



FAIRHAVEN SELECT BOARD

Meeting Minutes

April 14, 2025

FAIRHAVEN TOWN CLERK
RCUD 2025 MAY 18 PM 12:22

Present: Charles Murphy Sr., Andrew B. Saunders, Keith Silvia, Andrew Romano, Natalie A. Mello and Interim Town Administrator George Samia

Mr. Murphy opened the meeting at 6:00p.m.

SELECT BOARD REORGANIZATION AND SEATING

Mr. Samia facilitated discussion and nominations for Chair, Vice Chair and Clerk

Motion: Mr. Silvia motioned to appoint Charles Murphy, Sr. as Chair. Mr. Romano seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Silvia motioned to appoint Andrew Romano as Vice Chair. Mr. Saunders seconded. The motion passed (5-0-0).

Motion: Mr. Saunders motioned to appoint Natalie Mello as Clerk. Mr. Silvia seconded. The motion passed unanimously (5-0-0).

PUBLIC HEARING

Transfer of an Annual All Alcohol Liquor License for JPTS Wine & Spirits dba Southcoast Wine & Spirits to Jason O. Silva

Mr. Murphy opened the public hearing at 6:07pm and read the notice.

Jason Silva addressed the Board regarding his application.

No public comments were received.

Mr. Murphy closed the public hearing at 6:09pm.

Motion: Mr. Saunders motioned to approve the Transfer of an Annual All Alcohol Liquor License for JPTS Wine & Spirits dba Southcoast Wine & Spirits to Jason O. Silva. Ms. Mello seconded. The motion passed unanimously (5-0-0).

PUBLIC HEARING

Transfer of an Annual All Alcohol Liquor License for Fairhaven Wine & Spirits to Jayshreeben S. Patel

Mr. Murphy opened the public hearing at 6:10pm and read the notice.

Jackson Cushman, attorney for the applicant addressed the Board regarding the application.

No public comments were received.

Mr. Murphy closed the public hearing at 6:12pm.

Atty. Cushman asked the Board for the motion to include the managers and transfer of collateral to Rockland Trust. Discussion ensued as to the advertisement and requirements prior to the Board's vote. Atty. Cushman will contact the licensing clerk to clarify and reschedule the public hearing.

APPOINTMENTS AND COMMUNITY ITEMS

Special One-Day Liquor License: Annual Full Bloom Festival, June 29, 2025

Applicants Samantha Dunga and Alexis Costa addressed the Board about this annual event. This is the first time they are applying for a Special One-Day Liquor License.

Motion: Mr. Saunders motioned to approve the Special One-Day Liquor License: Annual Full Bloom Festival, June 29, 2025. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Event Request and Temporary Street Closure Request: Cherry Blossom Festival, Sunday, May 4, 2025

Gerry Rooney addressed the Board about the application. He reviewed a brief history of the event.

Motion: Ms. Mello motioned to approve the event and temporary street closure request for the Cherry Blossom Festival on Sunday, May 4, 2025, pending approval of Police/Fire/Public Works. Mr. Saunders seconded. The motion passed unanimously (5-0-0).

The applicant is responsible to coordinate with Police, Fire and Public Works.

Event Request: Tour de Crème, Sunday, June 1, 2025

The notice was reviewed. No questions from the Board.

Motion: Mr. Saunders motioned to approve the Event Request for the Tour de Crème, Sunday, June 1, 2025. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Event Request: Motorcycle Run for ALS, Sunday, June 22, 2025 (rain date, June 29, 2025)

Applicant Jacqueline Tome addressed the Board about the event and details. The route is from Fairlawn Funeral Home on Washington Street to Bourne, MA and then to return to Fairlawn's parking lot for entertainment from 12:00-4:00PM. Ms. Tome said a letter was sent to abutters and she will provide a valid copy of the insurance policy due to the current policy expiring in May prior to the event.

Motion: Mr. Saunders motioned to approve the Event Request for a Motorcycle Run for ALS, Sunday, June 22, 2025 (rain date, June 29, 2025) pending notification of abutters and working with Police/Fire on the event details. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Use of Town Hall Request: Fairhaven Improvement Association: Summer Concerts

The request was reviewed and brief discussion on fees for town hall being waived and the custodian fee not being waived.

Motion: Mr. Saunders motioned to approve the use of Town Hall by the Fairhaven Improvement Association for the Summer Concerts as written in the application, waiving the town hall fee, the custodian fee does apply. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Public Safety Committee Membership

Fire Chief Todd Correia and Police Chief Dan Dorgan addressed the Board regarding the membership recommendation for the Public Safety Complex Committee, 13 members: Fire Chief, Police Chief, Fire Labor Representative, Police Labor Representative, Select Board Member, 2 Finance Committee Members, 4 Citizens at Large, Building Department Representative and a Planning/Conservation Representative.

Discussion ensued on membership. The Fire and Police Chief would select the labor representatives. At-Large applications can be submitted through the Select Board office. Mr. Silvia and Mr. Saunders volunteered and the Board reduced the number of At-Large from four to three.

Motion: Mr. Romano motioned to appoint Andrew Saunders and Keith Silvia as Select Board representatives to the Public Safety Complex Committee. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Romano motioned to take items H4 and H5 out of order. Mr. Saunders seconded. The motion passed unanimously (5-0-0).

ACTION / DISCUSSION

**Open, Review and Vote Recommendations for Articles Annual Town Meeting Warrant
Close and Sign Annual Town Meeting Warrant**

Chief Correia addressed the Board about discussion with the Finance Committee and the reduction of the amount in Article 20 from four million to two and a half million as well as removal of the reference to the School Administration.

Motion: Mr. Saunders motioned to open the 2025 Annual Town Meeting Warrant. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Discussion continued on the reduced amount, removal of the reference to the School Administration and potential for grant funds.

Motion: Mr. Saunders motioned to reconsider the vote on Article 20A and 20B, reduce the amount from four million dollars to two and a half million dollars and remove the School reference. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Mr. Samia addressed the Board about Article 10, lines 11 and 12 regarding retiree cost-of-living-adjustment and insurance. Mr. Samia spoke with the Retirement Board and there is a potential to take this item up at a fall town meeting. The Board had previously voted to recommend adoption of this article.

Motion: Mr. Saunders motioned to reconsider the vote on Article 10, line 11 and change recommendation to pass over. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Saunders motioned to close the 2025 Annual Town Meeting Warrant. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Saunders motioned to approve and sign the 2025 Annual Town Meeting Warrant. Ms. Mello seconded. The motion passed unanimously (5-0-0).

EXECUTIVE SESSION

Motion: Mr. Romano motioned to enter into executive session Pursuant to G.L. c. 30A, s. 21(a)(3) discuss strategy with respect to litigation where the chair declares that an open session would have a detrimental effect on the Town's litigating position; and G.L. c. 30A, s. 21(a)(7) to comply with, or act under the authority of, the Public Records Law, G.L. c. 4, s. 7(26) (Fairhaven School Committee v. Fairhaven Zoning Board of Appeals, Land Court 25MISC000064) AND Pursuant to G.L. c. 30A, s. 21(a)(3) discuss strategy with respect to anticipated litigation where the chair declares that an open session would have a detrimental effect on the Town's litigating position; and G.L. c. 30A, s. 21(a)(7) to comply with, or act under the authority of, the Public Records Law, G.L. c. 4, s. 7(26) (anticipated litigation by Patrick Carr and Ruy daSilva; written attorney-client privileged communications regarding same) AND to return to Open Session. Ms. Mello seconded. Roll Call Vote: Mr. Saunders, Ms. Mello, Mr. Murphy, Mr. Romano and Mr. Silvia all in favor. The motion passed unanimously (5-0-0).

Mr. Saunders advised that he would recuse himself from Pat Carr's Conflict of Interest item and any potential Executive Session discussion related to Mr. Carr. Mr. Murphy advised he would recuse himself from any potential Executive Session discussion related to Ruy daSilva.

Meeting adjourned to Executive Session at 6:54pm

Meeting returned to Open Session at 8:08pm

MINUTES

Motion: Mr. Saunders motioned to accept the Open Session minutes of March 24, 2025. Mr. Romano seconded. The motion passed (4-0-1) Ms. Mello abstained.

Motion: Mr. Saunders motioned to accept the Executive Session minutes of March 24, 2025. Mr. Romano seconded. The motion passed (4-0-1) Ms. Mello abstained.

TOWN ADMINISTRATOR

Mr. Samia reported:

- Board Resignations were received from Amy Goyer from the Zoning Board of Appeals and Pam Whynot from the Commission on Disability. Mr. Samia thanked them for their contributions and reminded anyone interested in volunteering for a board, committee or commission can complete the volunteer application on the Town's website.
- The Town website is being worked on, the new site was launched and the IT Department has been working on it.
- The Harbormaster submitted a letter regarding the City of New Bedford offering to supply Fairhaven and Dartmouth with mitigation funds to plant one thousand bushels of shellfish per year for the next three years (*Attachment A*). New Bedford is requesting we sell 100 shellfishing permits to New Bedford residents and they would be restricted to the propagation areas only. Discussion ensued regarding the propagation area limit, timing, potential revenue to the Town, having New Bedford pay for the bushels versus reimbursing the Town and is there the potential for grant funds to be pulled back from the Federal Government.

ACTION / DISCUSSION

Conservation Restriction: Camel Street Property - Sconticut Neck

Mr. Saunders provided the Board with context to the concerns on this conservation restriction and understanding the tax impacts to the Town because this would be removed from the tax rolls. Mr. Saunders contacted the President of the Buzzards Bay Coalition, Mark Rasmussen, and received a fact sheet (*Attachment B*). Mr. Saunders recommended tabling this item so the Board can review and consider at the next meeting.

Motion: Mr. Saunders motioned to table item H1 to the April 28, 2025 meeting. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Mr. Saunders recused himself and exited the Banquet Room at 8:22PM.

Review Conflict of Interest Disclosure: Patrick Carr

Mr. Carr addressed the Board and referred to his prior conflict of interest (COI) disclosure that was before the Board on December 30, 2024; the motion to accept the disclosure failed. Mr. Carr said he received further information from state ethics regarding his request and questions on setting a precedent that had been mentioned during the December meeting by members of the Board (*Attachment C*). Mr. Carr read from the correspondence from Mr. Popov at state ethics.

Erin Carr addressed the Board and reviewed details about the storage containers at Fairhaven High School (FHS). She asked the Board to grant the exemption based on the overall amount not being so significant and that Mr. Carr is a resource due to his expertise.

Discussion ensued about the details of the disclosure form, permit questions regarding the FHS shed, accepting the disclosure to be able to participate in the shed matter that is before the Zoning Board of Appeals (ZBA), COI disclosures allowed for others without discussion at meetings prior to the December 30, 2024, the ability for ZBA to use associate members in place of a full member, how the overall amount is viewed as so significant or not and public perception.

Motion: Mr. Silvia motioned to approve the conflict of interest disclosure under MGL c 268A, section 19(B)(1) and 23(B)(3) for Patrick Carr. Mr. Murphy seconded. The motion failed (2-2-1) Mr. Saunders abstained.

Mr. Saunders returned to the Banquet Room at 8:58PM.

Authorize Redemption of Bonds

Mr. Samia reviewed the process of a debt service payoff and the impact to future budgets. This is for Article 10, line 9.

Motion: Mr. Saunders motioned to approve the redemption of bonds as outlined contingent on the approval of a transfer from free cash by the 2025 Annual Town Meeting and that the Town Treasurer, the Town Administrator and other Town officials and representatives be authorized to take any and all actions required in order to affect the redemption of the redeemed bonds. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Authorize Town Clerk to Request Election Workers from the Democratic and Republican Town Committees

The Town Clerk submitted a request to contact the respective Democratic and Republican Town Committees requesting election workers.

Motion: Mr. Saunders motioned to approve and sign the Annual Letter from the Select Board to the Democratic and Republican Town Committees. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Reassignment of Select Board Committee Liaisons

The Board reviewed the list of liaison assignments and discussed interests and changes.

Motion: Mr. Saunders motioned to appoint Andrew Romano liaison to the Belonging Committee, Cable Advisory Committee, Dog Park Study Committee and the Sustainability Committee; Natalie Mello liaison to the Bristol County Advisory Committee, Buzzards Bay Water Quality Working Group, Historical Commission and the Millicent Library Board of Trustees; Keith Silvia liaison to the Commission on Disability, Economic Development Committee, Harbormaster Renewal Plan and the Rogers Reuse Committee; Andrew Saunders liaison to the Livable Streets Committee, Marine Resources Committee, South Coast Bikeway Alliance and the Southeastern Regional Transit Authority (SRTA) Board; Charlie Murphy liaison to the Fair Housing Coordinator, Lagoa Friendship Pact Committee and the Sister City Committee. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Mr. Romano will confirm SRPEDD meeting schedule does not conflict with his schedule.

SRPEDD Commission Member Appointment

Mr. Romano will be Select Board liaison pending confirmation of schedules.

Motion: Mr. Saunders motioned to appoint Andrew Romano liaison Southeast Regional Economic Development District (SRPEDD) pending schedules. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Review and Sign Select Board Meeting Protocols

The Board discussed the draft protocol document and suggested edits. Suggestion made to move public comment up to the beginning of the agenda. The Board discussed the language and public comment will be moved up on the agenda. Ms. Hart will update the draft based on the discussion and provide to the Board.

Motion: Mr. Romano motioned to change language on public comment from “near the end” to “near the beginning” in the protocols. Mr. Saunders seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Romano rescinded his motion to change language on public comment from “near the end” to “near the beginning” in the protocols. Mr. Saunders rescinded his second. The motion passed unanimously (5-0-0).

Motion: Mr. Romano motioned to adopt and adhere to the protocols as outlined and discussed as amended. Mr. Saunders seconded. The motion passed unanimously (5-0-0).

BOARD MEMBER ITEMS / COMMITTEE LIAISON REPORTS

Mr. Saunders reported:

Livable Streets and Marine Resources met at the same time, Livable Streets ended before he could attend. Marine Resources discussed legislation through New Bedford Representative Chris Hendricks to move the harbor line. This affects building structures in the waterway. New Bedford is proposing movement for a terminal and if Fairhaven has any areas in town that should be moved, the Town should try and get in on the New Bedford petition. Anyone with suggestions should send them to the Marine Resources Committee.

Mr. Murphy reported:

Lagoa met and the goal is to reestablish and get more involvement.

Mr. Romano reported:

The Eco Fair was rained out. He formally welcomed Ms. Mello and said he echoes the need to move forward as a Town with goals to hit and hire a Town Administrator; no need for further divide or speculation.

Mr. Silvia reported:

Historical Commission met and the flagpole project at Fort Phoenix is moving forward including lighting. The Protecting Society has access to the fire house building. The Commission on Disability met.

Mr. Murphy advised the Board that the agenda is the whole Board and if you have a topic for the agenda to send it to Ms. Hart.

PUBLIC COMMENT

None received

CORRESPONDENCE

Memorial Day Parade invitation for Monday, May 26, 2025

NEWS AND ANNOUNCEMENTS

The next regularly scheduled Select Board meeting is Monday, April 28, 2025, at 6:00 p.m.

ATTACHMENTS

- A. Correspondence from Harbormaster Timothy Cox
- B. Correspondence from Mark Rasmussen, Buzzards Bay Coalition
- C. Conflict of Interest correspondence: Patrick Carr

Meeting adjourned at 9:29p.m.

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

Approved on May 12, 2025



Town of Fairhaven
Marine Resources Department

40 Center St.
Fairhaven, MA 02719
(508) 979-4023

Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

The City of New Bedford has proposed to supply both Fairhaven and Dartmouth with mitigation funds to plant 1000 bushels of shellfish per year for the next three years. In exchange they would like Fairhaven to sell 100 shellfish permits to New Bedford Residents. These permit holders would be limited to shellfishing in the propagated area only and nowhere else in Fairhaven This will cost New Bedford a total of over \$89,000 and potentially generate up to \$15,000.00 of revenue yearly for Fairhaven for the next three years.

Timothy Cox, Harbormaster
Town of Fairhaven



Benefits of Widemarsh Farm & Coastal Land Protection Project

Wide Marsh Farm, Viveiros Field, Trott Woods - Fairhaven

1. **Farmland and Coastal Land Protection are consistently listed as THE TOP priorities** in Fairhaven Open Space and Master Plans...for decades. These projects are fulfilling specific Goals set by Fairhaven at **NO COST** to the town.

Excerpts from GOALS: Fairhaven Open Space & Recreation Plan (2020-2024)

- *Goal 1: Preserve our farmland and working agricultural landscapes*
 - *Acquire specific critically located parcels of land to prevent development in inappropriate (e.g., coastal) areas in Fairhaven.*
 - *Protect inland and coastal wetlands and wildlife habitat through... restrictions that apply to areas subject to coastal flooding.*
 - *Continue to work with conservation partners to acquire lands that are significant to state recognized Core Habitat, Critical Natural Landscapes, and climate change resilient land.*
2. WideMarsh Project preserves the town's coastal farmland, salt marshes and historic stone walls – the **character of the Neck**.
 3. Opens up new **Walking Trails for use by the General Public**, with no future cost to the town for this public use. BBC will maintain land and trails at its own expense.
 4. **Improves Water Quality:** 2 old septic systems removed, Municipal Sewer Line run to 4 new house sites (2 existing, 2 new): Reduces pollution to Nasketucket Bay AND adds ratepayers to Fairhaven Water and Sewer system.
 5. Project requested **NO funding from the Town of Fairhaven**. BBC raised all funds through Federal and State Grants and private donations.
 6. Project is very **close to Tax Revenue Neutral** to Town of Fairhaven. Adds 2 new houses to existing 2; new construction will assess higher going forward.
 7. Prevents new construction and the cost of protecting people and property in **Flood Prone Areas**; allows for Sea Level Rise Climate Adaptation.
 8. Fairhaven Conservation Commission has approved holding the **Conservation Restriction (CR) which gives the town authority over BBC's ownership** to enforce the terms of the CR.

Widemarsh Farm & Coastal Land Protection Project - 53 acres on Fairhaven's Sconticut Neck
Buzzards Bay Coalition (2022-2025)

	Widemarsh Farm (26 acres)		Viveiros Field (16 acres)		Trott Woods (11 acres)		Totals	
	Before	After	Before	After	Before	After	Before	After
Land Use Change								
Number of Residential Units	2	3	0	1	0	0	2	4
Septic v. Sewer	2 Septic Systems	All on Sewer	none	Sewer to new lot	none	none	2 Septic Systems	All 4 lots on Sewer
Well v. Drinking Water	1 Well, 1 Town	All on Town	none	1 on Town	none	none	1 Well, 2 Town	All 4 Lots Town Water
Key Protections/Uses Acquired								
Farmland Protection	No protection	15 acres in 4 fields	No Protection	10 acres	No protection	none	No protection	25 Acres Prime Farmland preserve
Coastal Resilience Protection	No protection	5.6 acres	No Protection	2.3 acres	No protection	4 acres	No protection	12 acres of CAA protected
Public Access	none	YES, new trail	none	possible future	none	YES, new trail	None	2 new coastal trails
Local Property Tax Implications*								
Town Assessed Value	\$ 1,142,000	\$ 1,078,000	\$ 3,536	\$ 305,000	\$ 348,000	\$ -	\$ 1,493,536	\$ 1,383,000
Annual Property Tax Payment*	\$ 10,643	\$ 10,047	\$ 33	\$ 2,843	\$ 3,243	\$ -	\$ 13,920	\$ 12,890
Project Funding								
Purchase Price from landowners , etc)	\$ 2,000,000		\$ 900,000		\$ 610,000		\$ 3,510,000	
Total Cost of Land Protection	\$ 2,655,000		\$ 65,000		\$ 35,000		\$ 365,000	
Income Sources			\$ 965,000		\$ 645,000		\$ 3,875,000	
Federal Grants	\$ 697,500		\$ 450,000		\$ -		\$ 1,147,500	
State Grants	\$ -		\$ -		\$ 300,000		\$ 300,000	
Town of Fairhaven	\$ -		\$ -		\$ -		\$ -	
Resale of Lots/Houses	\$ 1,250,000						\$ 1,250,000	
BBC Private Fundraising	\$ 317,500		\$ 515,000		\$ 345,000		\$ 1,177,500	
Land Protection Outcome								
	Resale of house lots, Resale of Farm to private buyer, CR held by BBC		Farm remains with Viveiros Family, CR held by BBC		Land owned by BBC, CR held by Fairhaven Conservation Comm			

summary prepared April 10, 2025

* Estimates assume average Buildable Lot Value of \$300,000, and average 2024 Fairhaven house value of \$478,000 (per comps)

* FY2025 Residential Tax Rate: \$9.32/thousand

* Note: Future Assessed Values expected to increase due to construction of 3 new houses, and 1 renovation

Widemarsh Farm & Coastal Land Protection Project





Select Board Agenda - 04/14/2025

3 messages

Patrick J. Carr <pj carr@a1crane.com>
To: Elisabeth Horan <ehoran@fairhaven-ma.gov>

Wed, Apr 9, 2025 at 2:30 PM

Hello Ms. Horan,

I am requesting to be added to the Select Board meeting Agenda for the Select Board meeting on 04/14/2025. I am asking the newly elected officials to consider a 19(B)1 disclosure and a 23(b) disclosure be applied by the appointing body (Select Board) for Seaspray Container Company, Inc. owned by Erin C Carr (WBE) and Patrick J Carr. I will be submitting additional information/documentation acquired from the MA State Ethics Attorney Christopher Popov via email (02/27/2025) pertaining to this request addressing the 19(B)1 disclosure.

All documents will be hand delivered and time stamped by the Town Clerk (yourself) today. I have emailed the acting Chair of the Select Board (Charles Murphy) and requested the same.

Thank you for your consideration.

Best Regards,
Patrick Carr

A1 Crane Company, Inc.
86-88 Middle Street
Fairhaven, MA 02719
O: 508-999-2050 F: 508-996-8251 Email: info@a1crane.com

Elisabeth Horan <ehoran@fairhaven-ma.gov>
To: "Patrick J. Carr" <pj carr@a1crane.com>

Wed, Apr 9, 2025 at 2:44 PM

Good afternoon, Mr. Carr.

I will forward this email (and will deliver the information after it's been timestamped) to the Select Board Office today.

Also, I received the message that you called earlier this afternoon. I tried to return the call several times and each time I received a rapid busy signal. I will try again in a few minutes.

Thanks,

Elisabeth E. Horan
Interim Town Clerk
Town of Fairhaven
508-979-4023 x106

PLEASE SEND ALL MEETING POSTINGS, AGENDAS, AND MINUTES TO CLERK@FAIRHAVEN-MA.GOV

[Quoted text hidden]

Elisabeth Horan <ehoran@fairhaven-ma.gov>
To: Amy Hart <ahart@fairhaven-ma.gov>

Wed, Apr 9, 2025 at 2:44 PM

Elisabeth E. Horan
Interim Town Clerk
Town of Fairhaven
508-979-4023 x106

PLEASE SEND ALL MEETING POSTINGS, AGENDAS, AND MINUTES TO CLERK@FAIRHAVEN-MA.GOV

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RE: Discussion last week [CONFIDENTIAL]

2 messages

Popov, Christopher N (ETH) <Christopher.N.Popov@mass.gov>
To: "pj carr@a1crane.com" <pj carr@a1crane.com>

Tue, Feb 18, 2025 at 12:51 PM

Hi Patrick:

My apologies for the delay in following up with written guidance.

As you know, § 19(b)(1) specifies: "(b) It shall not be a violation of this section (1) 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."

Thus, as we discussed, your/your immediate family member's reasonably foreseeable financial interests in the particular matter(s) involving the ZBA's review of the storage building on the High School campus relate to the two storage containers your business leases to the School District.

As you have seen, an appointing authority's determination about whether "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" is based on the specific facts and circumstances of the municipal employee and the particular matter(s). Except when the same employee later seeks a § 19(b)(1) determination, it is very unusual that a given § 19(b)(1) determination for one municipal employee is similar to another's.

The term "precedent" has meaning in law when, for example, a decision now will have some type of effect on a later decision. Sometimes people refer to "binding precedent," mean the later decision must follow the former decision. I know of nothing in G. L. c. 268A that means an appointing authority's decision to issue or not issue a § 19(b)(1) determination establishes any type of binding precedent. Thus, for example, issuing/not issuing a § 19(b)(1) determination to you would not impose any obligation on the appointing authority to issue/not issue a § 19(b)(1) determination to you or someone else later, about the same or different particular matter(s). Each should be determined on a case-by-case basis.

In your circumstances, your appointing authority would consider your/your immediate family member's financial interests represented by the leasing of the two containers your business has been providing for temporary storage of things that, as I understand the facts, could be moved to the new storage building. Thus, at some point, it seems likely that the School District would no longer need to lease those storage containers from your business, after the storage building's construction is completed and it receives a certificate of occupancy/use.

If your appointing authority were to issue a § 19(b)(1) determination for you, the disclosure that is part of that process would also "cover" the disclosure called for by § 23(b)(3). The relevant facts would be the same for both. Thus, if you received the § 19(b)(1) determination that would allow you to participate in the ZBA's particular matter(s), then you would also be in compliance with § 23(b)(3) about "act[ing] in a manner"

I hope the above helps clarify some things.

Best Regards,

CP

From: Patrick J. Carr <[pj carr@a1crane.com](mailto:pjcarr@a1crane.com)>
Sent: Monday, February 3, 2025 3:20 PM
To: Popov, Christopher N (ETH) <Christopher.N.Popov@mass.gov>
Subject: Discussion last week

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello Chris,

I hope all is well.

If at all possible, I would like you to obtain a written summary of our discussion that we had on the phone in our last conversation. I believe it was on 01/23/2025 at or around 10:15 AM. The context can be brief and to the point involving the Select Board reviewing my 19(B) 1 request and it was subsequently denied .

The reason given to me at the Select Board meeting was "that if approved, it would set a precedent". I believe you had made the determination that every case should be judged upon its merits and would in fact not set a precedent if approved.

I had reapplied to be put on the agenda for further review and also applied for a 23(B) disclosure. Please review and advise at your next earliest convenience. Thank you in advance as always for your input and guidance.

Best Regards,

Patrick Carr

A1 Crane Company, Inc.

[86-88 Middle Street](#)

[Fairhaven, MA 02719](#)

O: [508-999-2050](tel:508-999-2050) F: [508-996-8251](tel:508-996-8251) Email: info@a1crane.com

Patrick J. Carr <[pj carr@a1crane.com](mailto:pjcarr@a1crane.com)>
To: "Popov, Christopher N (ETH)" <Christopher.N.Popov@mass.gov>

Wed, Feb 19, 2025 at 1:00 PM

Hello Chris,

Thank you so much for affording your legal expertise to this matter. I truly appreciate your guidance and knowledge regarding these complex and sometimes broad applications of the ethic laws. I will continue to reach out to you in the future if I have questions or need direction in any other issues that may arise. Again, thank you and much appreciated.

Best Regards,
Patrick Carr

A1 Crane Company, Inc.
86-88 Middle Street
Fairhaven, MA 02719
O: 508-999-2050 F: 508-996-8251 Email: info@a1crane.com

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CONFIDENTIAL



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 Seaspray 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

³You 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 be 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?>.