



FAIRHAVEN SELECT BOARD

Meeting Minutes December 30, 2024

Present: Chair Stasia Powers, Vice-Chair Charles Murphy Sr., Clerk Andrew B. Saunders, members Keith Silvia and Andrew Romano and Assistant Town Administrator of Finance/Town Accountant Anne Carreiro

Present via zoom: Executive Assistant Amy Hart

Ms. Powers opened the meeting at 5:00p.m.

ACTION / DISCUSSION

Review Conflict of Interest Disclosure: Patrick Carr

Mr. Saunders recused himself due to a potential conflict of interest, he said he would return for Executive Session and exited the Banquet Room for this item.

Ms. Powers introduced the item and referred to the background material provided to the Board (*Attachment A*). The Board is asked to weigh in on a conflict of interest under section 19.

Mr. Carr addressed the Board about a potential conflict that may exist with an upcoming appeal to the Zoning Board of Appeals (ZBA) from the School Department. He explained that the potential conflict is due to his position on the ZBA and the Planning Board and his partnership with his daughter in Seaspray Container Company. Seaspray has contracts with the School Department for two storage containers at Fairhaven High School (FHS) and containers at other school locations. Mr. Carr has minority financial interest as a partner with his daughter in Seaspray.

Erin Carr, President of Seaspray, 86 Middle Street in Fairhaven, addressed the Board and provided the history of Seaspray's business with the Town; she explained that her business, Seaspray Container Company, was established in July of 2021 and in August of 2021 Ms. Carr approached the School's Athletic Director about the rental or purchase of storage containers at FHS. A rental agreement was later entered into through the Business Manager and two containers were placed at FHS; other containers have also been placed at other school locations subsequent to the FHS container delivery.

Mr. Carr advised the Board that his appointment to the ZBA was on July 18, 2022 and his election to the Planning Board was in April, 2023 and the contracts for the containers at FHS were already in place as of late 2021. Mr. Carr continued and said the School Department is coming before the ZBA at their meeting on January 7, 2025 to be heard on an important permit issue pertaining to a storage shed that is on the FHS property and the conflict is the two containers at FHS and potential financial gain or loss in a company he has a minority financial interest in.

Mr. Carr referred to conversations he had with Chris Popov of the State Ethics Commission regarding the potential conflict. Mr. Carr described the options reviewed with Mr. Popov and one option was that Mr. Carr file a disclosure form seeking a determination that the interest was not so substantial to affect his role as Chair of the ZBA. Mr. Carr would like to have the Board accept the disclosure which would allow the containers to remain and also allow him to run the meeting on January 7, 2025 with the determination as follows: "As appointing official, as required by G.L. c. 268A, § 19 have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee."

Discussion ensued regarding the potential conflict and Mr. Carr recusing himself and having a ZBA Associate Member step in to avoid the appearance of a conflict at the January 7, 2025 meeting, contracts being in place prior to Mr. Carr's appointment to the ZBA and election to the Planning Board, the contract amount and whether it is "not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee," potential cancelation of the contracts and removal of the containers, other options discussed with State Ethics like donating the containers, Town Counsel being present at the January 7, 2025 meeting to guide the ZBA Associate Members, concern on setting a precedent, Mr. Carr's contention that the meeting will be complex and he has done research to run the meeting effectively and maintain professionalism.

Atty. White addressed the Board via zoom and said the question before the Board is providing an exemption if the financial interest identified by a municipal employee is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee or not providing an exemption.

Diane Tomassetti of Main Street addressed the Board and said, in listening, the question is, if the 19b is not approved and the containers are removed, what is the look and how is this going to be perceived, would it be perceived as penalizing the school, what is the perception of Mr. Carr continuing with the meeting based on what she heard tonight it seems ethically approved by state ethics attorneys.

Mr. Murphy summarized from the documents that the contracts are preexisting and the question before the Board is whether the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee. Discussion continued about the options presented to Mr. Carr by State Ethics. Ms. Powers asked Atty. White to clarify the role of State Ethics. Atty. White said State Ethics will outline options and not advice on past conduct; they provide prospective advice to avoid future conflicts. The amount is not defined in the law and the Board is being asked whether to allow the exemption.

Mr. Carr said his opinion is that there is a wealth of knowledge with the five Full-Time ZBA Members and, no disrespect to the Associate Members, they are not as experienced. If the exemption request fails, Mr. Carr said he would confer with his partner and contact State Ethics again about options.

Motion: Mr. Silvia motioned to grant the 19B exemption to Patrick Carr and Erin Carr, the financial interest is not substantial. Mr. Murphy seconded. The motion failed (2-2-1) Ms. Powers and Mr. Romano opposed. Mr. Saunders abstained.

Discussion ensued as to process and the suggestion that other board members should contact State Ethics proactively to review potential conflicts and then come before the Select Board regarding exemptions. Board members opposed stated that the alternate members of the ZBA would be available to step in for the January 7, 2025 meeting.

Mr. Saunders returned to the Banquet Room.

EXECUTIVE SESSION

Motion: Mr. Romano motioned to enter into executive session Pursuant to G.L. c. 30A, § 21(a)(2) To conduct strategy sessions in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel: Interim Town Administrator, and to return to open session. Mr. Saunders seconded. Roll Call Vote: Mr. Romano, Mr. Saunders, Ms. Powers, Mr. Murphy and Mr. Silvia in favor. The motion passed unanimously (5-0-0).

Meeting adjourned to Executive Session at 6:20p.m.

Meeting returned to Open Session at 6:45pm

Ms. Powers announced that the Board reached an agreement with Acting Town Administrator George Samia.

Motion: Mr. Romano motioned to approve the contract and authorize the Chair to sign on behalf of the Board. Mr. Saunders seconded. The motion passed unanimously (5-0-0).

Meeting adjourned at 6:46p.m.

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

ATTACHMENTS:

A. Conflict of Interest documents: Patrick Carr

Approved on January 27, 2025

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST
AND DETERMINATION BY APPOINTING AUTHORITY
AS REQUIRED BY G. L. c. 268A, § 19**

SELECT BOARD

2024DEC26 13:50:13:50

MUNICIPAL EMPLOYEE INFORMATION	
Name:	
Title or Position:	Chair of the Zoning Board of Appeals
Municipal Agency:	Town of Fairhaven
Agency Address:	40 Center Street Fairhaven, MA 02719
Office Phone:	508-979-4023
Office E-mail:	www.fairhaven-ma.gov/townadministrator
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
PARTICULAR MATTER	
Particular matter E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter. My name is Patrick Carr and I serve as the chair on the Zoning Board of Appeals, and I am classified as a special town employee. The ZBA is hosting a meeting on 01/07/2025 in which the Fairhaven School Department is coming before ZBA with a zoning issue. I am presently a co-owner with my daughter (Erin Carr) of Seaspray Container Company and have a financial interest (contract) with the School Department and the Town of Fairhaven. Presently we have 6 storage containers that are leased to the School Department and 1 storage container lease to the Town of Fairhaven. There are 2 storage containers located at the High School (School Department) , 2 at the Administration building (School Department), 1 at the Wood School (School Department), 1 at East Elementary School (School Department) and 1 at Hastings Middle School (Town of Fairhaven). Since I have a financial interest (contracts) with the School Department, I have a potential conflict of interest, and It is my responsibility to address this issue with the MA State Ethics Commission. I have done so and have been advised by the State Ethics Commission to submit a discloser of financial interest to the appointing authority (Select Board) prior to the Zoning Board of Appeals meeting on 01/07/2025. I am submitting the State Ethics findings and summation and advice along with the dated contracts and the appropriate MA GL exemptions and codes.
Your required participation in the particular matter: E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter. I, (Patrick Carr) acting as a Chair on the Fairhaven Zoning Board of Appeals, will actively participate in the upcoming ZBA meeting dated 01/07/2025. I am required by law to submit a formal discloser prior to the 01/07/2025 ZBA meeting with the appointing body, the Fairhaven Select Board. I am submitting evidence of compliance in reference to the MA G. L. C. 268A "Conflict of Interest Law" under 19 (B)(1) and seek approval from the appointing body (Fairhaven Select Board) as the law mandates. I submit the summation and conclusion that was afforded to me by the MA State Ethics Commission, the dated

	contracts with Seaspray Container Company, The Town of Fairhaven's list of "Special Employees" and will ask to come before the appointing body at their next available scheduled meeting on 12/30/2024 for determination.
	FINANCIAL INTEREST IN THE PARTICULAR MATTER
Write an X by all that apply.	<input checked="" type="checkbox"/> I have a financial interest in the matter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input checked="" type="checkbox"/> My business partner has a financial interest in the matter. <input checked="" type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.
Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it. The contracts between The School Department and Seaspray Container Company are included in the documents submitted. The monthly rental fees for the 2 containers located at the Fairhaven High School are \$99.00 per container, (2 containers). Total: \$198.00 per month.
Employee signature:	
Date:	12/26/2024

DETERMINATION BY APPOINTING OFFICIAL

	APPOINTING AUTHORITY INFORMATION
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	

Office E-mail	
	DETERMINATION
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

Attach additional pages if necessary.

The appointing authority shall keep this Disclosure and Determination as a public record.

CONFIDENTIAL

SELECT BOARD
2024DEC26 13:50:13:50



**Commonwealth of Massachusetts
STATE ETHICS COMMISSION**

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Margot Botsford (ret.)
Chair

David A. Wilson
Executive Director

December 23, 2024

Patrick J. Carr

BY EMAIL (PJCarr@a1crane.com)

Dear Mr. Carr:

I am writing in response to your recent request for advice about the "Conflict of Interest Law," G. L. c. 268A. The following is based on the information you provided during our telephone discussions this month with you and your daughter, emails from you, and online public information.

Information

You are a member of the Zoning Board of Appeals for the Town of Fairhaven ("ZBA") serving as its Chair. The Town's Select Board appoints members to the ZBA and ZBA members are not compensated. You were first appointed to the ZBA on July 18, 2022. Your most recent term expires in 2029. You are also a member of the Planning Board, serving as its Vice Chair. Planning Board members are elected. You were first elected in 2023. Your most recent term expires in 2027. See <https://www.fairhaven-ma.gov/zoning-board-appeals>; <https://www.fairhaven-ma.gov/planning-board>.

On January 7, 2025, the ZBA will be hearing an appeal of a building official's decision to issue a building permit for the construction of a storage building on land on the High School campus ("Project"). The appeal is based on allegations that construction of

the Project to date failed to comply with Town by-laws ("Appeal"). Abutters to the High School property filed the Appeal.

Since approximately 2021, the Seaspray Container Company ("Seaspray"), which you and your daughter co-own, has been leasing to the School District two storage containers that are located on the High School campus. (The Seaspray Container Company is described at <https://seaspraycompany.com>.) Those two containers are leased pursuant to the following two contracts: Fairhaven Public Schools, Account Number 2021-115 **Location: FHS**, Container # 21.83; MESU2106422, Agreement Date: 10/13/21; and Fairhaven Public Schools, Account Number 2021-115, **Location: FHS**, Container # 21.86; MSEU2109530, Agreement Date: 11/12/21.

Seaspray presently also has leased other containers to the School District for use on other school properties, pursuant to other contracts listed as follows:

Fairhaven Public Schools
Account Number 2021-115
Location: Admin Building
Container # 21.74; CWWU2213295
Agreement Date: 9/29/21

Fairhaven Public Schools
Account Number 2023 - 14
Location: Admin Building
Container # 22.33; SKIU2298340
Agreement Date: 7/25/23

Fairhaven Public Schools
Account Number: 2024 - 43
Location: Wood School
Container # 23.46; CICU5684664
Agreement Date: 10/17/24

Fairhaven Public Schools
Account Number: 2024 - 44
Location: East Fairhaven School
Container # 24.15; ACCU2310306
Agreement Date: 10/17/24

Seaspray also has the following contract: Town of Fairhaven*, Account Number: 2023 - 28, Location: Hastings Middle School, Container # 23.50; SJC2061842, Agreement Date: 11/21/23.

If the Project were completed, it would be likely that the High School no longer would need use of the two Seaspray storage containers. (Note that the website for Seaspray includes a photograph of what appears to show two containers on a school campus. This photograph appears to reflect the types of containers and their functions per Seaspray's contracts.)

If the Project's completion were delayed, that would likely affect how long the High School might want use of the containers. Obviously, delay in construction in the Project's present location or delay due to decisions that could require its relocation would affect the time the High School might want to use the containers for storage.

Before the Appeal will be heard on January 7, 2025, you will terminate the contracts for the two containers in use on the High School land and remove them, making them available elsewhere for Seaspray's business (which also includes leasing containers to individuals, business, etc.) Seaspray will not renew the contracts with the District for those containers on the High School campus and Seaspray will no longer lease any containers for use on the High School campus, regardless of the ZBA's decision(s) about the Appeal.

Nothing about Seaspray's contracts to lease the two containers for use on the High School campus has any effect on Seaspray's other contracts with the School District/Town for containers on other District properties. Each of those contracts is separate from one another; functions apart from one another.

Seaspray might consider donating the use of the two containers presently located on the High School campus for continued use on the High School campus. Seaspray might also consider donating the use of the other containers presently under other Town/District contracts and located elsewhere.

Discussion

The following describes how G. L. c. 268A applies to the information described above. No description of requirements of c. 268A, however, can cover every situation. But the following should help you identify issues relevant to the information above. Of course, you are welcome to contact us again if, for example, relevant information changes and you have additional questions about your future conduct.

As a member of the ZBA, you are a "municipal employee" as defined in G. L. c. 268A, § 1(g). You also are a "municipal employee" as a member of the Planning Board. As described in detail below, you must comply with G. L. c. 268A, §§ 19 and 23 regarding the upcoming ZBA Appeal. But, because of the existing contracts that Seaspray has with the District/Town, you must also comply with G. L. c. 268A, § 20, described below.

Section 19

As we discussed, the first issue involves § 19. As you know, you, as a ZBA member, may not participate “in a particular matter in which to [your] knowledge [you, your] immediate family or partner, a business organization in which [you are] serving as officer, director, trustee, partner or employee, or any person or organization with whom [you are] negotiating or has any arrangement concerning prospective employment, has a financial interest.” G. L. c. 268A, § 19.

The term “participate” means, “participate in agency action or in a particular matter personally and substantially as a . . . municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.” G. L. c. 268A, § 1(j). “Particular matter” means, “any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, . . .” G. L. c. 268A, § 1(k).

The Appeal is a particular matter. If you were to be involved in discussions about the Appeal as a ZBA member you would be “participat[ing]” in that “particular matter” as those terms are understood and interpreted for § 19.

The issue is whether you, your daughter, and/or your business will have a reasonably foreseeable *financial* interest in the Appeal. For purposes of complying with § 19, the financial interest may be either negative or positive. Participation in a particular matter that could adversely affect one’s financial interests is prohibited the same as participation in a particular matter that improves one’s financial interests.

Here are some examples. A ZBA decision that would allow the new storage building to continue to be constructed would affect how much longer the High School would need to use Seaspray’s containers. Similarly, a decision that would **not** allow construction to continue would, arguably, increase the time the High School would need to use Seaspray’s containers.

You argue that you will eliminate any reasonably foreseeable financial interest (of yours, your daughter’s, your business’) by Seaspray’s terminating the contracts for the two containers presently located on the High School campus and removing them. Seaspray would, never again, lease containers to the School District/Town for use on the High School land.

Thus, if the containers were removed and the lease terminated **before** the Appeal hearing, decisions the ZBA might make about the Appeal would not affect your, your daughter’s, or your business’ financial interests. By contrast, even if Sea spray did everything proposed above to eliminate the § 19 financial interest but, not long after, offered new containers for use at the High School, a good argument can be made that such a new deal was reasonably foreseeable at the time of your participation in the Appeal.

You agree that if you were to leave the containers in place, whether and when the Project might be completed would affect, for example, future lease payments---income to your business.

Even if you were to stop charging rent and simply donate the use of the containers so the District could use them until it found an alternative storage facility, you would still have a financial interest in the Appeal. Why? Because a couple of your business assets, the containers, would be “tied up.” Arguably, those containers in use and unavailable for use elsewhere would, alone, affect your business’ financial interests, even if Seaspray no longer collected rent for them from the District/Town. Those two containers are tangible assets that have at least some financial value for purposes of § 19 compliance. The financial interest for § 19 does not have to be substantial.

After you, your daughter, and your business had no financial interest in the Appeal by eliminating the financial interest before the Appeal hearing, what the ZBA might decide later about the Project would not affect financial interests for purposes of the § 19 restriction against your participation as a ZBA member. Whether the Project is/is not constructed or modified based on what the ZBA decided would **not** have a *reasonably foreseeable* effect on Seaspray’s financial interests, your financial interests, your daughter’s financial interests.

Note that if you did not want to eliminate the § 19 financial interest, § 19(b)(1) allows an appointed municipal employee to participate in what would be, otherwise, a particular matter in which there were a financial interest for purposes of § 19 “if the municipal employee **first** advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, **and** receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.” *G. L. c. 268A, § 19(b)(1)*. (emphasis added).

Obviously, if you decided to leave the contracts in effect and containers in place at the High School, you would need to obtain a § 19(b)(1) determination before participating in the Appeal as a ZBA member because the financial interests would be obvious. Even if the financial interests related to those two containers would not be large/not substantial

relative to the balance of Seaspray's business interests¹ in container leasing, § 19 would still apply.²

Section 23

As you know, you may not "solicit or receive anything of substantial value for [yourself], which is not otherwise authorized by statute or regulation, for or because of [your] official position" as a ZBA member. G. L. c. 268A, § 23(b)(2)(i). Also, you may not use your official position as a ZBA member to "use or attempt to use such official position to secure for [yourself] or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals." G. L. c. 268A, § 23(b)(2)(ii).

Thus, if you were to participate in the Appeal in compliance with § 19 as described above because you would have, in advance, eliminated the § 19 financial interests, you must interpret and apply the ZBA rules as you would for any appeal. Your responsibility, like any member of the ZBA, is to ensure that the rules are properly interpreted and applied so no one obtains an unwarranted privilege or exemption of substantial value as a result of the ZBA's decision(s) about the Appeal.

To the extent there is any debate about how to interpret and apply the ZBA bylaws applicable to the Appeal, I recommend that you and your fellow ZBA members confer with Town Counsel. It may be useful to have Town Counsel present during the Appeal hearing. I cannot offer you any type of legal opinion about how your Town's bylaws apply to the Appeal. (I note that you mentioned that there have been arguments about, for example, the application of the "Dover Amendment," G. L. c. 40A, § 3 to the Project.)

Also as you know, Section 23 also mandates that you must not "act in a manner which would cause **a reasonable person**, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy [your] favor in the performance of [your] official duties, or that [you are] likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person." G. L. c. 268A, § 23(b)(3).

¹ Whether to issue the written determination per § 19(b)(1) is within the discretion of the appointing authority. Deciding whether the financial interest "is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee" is within any appointing authority's discretion.

² If during the ZBA meeting anyone were to ask you about Seaspray's business, the best course for you would be to direct the question to someone else, who is not a Town official, such as your daughter, to answer any question on behalf of Seaspray. See G. L. c. 268A, § 17. Also, you must continue to be sure that someone other than you were to act as agent for Seaspray in any of its dealings with the Town/District about any of Seaspray's contracts with the Town/District.

As you proposed, your § 19 financial interest in the Appeal will be eliminated well before the Appeal hearing on January 7, 2025. But you still must ask yourself whether there are relevant facts, for example some “history” with the parties to the Appeal, that could “cause a reasonable person” to conclude you would act/fail to act/be subject to improper influence/someone could unduly enjoy your favor is anything you would do as a member of the ZBA. If those facts exist, you must, before you act—thus before the ZBA meeting--- comply with the following disclosure provision in § 23(b)(3).

With respect to the prohibition against “act[ing] in a manner which would cause a **reasonable** person . . . to conclude,” § 23(b)(3) also specifies, “**It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority . . . the facts which would otherwise lead to such a conclusion.**” G. L. c. 268A, § 23(b)(3). (emphasis added).

In those types of circumstances, you would comply with the § 23(b)(3) disclosure requirements **before** you began to get involved in the Appeal. (See “7. G.L. c. 268A, § 23(b)(3), Appearance of undue favor or improper influence disclosure, Instructions” on the Ethics Commission’s website, <https://www.mass.gov/info-details/state-employee-disclosure-forms>. (This link contains a § 23(b)(3) form you can use.)) You would file a written disclosure per § 23(b)(3) as a public record that discloses the relevant facts with your appointing authority for the ZBA, the Select Board.

Thus, even if a “reasonable person” could conclude that a public official would “act in a manner” as prohibited by § 23(b)(3), that conclusion would be eliminated as a matter of the Law.

Section 20

We did not discuss during our first telephone discussion in December 2024 that your circumstances also require compliance with § 20. My apologies for not spotting that issue while we were so focused on ways for you to comply with § 19 for the Appeal. We later discussed § 20 issues, and, as described above, you provided information about Seaspray’s contracts.

As you know (likely based on your Town service and Ethics Commission educational trainings), you may not have, **in addition to** your municipal positions as a member of the ZBA and/or as a member of the Planning Board, a direct or indirect financial interest in **another** contract with the Town. G. L. c. 268A, § 20. (Section 20 does not prohibit you from holding the unpaid ZBA position and being elected to the Planning Board, even if elected members of the Planning Board were to receive stipends.)

For example, because you co-own Seaspray, you have financial interests in its leases to the School District/Town. The Town is part of the School District. Although some of those lease contracts were made with and by the School District, they created financial interests in contracts with the Town because of the Town’s membership in the School

District. This general prohibition, however, includes several types of statutory or regulatory exemptions to be considered.

One simple exemption is that Section 20 “shall not apply (a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest.” *G. L. c. 268A, s. 20(a)*.

Maybe an argument can be made that you have been, already, in violation of Section 20 for longer than 30 days. Regardless, the Law does not *now* prohibit you from “terminat[ing] or dispos[ing] of the interest.” Thus, one option would be for Seaspray, thus you, to terminate all its Town/District contracts. For example, donating the use of the containers would amount to gifts, not contracts because there would no longer be any bargained-for exchange for the use of those containers.³

There are other options that would not require terminating contracts to comply with § 20.

You could retain your financial interest in some contracts and comply with an exemption from § 20 because those contracts were in existence **before** you first joined the ZBA and the Planning Board. The following contracts were in existence before you joined either of the Boards:

Fairhaven Public Schools
Account Number 2021-115
Location: Admin Building
Container # 21.74; CWWU2213295
Agreement Date: 9/29/21

Fairhaven Public Schools
Account Number 2021-115
Location: FHS
Container #21.83; MESU2106422
Agreement Date: 10/13/21

Fairhaven Public Schools
Account Number 2021-115
Location: FHS
Container # 21.86; MSEU2109530
Agreement Date: 11/12/21

³ You could also eliminate your ownership interest in Seaspray.

Of course, the two contracts listed above for those containers at the High School soon will be terminated as part of your compliance with § 19 for the Appeal. Doing so also would eliminate your financial interests in those contracts for purposes of § 20. But the “Admin Building” contract above would qualify for the following exemption specified in 930 CMR 6.26:

(3) Exemption For Financial Interests in Contracts That Pre-date Public Service. A public employee may retain a direct or indirect financial interest in a contract with a public agency (other than a financial interest arising from employment with, or funded by, a public agency, or from the provision of legal or other professional services to a public agency), if the financial interest pre-dates his election or appointment to a state, county, or municipal position, without violating M.G.L. c. 268A, §§ 7, 14, or 20, provided that the public employee makes a disclosure as required by 930 CMR 6.26(6), and complies with the restrictions set forth in 930 CMR 6.26(7). The public employee may retain such financial interest during the original contract term, as well as during any additional term resulting from an automatic extension of the contract or a renewal of the contract upon notice by either party, as long as the same terms and conditions apply during any such additional term, and no action is taken by either party other than the notice to renew. Changes in contract payments will not be considered a change in the terms and conditions as long as the methodology for computing such changes is specified in the original contract, such that no negotiations are needed or required. A “change order,” as defined by M.G.L. c. 7C, § 17, shall be considered a continuation of the same contract for purposes of 930 CMR 6.26(3), (4), and (5), rather than an amendment of the contract, only if any added cost resulting from the change order is based upon pre-existing labor rates, unit costs and allowable mark-up for overhead and profit, or similar objective criteria, as established in the original contract. Retention of a financial interest in an amendment to a contract is permissible only in accordance with 930 CMR 6.26(5)

(6) Disclosure Requirement

(a) Public employees using the exemption set forth in 930 CMR 6.26(3) shall file a disclosure identifying the public contract and providing information regarding their financial interest in the contract on a form prescribed by the State Ethics Commission within thirty (30) days of election or appointment to a public position.

(b) Public employees using the exemptions set forth in 930 CMR 6.26(4) and/or 930 CMR 6.26(5) shall file a disclosure identifying the public contract and their financial interest in the contract, along with such other information as may be necessary to show that the requirements of 930 CMR

6.26(4) and/or 930 CMR 6.26(5) have been met, on a form prescribed by the State Ethics Commission within thirty (30) days of acquiring the financial interest.

(c) A public employee who makes a disclosure pursuant to 930 CMR 6.26(6), and who subsequently has contacts with the contracting agency, may have an obligation to disclose those facts pursuant to M.G.L. c. 268A, § 23(b)(3).

(d) Disclosures made pursuant to 930 CMR 6.26(6) shall be public records and shall be made:

(1) by elected municipal employees, to the municipal clerk, or, in the case of elected regional school district employees, to the clerk or secretary of the regional school district;

(2) by appointed state, county and municipal employees, to their appointing authorities; and

(3) by elected state and county employees, to the State Ethics Commission, which shall list each such disclosure on the Commission website, and may also post each such disclosure in its entirety.

(7) Restrictions on Persons Using Exemptions. A public employee using the exemptions set forth in 930 CMR 6.26(3), 930 CMR 6.26(4), or 930 CMR 6.26(5):

(a) Remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, §§ 4, 6, 11, 13, 17, 19 and 23, except that any compensation derived from or provided for in the pre-existing contract, or new or amended contract, may be received; and

(b) May not, in either his official or his private capacity, communicate, directly or indirectly, with any public agency concerning any public contract in which he has a financial interest. This restriction shall not prohibit normal business dealings and communications between the private contracting party and the public contracting agency involving persons other than the public employee. See <https://www.mass.gov/info-details/municipal-employee-disclosure-forms> (item # 25, "Financial interest in a public contract that predates municipal employment disclosure").

For the Seaspray contracts that were created **after** you joined the ZBA and the Planning Board, there are other options to consider. Section 20(b) provides the following exemption. Section 20 shall not apply:

to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family. *G. L. c. 268A, s. 20.*

Two conditions may make this not available: you, as either a ZBA member or Planning Board member may be in positions that allow you to “participate in or have official responsibility for” at least some activities of the contracting agency because of what those boards control—such as the issues that are part of the Appeal. Also, it is not clear that those contracts were “made after public notice,” e.g., the School District advertised that it needed to rent containers and you, like others, had an opportunity to respond to those advertisements.

A different exemption requires that the Select Board has classified ZBA members as “special municipal employees”⁴ and Planning Board members as special municipal employees. The Select Board could have classified either or both as “special municipal employee” positions or not have ever so classified them as “special.” You should check with the Town Clerk because, typically, municipal clerks keep records about what municipal board positions a select board has classified as special municipal employees. If the ZBA and Planning Board positions have not been designated a special, you can request to have special municipal employee status put on a Select Board’s agenda.

⁴“Special municipal employee”, is defined as “a municipal employee who is not a mayor, a member of the board of aldermen, a member of the city council, or a selectman in a town with a population in excess of ten thousand persons **and whose position has been expressly classified by** the city council, or board of aldermen if there is no city council, or **board of selectmen, as that of a special employee under the terms and provisions of this chapter**; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a “special municipal employee” unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been made shall be deemed to be “municipal employees” and shall be subject to all the provisions of this chapter with respect thereto without exception. *G. L. c. 268A, § 1(n).*

A special municipal employee may have a financial interest in a Town contract if the special municipal employee qualifies for either an exemption specified in § 20(c) or § 20(d). Section 20 states, “

This section shall not apply to . . .

(c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this section. *G. L. c. 268A, § 20.*

As you may appreciate, “special municipal employee” status makes both § 20 and § 17 be less restrictive for the special municipal employee. The option for a select board to designate positions as “special” provided those positions also meet the other conditions in *G. L. c. 268A, § 1 (n)* exists because the Legislature recognizes, for example, that it can be difficult for municipalities to find qualified volunteers for those types of part-time, but essential, parts of municipal government. Without the “special municipal employee” option, volunteers might be deterred from volunteering because it would be too difficult for them to serve and still comply with §§ 17 and 20 while they were involved in private activities/enterprises/organizations/businesses that also operate in a town.

Again, I point out ways to deal with the § 20 prohibition because, if you were to terminate/dispose of your financial interest in any of Seaspray's contracts with the District/Town, you no longer would have financial interests in municipal contracts for purposes of § 20, *going forward*. However, if someone wanted to file a complaint with the Ethics Commission's Enforcement Division about, for example, allegations that you may, already, have violated § 20, what you do now or in the future cannot, obviously, change the facts in existence in the past. *See footnote 5 below.*

Conclusion

I hope that this general advice is helpful. Both this email and your request for advice are confidential by statute. *G. L. c. 268B, § 3(g); see also 930 CMR 3.01(8)*. This means that you are free to disclose this advice to anyone you wish, but the Commission may not disclose your request or any other identifying information about you unless you consent, or unless you misrepresent the contents of this email or unless otherwise authorized by law.

Again, this advice cannot, obviously, cover all situations/circumstances. If you have any questions about this advice, please feel free to call me, (617) 371-9536. Also, please do not hesitate to contact the attorney-of-the-day at the Ethics Commission to seek additional guidance whenever you anticipate any potential issue about the Conflict of Interest Law.⁵

Sincerely,

Christopher N. Popov

Christopher N. Popov
Assistant General Counsel
Legal Division
State Ethics Commission
(617-371-9536)

⁵ As you know, this letter is intended to provide only prospective advice. It cannot provide an opinion about past conduct or allegations about past conduct. The Ethics Commission's Enforcement Division addresses allegations about past conduct. See e.g., <https://www.mass.gov/info-details/frequently-asked-questions-about-the-state-ethics-commission#how-do-i-file-a-complaint-about-a-conflict-of-interest-or-financial-disclosure-law-violation?> and <https://www.mass.gov/info-details/frequently-asked-questions-about-the-state-ethics-commission#what-if-i-am-the-subject-of-an-ethics-complaint?>.

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SELECT BOARD

SEASPRAY
CONTAINER COMPANY

2024DEC26 13:50

Customer: Fairhaven Public Schools
Contact Person: Nicole Potter
Address: 128 Washington Street, Fairhaven, MA 02719
Phone Number: 508.979.4110
Email Address: npotter@fairhavenps.net

Account: Fairhaven Public Schools Container Rentals
Account Number: 2021 - 115
Delivery/Pickup Address: 12 Huttleston Avenue, Fairhaven, MA 02719
Delivery Date: November 15, 2021
Rental Duration: As needed

Storage Unit Size: 20'
Storage Unit Description: 20' New/One Trip Storage Container 21 86: MSEU2109530
Monthly Rental Fee: \$99/month
MA Sales Tax: Exempt
One Time Delivery Fee: \$125 (waived)
One Time Pickup Fee: \$125 (waived)
Total due upon delivery: \$99
Monthly charge beginning on 30 day anniversary of due date: \$99

Rental and Transportation Agreement

This Rental and Transportation Agreement (the "Agreement") is made as of the 12th day of November, 2021, by and between Seaspray Container Company (the "Company") and Customer (defined above). Customer agrees to rent from Company the above mentioned container(s) (the "Container") and items (if any) on the terms and conditions stated herein. Customer has received, read, and understands this Agreement, and agrees to comply with all policies and rules contained herein. In consideration of the foregoing and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **TERM:** The term of this Agreement commences on the Delivery Date and continues for 30 days, and automatically renews for 30 days periods until terminated
2. **PAYMENT:** Customer agrees to pay the Company the Rental Fees one-month in advance of the Delivery Date (the "Due Date"), and subsequently, on the one-month anniversary of the Due Date, as applicable. All payments must be made without deduction, prior notice, demand, or a billing statement. Customer is not entitled to a refund of any Rental Fees.
3. **DELIVERY:** Customer authorizes the Company and its agents to enter the Delivery Address as the Company deems necessary to enforce any of its rights pursuant to this Agreement or pursuant to any state or federal law. Company requires and Customer authorizes the Containers to be delivered on street fronting and solid surfaces capable of supporting the weight of each Container and its contents. Customer agrees and as a condition to the delivery the delivery space must be large enough and free from branches, fences, retaining walls, overhead wires, underground plumbing, electrical, sprinkler systems, utilities, or other obstacles. Customer authorizes Company to drive on



Customer: Fairhaven Public Schools
Contact Person: Nicole Potter
Address: 128 Washington Street, Fairhaven, MA 02719
Phone Number: 508.979.4110
Email Address: npotter@fairhavenps.net

Account: Fairhaven Public Schools Container Rentals
Account Number: 2021 - 115
Delivery/Pickup Address: 12 Huttleston Avenue, Fairhaven, MA 02719
Delivery Date: October 27, 2021
Rental Duration: As needed

Storage Unit Size: 20'
Storage Unit Description: 20' New/One Trip Storage Container 21.83; MESU2106422
Monthly Rental Fee: \$99/month
MA Sales Tax: Exempt
One Time Delivery Fee: \$125 (waived)
One Time Pickup Fee: \$125 (waived)
Total due upon delivery: \$99
Monthly charge beginning on 30 day anniversary of delivery date: \$99

Rental and Transportation Agreement

This Rental and Transportation Agreement (the "Agreement") is made as of the 13th day of October, 2021, by and between Seaspray Container Company (the "Company") and Customer (defined above). Customer agrees to rent from Company the above mentioned container(s) (the "Container") and items (if any) on the terms and conditions stated herein. Customer has received, read, and understands this Agreement, and agrees to comply with all policies and rules contained herein. In consideration of the foregoing and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **TERM:** The term of this Agreement commences on the Delivery Date and continues for 30 days, and automatically renews for 30 days periods until terminated.
2. **PAYMENT:** Customer agrees to pay the Company the Rental Fees one-month in advance of the Delivery Date (the "Due Date"), and subsequently, on the one-month anniversary of the Due Date, as applicable. All payments must be made without deduction, prior notice, demand, or a billing statement. Customer is not entitled to a refund of any Rental Fees.
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Chapter 220 Special Municipal Employees

§ 220-1 List of special municipal employees.

The following list of special municipal employees was approved by the Board of Selectmen 1-17-1989. Amendments noted where applicable.

Board of Appeals
Planning Board
School Committee
Inspector of Wires
Sealer of Weights and Measures
Inspector of Petroleum
Tree Warden
Town Moderator
Finance Committee
Board of Health
Milk Inspector
Registrars of Voters
Safety Council
Call Firemen
Call or Spare Policemen
Board of Fire Engineers
Civil Defense
Commissioner of Trust Funds
Plumbing Inspector
Moth Superintendent
Public Weighers
Field Driver and Pound Keeper
Measurer of Wood and Bark
Shellfish Advisory Board
School Dentist
Sanitary Inspector
Natural Resource Officers
Board of Retirement
Fence Viewer
Town Forest Committee
Library Trustees
Council on Aging members
Board of Public Works
Historical Commission
Industrial Development Financing Authority
Southeast Regional Transit Authority Advisory Board
Joint Transportation Planning Group of the Southeast Regional Planning and Economic Development District
Delegates to the Southeast Regional Planning and Economic Development District
Affirmative Action Officer
Civil Service Director
Conservation Commission
Data Processing Advisory Board
Lottery Arts Council
Veterans Burial Agent
New Bedford/Fairhaven Harbor Commission

Personnel Board
Recreation Commission
New Bedford/Fairhaven Harbor Master Planning Committee
Tourism Committee
Fair Housing Coordinator
Affordable Housing Committee
Mattapoisett River Water Supply Protection Advisory Committee
Consultant to the Fairhaven Conservation Commission
[7-27-19896]
Director of Veterans Services
[5-13-1996]
Veterans Agent
[5-13-1996]
Tourism Director
[5-13-1996]
Fairhaven High School Building Committee
[7-11-1994]
Cable Television Committee
[8-5-1996]
Greater New Bedford Regional Vocational Technical High School, School Committee
[6-6-2002]
Conservation Agent
[3-3-2003]
Conservation Commission Secretary
[4-7-2003]
Board of Appeals Secretary
[4-7-2003]
Coalition for Buzzards Bay Attorney
[Added 7-25-2005]
Planning and Economic Development Department Attorney
[Added 1-18-2011]
Greater New Bedford Regional Vocational Technical High School (RVT) Attorney
[Added 4-25-2011]
Town Government Study Committee
[Added 10-11-2013]