicles (i.e. "hands free") while operating said vehicle.
12. Smoking is prohibited in all municipal vehicles.
13. Employees who operate municipal vehicles must have a valid motor vehicle license issued by the state of their current residence and may be required to provide proof of valid motor vehicle license once a year.
14. All new drivers must allow a motor vehicle record check prior to driving any town-owned vehicle. This record check will be done every other year thereafter. Employees will notify the Town Administrator and department head if changes in driver's license status occur. Any positive drug test may result in revocation of an employee's privilege to operate municipal vehicles, whether it occurred on-duty or not. If operating a municipal vehicle is an essential job function, reclassification or termination may result.
15. Employees driving municipal vehicles shall obey all applicable traffic and parking regulations, ordinances, and law.

- a. Employees who incur parking or other fines in municipal vehicles will generally be personally responsible for payment of such fines unless the payment of such fines is approved by the Town.
  - b. Employees who are issued citations for any offense while using a municipal vehicle must notify their supervisor immediately when practicable, but in no case later than 24 hours. Failure to provide such notice will be grounds for disciplinary action.
  - c. An employee who is assigned a municipal vehicle and who is arrested for, or charged with, a motor vehicle offense for which the punishment includes suspension or revocation of the motor vehicle license, whether in his or her personal vehicle or in a municipal vehicle, must notify his or her supervisor immediately when practicable, but in no case later than 24 hours. Conviction for such an offense may be grounds for loss of municipal vehicle privileges and/or further disciplinary action.
16. No employee may use a municipal vehicle for out-of-state use without advance approval by the Town Administrator.
  17. Under no circumstances will any person ride in the body of a truck, or in a trailer or bucket of a loader or backhoe.
  18. The Town reserves the right to withdraw the privilege of using a municipal vehicle based on the employee's driving record.
  19. During a leave (paid or unpaid), the employee will return the vehicle to their department immediately.
  20. Town fuel should be used for town vehicle and equipment only. Personal uses are strictly forbidden.
  21. Parking spaces in the front of the Town buildings are for use by the public and should not be utilized by employees, if at all possible.
  22. Employees shall complete "daily trip tickets" (Attachment K) that show the date of the trip, reason for the trip, starting mileage and ending mileage. This "trip ticket" shall be submitted to the department head on a daily or weekly basis, as requested by the department head. This section does not apply to employees who are assigned 24 hours Use vehicles pursuant to section 41-3

**41-10. *Special Circumstances.***

This Policy is intended to provide a basic framework governing the use of personal and municipal vehicles in the Town of Fairhaven, and as such, cannot contain procedures governing every situation that might arise. Department heads seeking clarification of, or exemption from, the provisions of this policy should contact the Town Administrator who will provide such clarification and may authorize exceptions to the policy under mitigating circumstances.

**41-11. *Sanctions.***

Failure to comply with any and all provisions of this policy may result in disciplinary action up to, and including, removal of Town vehicle privileges, suspension, and/or termination from Town service.

## 42.0 Travel

42-1. *Purpose.* The purpose of this policy is to establish procedures for authorizing travel and training expenses by Town employees, elected officials, and appointed officials for Town business, and to establish procedures for the reimbursement of the cost of authorized travel and other expenses.

42-2. *General Policy.* Training shall be defined as those conferences or sessions that provide certification or learning opportunities for employees, elected officials, and appointed officials, pursuant and relevant to their current positions.

It shall be the general policy of the Town to allow board members and employees to travel to training sessions, seminars, and meetings of professional associations under the following guidelines.

All travel is contingent upon the availability of funds in the proper budgetary account.

The Town expects employees and board members to act responsibly and professionally when incurring and submitting costs. The organization will reimburse employees and board members for reasonable expenses on pre-approved business. This includes, for example, travel fares, accommodations, meals, and gratuities.

Employees requiring training shall make every effort to get the training required without traveling outside of Massachusetts. Every effort shall be taken to find classes that are cost effective, which includes online training courses. Employees who cannot find training in Massachusetts and require travel out of state will have to get permission from their approving authority (see section 42-3 before traveling outside of Massachusetts).

### 42-3. *Approving Authority.*

The responsibility for keeping within the travel budget of each activity lies with the Approving Authority. The Approving Authority is defined as follows:

In the case of employed town official reporting to an elected board, the elected board is the approving authority.

In the case of a department head reporting to the Town Administrator, the Town Administrator is the approving authority.

In case of an employee working for a Town department, the department head is the approving authority.



In the case of an elected or non-paid appointed official of the Town, for the purposes of ensuring compliance with this policy, the Town Administrator shall be the appointing authority.

The Approving Authority shall authorize travel and training and requests for reimbursement. All travel and training outside of Massachusetts must be authorized in advance. Only those expenses allowed by this policy will be reimbursed.

#### *42-4. Procedure.*

##### **A. General Procedures**

- a. Travel request and approvals are to be made on the Travel Request Form (see Appendix I). Travel requests shall include an estimate of costs.
- b. Travel Request Forms shall be submitted to the Approving Authority.
- c. The Approving Authority shall review and provide an original signature to the form, either approving or denying the request, and will forward the original form to the Town Accountant's office. No stamped signatures will be accepted by the Town Accountant's office.
- d. Upon completion of the trip, the traveler will complete the Travel Expense Report (See Appendix J) as explained in sections 42.5 and 42.6, and return it back to the authorizing party for approval of the expense reimbursement.

#### *42-5. Reimbursable Expense Guideline*

##### **A. Travel/Transportation**

###### **a. Air Travel**

Travelers are encouraged to fly coach class with the lowest available airfare for non-stop travel. The passenger's portion of the airline ticket or the original transportation receipt must be submitted with the traveler's Expense Reimbursement Form; boarding passes alone are not sufficient.

###### **b. Car Rentals**

If a car rental is required, travelers are requested to rent mid-sized or compact vehicles. Travelers will be reimbursed for the fuel costs associated with renting a vehicle. Rental receipts must be submitted with the expense report for reimbursement.

###### **c. Personal Vehicles**

If the department does not maintain an authorized town vehicle and if an employee is using their personal vehicle for travel, they are entitled to request reimbursement for mileage at the IRS standard mileage rate. Charges for gasoline, repairs, depreciation, towing, vehicle maintenance, insurance and other expenditures will not be allowed. These are considered operating costs of the vehicle and are covered in the IRS mileage rate.

Mileage to and from the event is to be budgeted and requested for reimbursement by using the Travel Expense Form as a portion of the reimbursement for the total event cost. These costs should not be submitted for reimbursement as part of routine business mileage. If you drive to another municipality from your home on a work-related business trip, you may only take mileage for the difference between the length of that trip, less what the normal round-trip for your commute to work is. If you are driving a shorter distance from your home to attend a work-related meeting than you would have driven from your home to normal work location, then you are not eligible for reimbursement.

Employees with access to a Town vehicle are not eligible for mileage reimbursement if they elect to take their own car for special or routine work-related travel.

In addition to mileage, the following expenses may be reimbursed:

- Reimbursement for tolls at the established rates. The employee should include receipts or identify the date, location, and amount of the toll paid.
- Reasonable and necessary parking charges, including airport parking fees at the long-term reduced parking rate.
- Parking meters: Note on the expense reimbursement form, the date of the parking and the purpose for parking at the meter.
- Reasonable valet parking services, if self-parking is not available.

#### B. Accommodations

Travelers will be reimbursed for reasonable hotel accommodations. Discounted room rates should be requested at the time of the room booking. Travelers are entitled to accommodations that are suitably located and meet reasonable standards for safety, cleanliness, and comfort.

Charges caused by failure to cancel guaranteed reservations are not reimbursable.

Attending travelers should:

- Ask about the hotel's cancellation policy at the time of booking
- Notify either the hotel or the organization with whom the reservation was made to cancel a room reservation
- Remember that cancellation deadlines are based on the local time at the destination hotel; and
- Request and record the cancellation number in case of billing disputes

#### C. Meals

Itemized meals receipts must be submitted with the Travel Expense Report along with the charge card authorization receipt if a credit card is used. A copy of the charge card

authorization receipt or the charge card statement is not acceptable documentation. Gratuities not exceeding 20 percent are eligible for reimbursement. No alcohol purchases will be reimbursed at any time for any circumstances. Meal reimbursements shall be limited to \$15 for breakfast, \$15 for lunch, and \$25 for dinner.

Per diem reimbursement for meals is not allowed under this policy regardless of funding source.

#### D. Conference/Meeting Registration Fees

Employees may be reimbursed for Conference/Meeting Registration fees only if there is no appropriate mechanism for the Town to be billed directly for this expense and upon submission of appropriate detailed documentation.

### 1. Other Travel Expenses

In-room movies and other charges billed to the traveler's hotel room that have no bearing to the legitimate nature of the travel are the responsibility of the traveler and will not be reimbursed by the Town.

#### E. Non-Reimbursable Expenses

The following are examples of non-reimbursable expenses:

- Personal travel insurance
- In-room movies or video games
- Childcare
- Sporting activities, shows, etc.
- Expenses incurred by spouses, children, relatives
- Alcoholic beverages
- Sales tax
- Tolls normally paid by employee during his/her regular commute

Additionally, the Town may not reimburse both mileage and lodging for the same event. Whenever lodging is provided, the initial and return trip shall be the only mileage eligible for reimbursement. If the employee chooses to commute rather than use the lodging provided, they will not be reimbursed for the subsequent mileage that occurred due to their decision to commute.

The Town reserves the right to require employees who are reimbursed for work-related travel, to show proof of the following minimum levels of insurance coverage:

1. Bodily injury: \$100,000/\$300,000
2. Property damage: \$50,000

#### 42-6. *Vacation and Spouse Travel*

#### A. Combining Business and Vacation

If an employee wishes to combine a business trip with a vacation:

1. The proper approval authority (section 42-3) must approve the arrangement
2. The Town will provide only the reimbursement that covers the actual expenses of the business portion of the trip
3. The employee must specify on the Travel Authorization Form the dates of the conference or meeting and the total days of the trip in order to compute vacation time. A Request for Leave Form must also be submitted with the Payroll to the Treasurer's Office for all time taken as a vacation.

#### B. Travel with Spouse and/or Family

Spouses and/or family members may accompany an employee on official trips. However, the Town will provide reimbursement for only those expenses, which the employee would normally incur if traveling alone.

#### *42-7. Travel Expense Report*

The Travel Expense Report should be used in order to receive a reimbursement from the Town. Travelers should submit their expense reports no later than 10 working days after return from the trip. Expense report lodging receipts must reflect no more than single accommodation rates for the employees/officials. The employee will complete the expense report and attach original bills and receipts to support the following expenditures:

- Lodging
- Transportation costs
- Support of mileage calculation (Google maps, MapQuest printout)
- Registration fees
- Car rental
- Vehicle expenditures (parking, tolls)

If the actual expenses considerably exceed the original estimate on the Travel Authorization Request, a justification statement must be attached.

#### A. Approval and Processing of Travel Expense Reports

- a. Reimbursement Requests will be submitted to the Approval Authority party for approval (see 42-3). After approval by the Approval Authority, the Travel Expense Form will be included on the Department's Schedule of Bills Payable and forwarded to the Accounting Department as part of the weekly warrant with all necessary documentation.
- b. The Town Accountant will determine that the reimbursement form has been properly approved, that it is mathematically correct, that the requested reimbursements reconcile to the submitted receipts, and are within the limits set

forth by this policy. If an error is found in the reimbursement request, the requesting party will be informed and the error will be corrected before payment is made.

Before the reimbursement is made, the Accounting Department will determine that there is sufficient unexpended appropriation in the expenditure line item or that an amount sufficient to pay the request has been encumbered.

#### **43.0 Acceptable Use Policy – Computer, Technology, Email, Cell Phone, Internet, Social Media.**

*43-1. Policy.* The Town of Fairhaven may provide email and/or Internet access to employees who are connected to the municipal network server at the Town Offices and, additionally, to various employees in other town buildings. The purpose of providing these services to employees is to improve communication between departments and to provide the means to communicate and obtain information via the Internet. These services shall be used to improve the efficiency and effectiveness of municipal operations. Access and Control of the Town's technology resources, equipment and information shall be as follows:

The Town has these established policies to set the standards for the proper and allowed uses of the Town's telecommunications systems including telephones, email, facsimile machines (faxes), cell phones, and the Internet, including social media. The use of these capabilities and equipment is subject to the same management oversight as any other employee activity. The Town reserves the right to review and monitor employees' use of Town systems and communication devices. Employees are advised that they have no legitimate expectation of privacy in regard to their use of the Town's system and communications devices.

Violation(s) of this policy may result in disciplinary action being taken against the employee, up to and including termination from employment.

*Email:* Email is considered a public record and as such is subject to the requirements of the Public Records Law (M.G.L. c 66). Federal courts have also held that electronic mail is considered a record for purposes of the Federal Freedom of Information Act.

*Appropriate Use:* E-mail and related online services are the property of the Town and are to be used for business matters directly related to the operational activities of the Town and as a means to further the Town's objective to provide efficient, complete, accurate, and timely services.

Users shall act professionally, properly identifying themselves, and shall ensure that they do not misrepresent themselves or the Town.

The telecommunications systems (including Town office Wi-Fi access) shall not be used for:

- personal gain or to conduct personal business, political activity, non-Town-related fundraising activity, or charitable activity;
- the transmission of materials used for commercial promotion, product endorsement or political lobbying;
- to promote discrimination based on race, color, national origin, age, marital status, sex, political affiliation, religion, disability or sexual preference; to promote, resulting in, or contribute to sexual harassment; or to promote personal, political or religious business or beliefs;
- to violate any of the Town's personnel policies;
- for any illegal activity, including but not limited to, the transmission of copyrighted or trade secret material, the transmission of obscene, defamatory, or threatening material, or the propagation of any criminal activity.

No user shall violate the computer security systems or procedures implemented by the Town, the IT Director or his/her designee, including proper use of passwords, security systems and virus detection programs. For security purposes, employees should either log off or revert to a password screen saver when leaving their computer for an extended period. When leaving for the day, employees should log off and power down all electronic equipment.

Employees are expected to use careful consideration before opening emails or files from unknown senders. Employees are prohibited from downloading or transferring unauthorized software or files. No user shall pirate, download or transfer software for which the user does not have the proper licensing. Additional restrictions or regulations on the importing of remote files may from time to time be imposed, and such restrictions or regulations shall be considered part of this policy.

Internet browsing should be limited to Internet sites directly related to the user's job function. Users shall not engage in activities that could cause congestion and disruption of networks and systems, including but not limited to consuming excessive system resources.

Open Meeting Law Compliance: All provisions of the Massachusetts Open Meeting Law apply to email communication.

41-2. *Social Networking*. Employees are encouraged to use professional judgment at all times concerning personal and professional use of social networking sites. In using social networking sites, employees should at all times be respectful to co-workers, residents, or persons seeking assistance from the Town. Employees should not disclose confidential information, engage in any unlawful activity, or convey information that is disparaging or defamatory while using social networking sites, and must refrain from making comments or statements based upon race, color, gender, national origin, religion, ancestry, age, sexual

orientation, disability, maternity leave, genetics, active military status, or another basis prohibited under state or federal anti-discrimination statutes. Such statements or comments occurring online and/or through the use of social networking sites will not be tolerated and may be subject to disciplinary action, if severe enough to cause disruption in the workplace.

Subject to applicable law, online activity outside of work that violates the Town's Personnel Policies may subject an employee to disciplinary action, up to and including termination.

Use of social media during work hours, except as related to town business or postings, is prohibited and subject to disciplinary action.

*43-3. Mobile Devices Provided by the Town.* Employees whose work requires the issuance of a mobile device will be provided such device at the recommendation of the Department Head and the approval of the Town Administrator. Employees who do not accept a Town mobile device, and instead opt to use their own device, shall be eligible to receive a \$300 annual stipend, paid monthly in \$25 increments upon furnished proof of cell phone invoice paid. Such proof shall be provided to the Town Accountant's office, along with any reimbursement/payable cover sheets, and shall be signed by the Town Administrator for reimbursement. Employees who opt to use their own mobile devices for Town business must seek approval from their Department Head and should be advised that their device may be subject to records access laws. Cell phone stipends must be included in the annual departmental budget and are subject to Town Meeting appropriation.

*Usage Guidelines:*

- Detailed records of the use of Town mobile devices are public records and may be requested at any time.
- Mobile devices provided by the Town are to be used predominately for work-related purposes. Personal use that incurs charges must be paid for by the employee.
- In addition to this policy, the use of mobile devices is governed by personnel policies which relate to the use of all Town computing equipment.

Users are responsible for the physical safety of their Town provided devices and must report lost/stolen/damaged equipment immediately to the technology staff (IT Department).

#### **44.0 Severe Weather Policy**

*44.1. Policy and Statement.* This policy establishes guidelines for operations during periods of extreme weather and similar emergencies. The Town's offices remain open in all but the most extreme circumstances. Unless an emergency closing is announced, all employees are expected to report to work, although all employees are urged to use their own discretion in deciding whether they can safely get to work. When an emergency closing hasn't been

declared, employees who don't report to work because of inclement weather have the option of taking vacation, personal leave, or in the case of non-exempt employees, leave without pay.

44.2. *Designation of Emergency Closing.* Only by authorization of the Town Administrator does the Town cease operations because of emergency circumstances. If severe weather conditions develop during working hours, department managers can allow their nonessential employees to leave work early with approval of the Town Administrator.

44.3. *Emergency Operations Team.* An Emergency Operations Team, consisting of the Town Administrator, Public Works Director, Police Chief, Fire Chief, and Human Resources Director, and appropriate representatives from their departments is responsible for monitoring weather and emergency conditions for the purposes of communicating and implementing emergency plans. The Town Administrator or his designee is responsible for coordinating snow removal efforts and other steps necessary to maintain the safety and security of the Town premises during severe weather and other emergency conditions.

44.4. *Procedures for all employees.* If weather or other emergency conditions prevent employees from reporting to work on time, they are responsible for notifying their supervisor, within the first hour of the workday. If direct contact is not possible, leaving a detailed voice mail message or message with another employee is acceptable. Employees should leave a phone number where they can be reached.

44.5. *Essential Personnel.* If the Town officially is closed, essential functions must be maintained and essential personnel must report to work unless otherwise instructed. A roster of essential personnel is maintained by each department manager. An up-to-date copy of each department's roster is kept on file in the Human Resources Department.

44.6. *Pay and Leave Practices.* When a partial- or full-day closing is authorized, the following pay and vacation practices apply:

- Non-exempt employees in nonessential operations are granted administrative leave and compensated at their regular rate of pay for the hours they were scheduled to work.
- Non-exempt employees who are designated as essential are compensated at 1 1/2 times their regular rate of pay during the emergency closing period. Such employees are not given time off at a later date for hours worked during the period of closing.
- Exempt and non-exempt employees on sick leave on a day when a partial-day closing occurs are charged with sick leave for that day. Exempt and non-exempt employees already on personal leave or vacation during emergency closings are charged with whatever type of leave they had scheduled.
- Exempt employees who are in nonessential operations are granted administrative leave.



- Exempt employees in essential operations are eligible for compensatory time-off (“flextime”) for hours worked during the period of the closing. (See Section 24-2 for flextime policy).

44.7. *Announcements.* Modifications to normal operations are announced as early as possible through the following media: [www.Fairhaven-MA.gov](http://www.Fairhaven-MA.gov), Twitter and Facebook; telephone calls to employees; cable television.

## **ATTACHMENTS:**

- Appendix A: Personnel Bylaw Ch. 61**
- Appendix B: Town Administrator Special Act**
- Appendix C: Harassment Complaint Form**
- Appendix D: Harassment Policy Receipt Form**
- Appendix E: ADA Forms**
- Appendix F: Employee Application Form**
- Appendix G: FMLA Forms**
- Appendix H: Performance Appraisal Form**
- Appendix I: Travel Request Form**
- Appendix J: Travel Expense Report**
- Appendix K: Vehicle Trip Ticket**

## **EMPLOYEE ACKNOWLEDGMENT FORM**

I understand that the Personnel Policies and Procedures contains important information about the Town of Fairhaven and that I should consult with Human Resources or the Town Administrator's Office to field inquiries on personnel matters if I have any questions concerning the Personnel Policies or the Town of Fairhaven's policies, procedures, benefits, or programs.

I affirm that I have reviewed the contents of the Personnel Policies and Procedures in its entirety and that I will act in conformity with it, including all policies and procedures it contains. I understand that violations of the Personnel Policies and Procedures may result in disciplinary action, up to and including termination.

I further understand and agree that no part of the Personnel Policies and Procedures constitutes or is intended to create a contract of employment. I also understand that the Personnel Policies and Procedures do not create any implied contract between me and the Town of Fairhaven. My employment with the Town of Fairhaven is solely at-will, and I understand that I or the Town of Fairhaven can terminate our employment relationship at any time, with or without advance notice and with or without cause. I affirm that I have entered into my employment relationship with the Town of Fairhaven voluntarily and understand that my employment does not have any specific length or term.

I further understand and agree that the information contained in the Personnel Policies and Procedures supersedes any prior handbooks, policies, promises, practices, or representations from the Town of Fairhaven, whether written or oral. No person other than the Select Board and the Town Administrator have authority to bind the Town of Fairhaven concerning terms and conditions of employment or has authority to make any agreement that alters or varies any of the policies, procedures, benefits, or programs contained in the Personnel Policies and Procedures, or any terms or conditions of my employment, including my status as an at-will employee, and that any such agreement must be in writing. The Town of Fairhaven reserves the right to amend, supplement, modify, or eliminate any of its policies and procedures at its sole discretion, including policies and procedures relating to my compensation, work hours, or any other terms or condition of my employment.

By signing below, I acknowledge receipt of a copy of the Town of Fairhaven's Personnel Policies and Procedures. I understand that this form will be retained in my personnel file.

**Employee Name:** \_\_\_\_\_

**Employee Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name of Employer Representative:** \_\_\_\_\_

**Signature of Employer Representative:** \_\_\_\_\_

**Date:** \_\_\_\_\_