

TO: JUSTIN MAKUC, CHAIR
MONTEREY SELECT BOARD
FROM: MICKEY JERVAS
DATE: December 13, 2022
RE: SELECT BOARD MEETING OF 12/14/2022
OLD BUSINESS #1 - USE OF ARPA FUNDS

I am strongly opposed to using ARPA funds for items that are normally on the Town Budget at a Town Meeting.

ARPA funds should be, and it was previously agreed that they would be, used for Town projects that fall outside the normal budget. Projects that are for the good of the Town, but for which we would not have the funds within our normal budget.

Support of the Town playground and the Community Center pavilion are both very worthwhile projects and impact often forgotten members of our community. It seems that the Parks Commission and the Community Center get the short end of the stick when it comes to funding.

The highway department will get their fuel paid for. There is no reason to take gifted funds to fill a budget shortfall.

CC: Susan Cooper, Select Board
Scott Jenssen, Select Board
Melissa Noe, Town Administrator

Town Administrator

From: Justin Makuc
Sent: Wednesday, December 14, 2022 12:38 PM
To: Town Administrator
Subject: Fw: Monterey / Building Department

Hi Melissa,

Please print copies of this email chain for tonight's meeting.

Thank you,
Justin

From: Donna Brewer <dbrewer@miyares-harrington.com>
Sent: Wednesday, December 14, 2022 8:51 AM
To: Justin Makuc <justin@montereyma.gov>
Subject: Re: Monterey / Building Department

Hi Justin, the statutes do not support the inspector of wires' position. G.L. c. 166, § 32 states that the town must adopt a bylaw to appoint the inspector of wires. Monterey did so. Per Town Bylaw Article II, Section 13, the Select Board appoints the inspector of wires. Neither 166:32 nor the Bylaw authorize the inspector to appoint an assistant inspector. G.L. c. 166, § 32A is a local option statute. If it is accepted by the Town, then the assistant inspector of wires is appointed by the town "in the manner provided in the preceding section." That manner is appointment by the Select Board, so that is the method for appointing an assistant inspector.

Per G.L. c. 41, § 23A, the Select Board can assign to the Town Administrator any administrative duties that the Select Board has. This statute allows the SB to assign to the TA the authority to appoint an assistant inspector of wires.

While there is no specific statute that discusses delegation of authority to anyone other than the TA, I opine that it is in the SB's inherent authority to delegate its supervisory authority over certain inspectors to the Building Commissioner. The motion will specify the extent of your delegation, but would read something like: "I move that the Select Board assign to the Building Commissioner the daily supervision and management of the inspectors of wires and plumbing/gas, reserving to the Board the authority to appoint, discipline, or terminate such inspectors."

I'm off to a meeting but will be in the office this afternoon if you'd like to discuss any of this.

- Donna

From: Justin Makuc <justin@montereyma.gov>
Date: Wednesday, December 14, 2022 at 7:49 AM
To: Donna Brewer <dbrewer@miyares-harrington.com>
Subject: Re: Monterey / Building Department

Hi Donna,

The Town's inspector of wires insists that he is the only authority to assign an alternate inspector of wires to an inspection when he is not able to complete it due to ethics law, vacation, or other reason. The inspector of wires denies that the Select Board or its designee (Town Administrator or Building Commissioner) could assign

an alternate inspector of wires to an inspection. He points to MGL Part 1, Title XXII, Chapter 166, Sections 32 and 32A.

I am asking you to clarify that these sections do not prohibit the Select Board from assigning an alternate inspector of wires to an inspection for reasons of ethical conflict, vacation, or other; and furthermore to clarify that the Select Board can legally delegate this authority (to assign an alternate to an inspection) to the Town Administrator or Building Commissioner.

What kind of a motion could the Select Board approve to effectively make the Building Commissioner the supervisor over the Inspector of Wires and Inspector of Plumbing/Gas (in the interim while we consider proposing a consolidated department to Town Meeting)?

Thanks,
Justin

From: Donna Brewer <dbrewer@miyares-harrington.com>

Sent: Tuesday, December 6, 2022 2:42 PM

To: Justin Makuc <justin@montereyma.gov>

Subject: Re: Monterey / Building Department

Hi Justin, here are my responses:

1. At this time, before the adoption of 43C:13, the Select Board (or the Town Administrator if delegated to her) assigns the assistant/alternate to do an inspection. That right is not reserved to the primary inspection.
2. If the Town votes to accept 43C:13, we have the flexibility to limit the members of the consolidated department of inspections to just the zoning, building, plumbing/gas, and wiring inspectors. We are not required to include the Conservation Commission agent, the Health agent, or anyone else.

Let me know if there is anything further.

Donna Brewer

dbrewer@miyares-harrington.com

(617) 804-2423 dd

From: Justin Makuc <justin@montereyma.gov>

Date: Tuesday, December 6, 2022 at 12:04 PM

To: Donna Brewer <dbrewer@miyares-harrington.com>

Subject: Re: Monterey / Building Department

Hi Donna,

Thank you for this. I have two questions in response:

1. It is clear to me that the assistant or alternate inspector is appointed, hired, and fired by the SB -- I do not think that we want to change this at this time. My question is: who can assign the assistant/alternate to an inspection due to the primary inspector having a conflict of interest, failing to do the inspection in a timely fashion, having an interpersonal conflict with the contractor, or other similar reason? Can the SB or its designee get involved in the situation and assign the assistant/alternate inspector to that inspection, or is that right reserved to the primary inspector?

Ex. There is a construction project at the Smith's house and it is time for the electrical rough-in inspection. The inspector of wires, who is supposed to do the inspection, is on vacation, and it is clear that he will not be able to

complete the inspection in the time frame required by law. Can the SB, or its designee, assign the assistant/alternate inspector of wires to this electrical rough-in inspection at the Smith's house if the primary inspector of wires fails or refuses to assign the assistant/alternate to this inspection, despite his inability to complete the inspection in the time frame required by law?

2. "Thus, for example, the health agent would remain under the direction and supervision of the Board of Health, except when conducting inspections; in that instance the health agent would report to the director of municipal inspections." I understand that the Health agent would only report to the director of municipal inspections for matters regarding inspections, and for other work he would remain under the supervision of the Board of Health. Is there any way to adopt this law without including the health agent and conservation commission agent, for example? Could the "consolidated department" only include Zoning, Building, Plumbing/gas, and wiring? And exclude the work of the conservation commission, board of health, etc?

Thank you.

Justin

From: Donna Brewer <dbrewer@miyares-harrington.com>

Sent: Friday, December 2, 2022 1:54 PM

To: Justin Makuc <justin@montereyma.gov>

Subject: Re: Monterey / Building Department

Hi Justin, I've attached an example of a bylaw, warrant article, and ballot question. Here's a summary of the reach of the statute that I wrote for another client:

General Laws c. 43C, § 13, grants municipalities the authority to provide for "a consolidated department of municipal inspections which may include the inspections currently being made by the building inspector, wire inspector, plumbing inspector, gas fitting inspector, health agent and others as the ordinance or by-law may specify." To do this, Town Meeting must vote pursuant to Section 14 in the majority, at its annual meeting, to adopt G. L. c. 43C.

A bylaw adopted pursuant to G. L. c. 43C, § 13, must provide for a director of municipal inspections to be appointed by and responsible to the chief executive officer or the chief administrative officer of the Town. The term of office for the director must be a minimum of 3 years but cannot exceed 5 years. Pursuant to G. L. c. 43C, § 13(d), the bylaw may include, but is not limited to, the following:

- Coordination of all inspection functions carried out by any municipal officer or agent;
- Maintenance of all records relating to inspections in a central place through a common index; and
- A single application process which would indicate all inspections which might be necessary, including, but need not be limited to:
 - Any inspections under the zoning and other local bylaw;
 - Building code;
 - Wire code;
 - Plumbing and gas code;
 - State sanitary code;
 - Board of Health rules and regulations;
 - Fire code;

- Conservation Commission;
- Historical Commission; and
- Any other local inspections as may be otherwise authorized.

The bylaw may also provide “that any agency performing an inspection function shall be continued but that for administrative purposes all personnel performing inspection functions for the existing agency shall, when performing inspection services, be subject to the administrative control and direction of the director of municipal inspections, but not otherwise.” Thus, for example, the health agent would remain under the direction and supervision of the Board of Health, except when conducting inspections; in that instance the health agent would report to the director of municipal inspections. The bylaw may also provide for the appointment of other personnel to staff the department, such as administrative staff. Such personnel would be appointed by the director of municipal inspections.

This option is useful for consolidating all inspection functions of the Town under one department, but permitting and other functions of planning, conservation, building, and health would not fall under that umbrella and would remain as independent agencies.

For short term management, yes the SB can delegate to the Building Commissioner the oversight of the wire and gas inspectors but reserve to itself the hiring and firing authority. The SB can also delegate to the Building Commissioner the authority to create guidelines for the inspectors to follow but I recommend that the guidelines be approved by the SB before they are effective. The assistant or alternate inspector is appointed by the SB but the SB may delegate that authority to the Town Administrator.

Let me know if you have any further questions.

Donna Brewer
dbrewer@miyares-harrington.com
 (617) 804-2423 dd

From: Justin Makuc <justin@montereyma.gov>
Date: Friday, December 2, 2022 at 11:44 AM
To: Donna Brewer <dbrewer@miyares-harrington.com>
Subject: Re: Monterey / Building Department

Hi Donna,

The Select Board will likely reserve the right to hire, discipline, or terminate inspectors, and probably maintain the right to appoint inspectors and alternates. But I think that there is some interest in delegating the day-to-day oversight of the inspectors to either the Town Administrator or the Building Commissioner.

In the long term, I think we will consider the adoption of a consolidated department bylaw. Please share examples of these bylaws. Thank you.

In the short term, it seems like the Board has some flexibility to delegate oversight of the other two inspectors to either the Town Administrator or the Building Commissioner. What kind of reporting/oversight could this entail? Assuming the Board reserves the right to discipline and terminate, could the Board delegate to the Building Commissioner the authority to create some guidelines for the inspectors to follow?

Can the Select Board (or its designee) assign an assistant/alternate inspector to an electrical or plumbing/gas inspection? Or does only the respective primary inspector have the authority to assign an assistant/alternate?

Thank you,
Justin

From: Donna Brewer <dbrewer@miyares-harrington.com>
Sent: Thursday, December 1, 2022 12:07 PM
To: Justin Makuc <justin@montereyma.gov>
Subject: Re: Monterey / Building Department

Hi Justin,

As the town bylaws currently provide, the 3 inspectors individually report to the SB. The SB may delegate the reporting/oversight responsibilities to the Town Administrator, preserving the right to hire, discipline, or terminate in the SB. If Town Meeting votes to adopt a bylaw to consolidate the municipal inspectors in one department, the bylaw may provide that the wire and gas inspectors are overseen by the building commissioner but that is not a requirement of the statute. The statute is flexible on how the consolidated department is structured. In the absence of adoption of a consolidated department, though, I believe that the SB has inherent authority to delegate to the Building Commissioner supervision of the wire and gas inspectors without Town Meeting adopting a consolidated department. Alternate inspectors currently must be appointed by the SB. That can change under a consolidated department but is not required to change. The new bylaw can specify who appoints the alternates.

Let me know if you would like examples of a bylaw for a consolidated department of municipal inspections. We have done them for other municipalities.

Donna Brewer
dbrewer@miyares-harrington.com
(617) 804-2423 dd

From: Justin Makuc <justin@montereyma.gov>
Date: Thursday, December 1, 2022 at 6:27 AM
To: Donna Brewer <dbrewer@miyares-harrington.com>
Subject: Monterey / Building Department

Hi Donna,

I have a few questions for you related to the Town's inspectors of building, wiring, and plumbing/gas.

It is my understanding that Monterey has not adopted a consolidated department of municipal inspections pursuant to MGL Part I, Title VII, Chapter 43C, Section 13.

Each of our Inspectors (Building Commissioner, Inspector of Wires, and Inspector of Plumbing/Gas) has at least one assistant/alternate who completes inspections when the Inspector has a conflict of interest or is otherwise unable to complete the inspections.

The Town's Building Commissioner also serves as the Zoning Enforcement Officer and is the only of the three position who is paid an hourly rate rather than a per inspection fee. The Building Commissioner has in some ways become the de

facto "Department Head," although it seems that if we do not have a consolidated department, each inspector technically works as his own department.

Without a consolidated department, is it the case that each of the three inspectors individually reports to the Select Board through the Town Administrator? If Monterey adopts a consolidated department, will the Inspector of Wires and Inspector of Plumbing/Gas report to the Building Commissioner if he is appointed as the director of municipal inspections? If the supervisory authority over the Inspector of Wires and Inspector of Plumbing/Gas currently resides in the Select Board/Town Administrator, can it legally be delegated to the Building Commissioner without Town Meeting adopting a consolidated department?

Who can authorize an alternate inspector for the Building Commissioner, Inspector of Wires, and Inspector of Plumbing/Gas? Would this change if Monterey adopted a consolidated department?

Thank you,
Justin



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

CONTRACT

Contract made this ____ day of _____, 2022 by and between the **TOWN OF MONTEREY** and **BRIAN FAHEY, CHIEF OF POLICE** of the **MONTEREY POLICE DEPARTMENT**.

NOW, THEREFORE, the Select Board, acting as the chief executive officer of the **TOWN OF MONTEREY**, and, Brian Fahey, as the **CHIEF OF POLICE** hereby agree that the following terms and conditions shall govern the salary and fringe benefits payable under this contract to which said **BRIAN FAHEY** shall be entitled to as **CHIEF OF POLICE** of the **MONTEREY POLICE DEPARTMENT**. In addition, this position is also governed by the Job Description for the Police Chief of the Town of Monterey and all Massachusetts General Law governing this position.

LENGTH OF CONTRACT

This Contract shall be for a 6 month term commencing January 1, 2023 through June 30, 2023.
Extension beyond June 30, 2023 will require a new contract.

COMPENSATION

The CHIEF OF POLICE, an FLSA and Massachusetts Wage Act exempt position, shall receive the sum of \$42,544.50 as salary under for the 6 month terms of this Contract, and shall receive at least the same number of sick days, vacation days, holiday pay, uniform, cleaning allowance, and all other benefits as do exempt full-time employees of the TOWN OF MONTEREY. In addition, the provisions of M.G.L. Ch. 147, Sec. 17F (attached hereto), shall apply. The CHIEF shall receive on call pay for coverage from 12:00AM-8:00AM@ the rate of \$100.00/week for 13 weeks (the other 13 weeks covered by the chief's designees, at the same rate).

The CHIEF OF POLICE agrees that because this is his primary employment he will not become employed in any position which would impact in an adverse manner upon this responsibility or which would constitute a conflict of interest or violation of the ethics laws.

DUTIES

The CHIEF shall have all the powers given to a CHIEF OF POLICE under the provisions of M.G.L. Ch. 41, Sec. 97, as may from time to time be amended.

Commented [jm1]: Question for Donna: is the Chief of Police typically an FLSA exempt position?

Commented [DB2R1]: Yes, this is the norm

Commented [jm3]: Question for Gareth/Brian: Will this be changing if the two other full time officers are covering nights? Such that the chief will only cover 1/3 weeks?

Commented [DB4R3]: Justin, just fyi, typically all Chiefs are deemed to be on call 24/7 and that is taken into account in setting his salary. They do not typically get something above the salary for being on call at night.

Commented [DB5]: Justin, you'll want to confirm that the Town accepted this statute by vote of town meeting

His duties shall include but not be limited to the following:

1. The CHIEF shall supervise the daily operation of the Police Department.
2. The CHIEF shall supervise all departmental personnel.
3. The CHIEF shall prepare the Police Department annual budget and submit the proposed annual budget to the Select Board, the Finance Committee, and the Town Administrator.
4. The CHIEF shall give reports to the Town Administrator in writing when requested, or at a minimum quarterly (four times per year).
5. The CHIEF shall be responsible for all departmental expenditures, disbursements and collected funds in accordance with the laws and statutes of the Commonwealth of Massachusetts and the Bylaws of the TOWN OF MONTEREY.
6. The CHIEF shall supervise and be in charge of all equipment and property used by the Police Department, including vehicles belonging to the Police Department of the TOWN OF MONTEREY.
7. The CHIEF shall establish uniform specifications for the Police Department. Such uniform specifications shall specify the items that constitute the uniform, as well as the grade, quality and/or number of units of each uniform item so specified.
8. The CHIEF shall establish weapons and ammunition specifications for the Police Department. The officers of the Department shall carry only those weapons and ammunition as authorized by the CHIEF OF POLICE.
9. The CHIEF shall be in charge of all fulltime, part-time, reserve/intermittent, and special police officers in the TOWN OF MONTEREY. The CHIEF shall meet with them on a regular basis.
10. The CHIEF shall be responsible for encouraging and allowing for the professional growth, development, education and training of all other police officers on the Police Department.
11. The CHIEF shall be in charge of and responsible for the carrying out of all programs sponsored or hosted by the Police Department, including but not limited to training programs for departmental personnel, safety programs for elementary-school children, and "Neighborhood Watch" programs.
12. The CHIEF shall be responsible for and have the power to maintain the discipline of the departmental personnel, the assignment to shifts and duties of all departmental personnel, and shall have all the powers as to discipline conferred upon Chiefs of Police by statute in this Commonwealth.
13. The CHIEF shall be available for hearings before any Board of the Town at which the Police Department is required to appear. The CHIEF shall attend all Annual Town Meetings, and Special Town Meetings when necessary.
14. The CHIEF shall perform the duties of the Animal Control Officer.
15. The CHIEF shall perform the duties of the Harbor master.
14. The CHIEF shall be in charge of the Black Board Connect mass notification system.

HOURS OF WORK

1. The CHIEF agrees to devote that amount of time and energy which is reasonably necessary for the CHIEF to faithfully perform the duties of the CHIEF OF POLICE under this Contract.

2. The CHIEF agrees to work forty hours per week as the on duty patrol officer in the TOWN OF MONTEREY, ~~except when using sick or vacation time.~~

3. ~~Policing is a twenty-four hour, seven day a week operation and because of the serious nature and sensitivity of the work, it is recognized that the duties of the CHIEF OF POLICE must devote a great deal will require that he schedule himself to work those hours necessary to accomplish the responsibilities of the position. These hours will require of time outside the of normal office hours to the business of the TOWN OF MONTEREY, and to that end as a result, the CHIEF OF POLICE shall be allowed may adjust his normal office hours accordingly as he deems appropriate to provide a sufficient amount of time for personal leisure, taking into account the policing needs of the TOWN, to take compensatory time off as he shall deem appropriate during said normal office hours at such time which the CHIEF reasonably determines will least adversely impact the Department operations.~~

INSURANCE

The TOWN OF MONTEREY agrees to furnish at its expense professional liability insurance for the CHIEF OF POLICE with liability limits of \$1 million/\$1 million/\$3 million per year.

INDEMNIFICATION

~~Subject to the terms and provisions of M.G.L. c. 258, § 9 and all other applicable law, the TOWN shall defend, save harmless and indemnify the CHIEF OF POLICE against any tort, professional liability, claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his duties as CHIEF OF POLICE, even if said claim has been made following his termination from employment, provided that the CHIEF OF POLICE acted within the scope of his duties. Subject to the provisions of said statute, the TOWN shall pay the amount of any settlement or judgment rendered thereon. The TOWN may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the CHIEF OF POLICE. The TOWN shall reimburse the CHIEF OF POLICE for any reasonable attorneys' fees and costs incurred by him in connection with such claims or suits involving him in his professional capacity. This section shall survive the termination of this Agreement.~~

PROFESSIONAL DEVELOPMENT

1. The TOWN OF MONTEREY recognizes its obligations to the professional development of the CHIEF OF POLICE and agrees that the CHIEF OF POLICE shall be given adequate opportunities to develop his skills and abilities as a law-enforcement administrator; accordingly, the CHIEF OF POLICE will be allowed to attend the New England Chiefs of Police Conference and will be reimbursed by the TOWN for reasonable expenses incurred while attending or traveling to the conference. The TOWN also agrees to budget and pay for travel and subsistence expenses of the CHIEF OF POLICE for short courses, institutes and seminars that, in his reasonable judgment and as approved by that of the Select Board, are necessary for his professional development.
2. The TOWN agrees to budget and pay for professional dues and subscriptions related to the professional growth, development, education and training of the CHIEF OF POLICE, as approved by the Select Board.

Commented [DB6]: Justin, it is not standard to give a chief compensatory time off. I've changed this to reflect what I've done for other Police Chief contracts.

Commented [jm7]: Question for Donna: Are Police Chiefs entitled to compensatory time? Is that standard?

In cases where the Police Chief is entitled to compensatory time, how does that work?

This states that he will take the comp time when it will "least adversely impact" the Department. Should another officer be called to cover the shift when the Police Chief is taking comp time?

Commented [DB8R7]: This is not standard, Justin. I've input language that I've used for other Police Chief contracts.

Commented [DB9]: I'm not sure what these limits mean. Typically they are written as \$1 million/\$3 million, meaning 1 million per occurrence and 3 million annual aggregate. I don't know what the second \$1 million refers to.

AUTOMOBILE

1. The TOWN shall provide a police vehicle for unrestricted and exclusive use by the CHIEF OF POLICE and all attendant operating and maintenance expenses and insurance. The said This vehicle is to be used by the CHIEF OF POLICE in connection with the performance of his duties as CHIEF OF POLICE. It shall be equipped with all emergency equipment necessary and appropriate for response by the CHIEF OF POLICE to emergency calls or calls for police assistance.
2. The CHIEF OF POLICE may upon mutual agreement of both parties use his own private automobile for his use as CHIEF OF POLICE. The TOWN shall pay all allowable and appropriate expenses for such vehicle use.

DISCIPLINE AND DISCHARGE

During the term of this Agreement, the CHIEF OF POLICE may be disciplined for just cause upon proper notice and hearing. Just cause for the purposes of this Agreement means willful breach or habitual neglect of his duties, or an act of moral turpitude, gross negligence, willful misconduct, willful misfeasance, or material breach of this Agreement. The principle of progressive discipline is generally applicable, but the TOWN reserves the right to terminate the CHIEF OF POLICE's employment without the imposition of prior discipline if circumstances warrant.

The TOWN may terminate the contract with the CHIEF at any time prior to the expiration of the term of the Agreement and only for just cause. The TOWN shall institute removal proceedings in the following manner:

1. Termination will be by notice and hearing as required by law. At least ten (10) days prior to any hearing, as referred to below in subparagraph 2, the CHIEF OF POLICE shall be provided in writing with the charge(s) made against him, and the evidence which supports said charges, in such specificity so that the CHIEF OF POLICE may understand and prepare his defense.
2. After ten (10) days following delivery and receipt of the charges and specifications, as described above in subparagraph 1, on a specific date and time and at a place specified in the written notice, the Select Board will conduct a hearing, and the CHIEF OF POLICE will be given an opportunity to respond to the charges. The hearing will be public or private at the discretion of the CHIEF OF POLICE. The subject matter to be presented at the hearing shall be only those charges as were specifically detailed in the written notice to the CHIEF OF POLICE in accordance with subparagraph 1 above. During the hearing, the CHIEF OF POLICE shall have the right to be represented by a representative of his choosing, to question, confront and cross-examine witnesses, to introduce evidence and to conduct oral arguments. In its decision, the Select Board shall consider only those facts which were presented at the hearing and shall make its findings of fact based upon a preponderance of the evidence presented. The CHIEF OF POLICE shall be provided with a written notice of the findings and decision of the Select Board and such notice shall include the relevant facts and reasons for their findings.

Should the CHIEF OF POLICE resign his position at any time prior to the expiration of the term of this Agreement, he shall notify the Select Board in writing. If the CHIEF OF POLICE is leaving office due to retirement, he shall provide the TOWN with one year (365 days), or a lesser amount of time as determined by the Select Board, to allow the Town to consider the appointment of a replacement. Termination by the CHIEF OF POLICE for any other reason will require a minimum of ninety (90) days' prior notice, or such lesser time as is agreed to by the Select Board.

Commented [DB10]: Justin, I don't recommend that we give him a car and also allow him to use his private car. In all the contracts I've worked on, Chiefs get one or the other.

Commented [DB11]: This section needed to be beefed up. Here's something for your consideration.

It is agreed that the CHIEF OF POLICE can be discharged only for just cause in accordance with Massachusetts law, upon proper notice and only after a hearing at which the CHIEF OF POLICE shall have the right to be represented by his counsel. The CHIEF OF POLICE shall have the option of choosing whether or not any such hearing shall be closed to the public or be held as an open or public hearing.

Commented [jm12]: Question for Donna: Is it helpful to define just cause here or better to rely on its definition in State law?

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Commented [jm13]: Question for Donna: is this the proper procedure for discharge of a Police Chief?

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MISCELLANEOUS VACATION

1. Upon retirement of the CHIEF OF POLICE, in addition to all other benefits, the CHIEF OF POLICE shall be entitled to be paid for unused prorated vacation time in accordance with the established policy for Town employees.
2. Prior to taking any vacation leave by the CHIEF OF POLICE, the CHIEF OF POLICE shall advise the Town Administrator of the name of the Officer-in-Charge of the Police Department for the period of the vacation leave.

PAID DETAILS

The Chief shall be allowed to work paid details under the following conditions:

1. The number of detail hours shall not exceed 240 hours for the period of this contract.
2. Details may be worked during normal time-off hours or during vacation time.
3. Departmental procedure for assigning details shall be followed.

MODIFICATIONS MISCELLANEOUS

1. The text in this Agreement constitutes the entire agreement between the parties. There are no oral or external promises, representations, or understandings between the parties regarding employment of the CHIEF OF POLICE by the TOWN.
2. No change or modification of this Agreement shall be valid unless it shall be in writing and signed by both of the parties.
3. Notices pursuant to this Agreement shall be given either by USPS first-class mail, certified mail, or by email, addressed as follows:

TOWN: Chairman of the Select Board
435 Main Rd.
P.O. Box 308
Monterey, MA 01245

CHIEF OF POLICE: Brian Fahey
[address]

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SIGNED at the Town of Monterey, Berkshire County, Massachusetts, on the day and year first above written.

MONTEREY CHIEF OF POLICE:

MONTEREY SELECT BOARD:

Brian Fahey

Justin Makuc, Chair

Susan Cooper

Scott Jenssen

Part I ADMINISTRATION OF THE GOVERNMENT

Title XX PUBLIC SAFETY AND GOOD ORDER

Chapter 147 STATE AND OTHER POLICE, AND CERTAIN POWERS AND
DUTIES OF THE OFFICE OF PUBLIC SAFETY AND
INSPECTIONS OF THE DIVISION OF PROFESSIONAL
LICENSURE

Section 17F POLICE CHIEFS; WORKING ON HOLIDAYS; ADDITIONAL PAY

Section 17F. If the superintendent of police in the city of Lowell, the city marshal in the cities of Newburyport and Salem, or the chief of police in any other city or town, is on duty at any time on January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be granted an additional day's pay.



Town of Monterey Memorandum

TO: Lake Garfield Working Group

FROM: Monterey Select Board

DATE: 12/14/22

SUBJ: FY24 Budgeting

Dear Lake Garfield Working Group:

Thank you for volunteering to help the Select Board as an advisory group to research and promote the health of Lake Garfield.

At the Annual Town Meeting of May 2022, the Town voted to appropriate \$50,000 ~~from~~ to pay for the “non-chemical control of the invasive, aquatic weed Eurasian Watermilfoil and the hiring of a lake scientist to help determine the abundance and distribution of Eurasian Watermilfoil in Lake Garfield.” As the Town begins its annual budget process for Fiscal Year '24, the Select Board requests an advisory opinion from the Lake Garfield Working Group on this item.

- Please explain how the allocated \$50,000 has been spent this year. What has it paid for since July 1, 2022? Are there plans to spend additional funds this winter and spring before June 30, 2023?
- What is the current status of the milfoil in the Lake? Please direct us to any relevant reports that have been prepared by contracted firms and lake scientists.
- What sum of money does the Lake Garfield Working Group recommend be appropriated for milfoil control and the related lake scientist for the Fiscal Year '24 budget?
- Is there any other action that the Lake Garfield Working Group would like to recommend to the Select Board? Is there anything else that you want the Select Board to know?

We would greatly appreciate a report by February 1st. Please do not hesitate to reach out with any questions. Thank you for your assistance.

Sincerely,

Justin Makuc Susan Cooper Scott Jenssen
Monterey Select Board

Capital Planning Policy and Procedures

PURPOSE:

To formalize standards and guidance for the development of the town's Capital Planning Policy (CPP) for the public's review of the proposed capital projects and their support of the ~~CPP~~ Capital Plan, and for the equitable formulation of the annual capital budget consistent with sound practices and legal requirements.

DIVISION OF RESPONSIBILITY:

~~The Town Administrator is responsible for submittal of a~~ Capital Planning Policy (CPP) ~~to~~ will be agreed upon by the Select Board and the Finance Committee.

~~Department heads shall prepare their requests for capital items and capital projects and submit them to with the Town Administrator during the budget process as follows:~~

The CPP will designate responsibilities and processes for preparing the Capital Plan and presenting it to the Public. The Capital Plan must include all anticipated Capital Expenses in the foreseeable future and financing options (see attached request forms). The CPP shall include: 1) A clear and concise summary of its contents, 2) A list of all capital improvements proposed to be undertaken during the ensuing years and 3) Cost estimates, methods of financing and recommended time schedules for the improvement.

POLICY:

Definition of Capital

~~Capital items are defined as costing \$20,000 or more for a single item or \$100,000 for a capital project consisting of multiple line items costing less than \$20,000 each. The Town's policy is that the capital item should have a useful life of five years or longer.~~

~~The Town Administrator shall submit a CPP and the Finance Committee will work to craft a Capital Plan in consultation with the Select Board and to the Finance Committee not which creates a formal application and evaluation process to be considered in the context of overall planning. Department Heads will submit their Capital Requests concurrently with their Operating Budget Requests at scheduled meetings no later than January 15th.~~

The CPP shall include:

- A clear and concise summary of its contents;
- A list of all capital improvements proposed to be undertaken during the ensuing years and
- Cost estimates, methods of financing and recommended time schedules for the improvement.

~~This information is to~~ Capital Plan will be revisited annually revised by the ~~as part of the Budget Process which includes the Finance Committee, Select Board and Town Administrator. The Town's policy is that capital projects shall~~ Capital Projects will be undertaken in order to satisfy documented needs or demands of the Town. The ~~CPP shall~~ Capital Plan will be a realistic multi-year plan of capital spending, ~~based on considering~~ estimated revenues and other financial ~~sources~~ resources, which may reasonably be ~~antiCPPated~~ anticipated over the five-year term of the plan. -All ~~capital~~ Capital project proposals shall be evaluated in terms of their necessity and estimated impact upon the annual

operating budget of the Town. In the event the Town is awarded discretionary funds for disbursement the same standard will apply.

Capital improvement projects shall meet at least one or more of the following criteria:

- Ensure compliance with state or federal law or an administrative regulation or decree
- Enhance protection of public health or safety
- Enhance the cultural life of the town or build on its infrastructure
- Reduce and/or stabilize operating budget costs and/or
- Prolong the functional life of a capital asset of the Town by more than ten (10) years.

Definition of Capital

Capital items should be defined as costing \$20,000 or more for a single item or five times this threshold (\$100,000) for a capital project consisting of multiple line items costing less than \$20,000 each. The capital item should have a useful life of three years or longer.

PROCEDURES:

The Town Administrator's office will distribute this policy and budget worksheets to town departments in order and gather information to identify and inventory the multi-year capital needs of the Town. Town Departments shall include the following information with their capital requests:

- Estimated cost of the project with supporting documentation
- Identify the problem and evaluate alternative solutions
- Estimated cost of the project with supporting documentation
- Estimated costs delineated by category: architectural, land acquisition, demolition, site improvements, and construction
- Effects on the operating budget (increases or evidence of savings in maintenance and repair)
- Description and explanation of projects needs and benefits for the community as a whole, when applicable
- Estimated useful life of project/capital item
- Estimated implementation schedule and completion date
- A plan detailing projects awarded during the past three years and those planned for the next five years.

A sample *Capital Improvement Worksheet* is attached.

The department head shall also complete and submit a *Capital Projects Rating Sheet*. This rating sheet allows scoring and rankings by:

- Priority classification
- Project's expected useful life
- Project's effect on operating and maintenance costs
- Availability of state/federal grants or private funding

The *Capital Projects Rating Sheet* and instructions are attached.

- Department heads shall prepare and complete the capital improvement information and worksheets for their function/department and submit it to the Town Administrator for review at their scheduled budget meeting(s).

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- The Town Administrator shall prepare a summary of capital improvement needs including the departmental requests for submittal to the CPC no later than January 15th.

Rating System:

The Town Administrator, Select Board and Finance Committee will rate-evaluate requests using the following guidelines:

Monterey's Capital Policy includes a Rating System of 10 criteria for The Town Administrator, Select Board and Finance Committee to come to a consensus on projects. The finance committee suggests using 3 criteria to rank, choose and fund capital priorities. This overlays the 3 finance committee criteria with the 10 Criteria set out in the Capital Policy.

Fiscally Prudent

Factor 1 – Public Safety and Health – Consideration of the impact of a request and its impact on existing conditions of public safety and health. For example, the reliability of the police cruisers and fire department equipment could have an effect on the Town's ability to provide for the public safety and health.

Factor 2 – Legal Requirements – Consideration of requests based on mandates of local, state or federal regulations or laws. An example would be shoring for the Department of Public Works, which is required during certain excavation and-trenching operations.

Factor 3 – Budgetary Constraints – Consideration given to the effect of various requests on the capital budget in total.

Administratively Efficient

Factor 4 – Infrastructure Needs - Consideration of the impact of a request in relation to infrastructure problems and needs of the community. For example, does the current equipment the Town owns meet the needs of the community in relation to the infrastructure needs (roads/curbs/parks/lighting).

Factor 5 – Efficiency of Services – Consideration given to requests that increase the efficiency of services provided by the Town to the public. A specific example may be the purchase of a new computer system or software that would provide the same level of service that currently takes many hours to perform.

Factor 6 – Personnel Impact – Consideration of requests that are necessary based upon increased personnel or increased use by personnel.

Factor 7 – Administrative Needs – Consideration of requests that are necessary due to the administrative needs of various departments. Common examples would be copiers, fax machines, computer equipment, office furniture, etc. that arise due to other factors (i.e. new employees, volume of material that needs to be maintained, etc.).

Community Impact

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Factor 3 — Quantity of Use — Consideration is given to the number of people that will utilize the facilities or equipment and/or how often the equipment will be used. For example, a high-cost item that is used for a specialty purpose on an infrequent basis, should be considered a low priority while an item that has broad uses and will be used by whose use will serve many people should be given a higher priority.

Factor 4 — Efficiency of Services — Consideration given to requests that increase the efficiency of services provided by the Town to the public. A specific example may be the purchase of a new computer system or software that would provide the same level of service that currently takes many hours to perform.

Factor 5 — Legal Requirements — Consideration of requests based on mandates of local, state or federal regulations or laws. An example would be shoring for the Department of Public Works, which is required during certain excavation and trenching operations.

Factor 9 —

Factor 6 — Public Support — Consideration of requests in relation to public support of a specific project or program, specifically, you should consider how the public views or will view the purchase of specific capital items.

Factor 10 —

Factor 7 — Personnel Impact — Consideration of requests that are necessary based upon increased personnel or increased use by personnel.

Factor 8 — Service Impact — Consideration of requests that are necessary due to increased, altered or new services the Town is offering or wishes to offer.

Factor 9 — Budgetary Constraints — Consideration given to the effect of various requests on the capital budget in total.

Factor 10 — Administrative Needs — Consideration of requests that are necessary due to the administrative needs of various departments. Common examples would be copiers, fax machines, computer equipment, office furniture, etc. that arise due to other factors (i.e. new employees, volume of material that needs to be maintained, etc.).

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CAPITAL IMPROVEMENT WORKSHEET

1. Requestor:

2. Contact:

3. Project Manager:

4. Scope of Work: Detailed description of Request: INCLUDE DETAILED PLAN AND COSTS

5. What other DEPTS/ Boards are/will be involved in process.

6. Timeline: Start Date, Key Milestones and Anticipated Completion

7. What impact does this project of operational budget?

8. Have you spoken with the Chief Procurement Officer about your request?

Vehicle/Heavy Equipment Replacement Request

1. Is this a new capital expense or replacing an existing piece of machinery?
2. Information about vehicle or piece of equipment you are asking to replace.
 - a. Year manufacturer.
 - b. Year went into service for Monterey.
 - c. Number of hours and/or miles on vehicle/equipment.
 - d. Maintenance cost for the vehicle/equipment. Looking to understand the maintenance costs of the vehicle/equipment over the last 3 years of operation. Three-year maintenance summary expenditures.
3. Will maintenance costs be reduced if you replace the vehicle or piece of equipment? If so, projected maintenance costs savings for the 1st year?
4. Information about the NEW vehicle or piece of equipment you are asking requesting to add to your inventory (if applicable).
 - a. Year manufacturer.
 - b. Year ~~went~~will go into service for Monterey.
 - c. Number of hours or miles on vehicle/equipment.
 - d. Maintenance cost for the vehicle/equipment. Looking to understand the maintenance costs of the vehicle/equipment over the last 3 years of operation. Three-year maintenance summary expenditures.
5. Operational costs
 - a. Are there any other operational savings?
 - b. Are there any additional operational costs?
 - c. Is the old vehicle or piece of equipment going to be traded in? Estimate trade in value?
6. Tell us why you are recommending this purchase?

Capital Plan Policy and Procedures

POLICY:

The Select Board and Finance Committee, with the help of the Town Administrator, shall keep a Capital Plan which projects significant purchases that the Town is expected to make in the next twenty years.

All items owned by the Town, worth more than \$10,000 replacement value, and expected to be replaced within the next twenty years, shall be reflected in the Capital Plan. Items include vehicles, equipment, machinery, replaceable aspects of buildings (roofs, boilers, etc.), etc.

The Capital Plan shall guide the Town in its management of the general stabilization fund, loans, and other financing options. Capital purchases and their related funding sources should be coordinated to fulfill the needs of the Town while maintaining a steady and limited impact on required tax revenue.

PROCEDURES:

During the annual budget process, Departments Heads and the Town Administrator shall propose additions and revisions to the Capital Plan. Proposals to revise the Capital Plan shall be submitted as either a *Capital Improvement Worksheet* or a *Capital Projects Rating Sheet*. These proposed additions and revisions to the Capital Plan shall be considered by the Select Board and Finance Committee.

In building and revising the Capital Plan, Department Heads, the Town Administrator, the Select Board, and the Finance Committee shall consider factors such as:

Need

- Description and explanation of projects needs and benefits
- Priority classification (categories detailed below)

Up-front costs

- Estimated costs of the project with supporting documentation
- Estimated costs delineated by category: architectural, land acquisition, demolition, site improvements, and construction

Long term effect

- Effects on the operating budget (increases or evidence of savings in maintenance and repair)
- The capital's effect on operating and maintenance costs

Timeline

- Estimated useful life of project/capital item
- Estimated implementation schedule and completion date

Alternative solutions

- Identify the problem and evaluate alternative solutions

Alternative funding sources

- Availability of state/federal grants or private funding

Priority Classification:

Public Safety and Health – Consideration of the impact of a request and its impact on existing conditions of public safety and health. For example, the reliability of the police cruisers and fire department equipment could have an effect on the Town's ability to provide for the public safety and

health.

Infrastructure Needs - Consideration of the impact of a request in relation to infrastructure problems and needs of the community. For example, does the current equipment the Town owns meet the needs of the community in relation to the infrastructure needs (roads/curbs/parks/lighting).

Quantity of Use – Consideration is given to the number of people that will utilize the facilities or equipment and/or how often the equipment will be used. For example, a high cost item that is used for a specialty purpose on an infrequent basis, should be considered a low priority while an item that has broad uses and will be used by many people should be given a higher priority.

Efficiency of Services – Consideration given to requests that increase the efficiency of services provided by the Town to the public. A specific example may be the purchase of a new computer system or software that would provide the same level of service that currently takes many hours to perform.

Legal Requirements – Consideration of requests based on mandates of local, state or federal regulations or laws. An example would be shoring for the Department of Public Works, which is required during certain excavation and trenching operations.

Personnel Impact – Consideration of requests that are necessary based upon increased personnel or increased use by personnel.

Service Impact – Consideration of requests that are necessary due to increased, altered or new services the Town is offering.

Administrative Needs – Consideration of requests that are necessary due to the administrative needs of various departments. Common examples would be copiers, fax machines, computer equipment, office furniture, etc. that arise due to other factors (i.e. new employees, volume of material that needs to be maintained, etc.).