

I have been on the Monterey Select Board for two and a half years, and I have served as the Chair for a year and a half. There has been a full time Town Administrator the whole time. Of the total of about three years that Monterey has employed a Town Administrator, I have been present on the Board to witness two and a half of those years. I believe that, at this time, it is in the Town's best interest to develop and recruit for an updated and re-envisioned Town Administrator position.

Throughout the past two and a half years I have had first-hand experience with the Town Administrator position as it was designed and recruited by the 2020-2021 Select Board. It is clear to me that the Town Administrator position needs to be revisited to better serve the Town. I believe that going forward it is crucial to have a Town Administrator who exhibits excellent leadership, impartial management, meticulous attention to detail, great judgment and accountability, skillful de-escalation of interpersonal conflict, the ability to tactfully deal with disgruntled employees and residents, and the tendency to unite Town employees and residents over common goals. These skills and abilities were not emphasized in the job description and recruitment process that was developed by the Select Board in 2020-2021.

Due to the constraints of the Open Meeting Law and the essential nature of a Select Board, combined with the always changing expectations of municipal government, I think it is vital that the Select Board delegate a significant amount of its traditional authority and work to the Town's Administrator. This transfer of power is essential for the smooth and efficient functioning of the Town. This is not what has been achieved during the previous and current Town Administrator efforts. I think it is important to the Town's future that the Select Board place great trust and power into a Town Administrator. I think the best way to begin that process is to recruit for a candidate who will best serve the Town in this re-envisioned role.

I think that if and when the Select Board does delegate substantial authority over day-to-day functions to a Town Administrator, the benefit to the Town will be clear to its employees and residents alike.

We are here this morning to discuss and allow public comment on an issue that concerns us all – the recruitment and interview of our next Town Administrator. The current Town Administrator's employment agreement expires in February 2024. In August, the Select Board unanimously voted not to renew that agreement. Last week, the Select Board unanimously voted to post this position and to recruit applicants for interview and evaluation.

I am aware that many residents feel strongly with various opinions about the Town Administrator position. We will take all opinions voiced to us into consideration. But neither opinions for nor opinions against the current Town Administrator will control the Select Board's determinations or decision. The Select Board will use its best judgment in order to make a decision for the whole Town.

The Select Board intends to evaluate and interview all eligible applicants, including the current Town Administrator, who we assume will be open to filling this position, based on their individual merits and their strengths and weaknesses. The Select Board will then exercise its authority to decide who will be offered the position of Town Administrator. After a recruitment process, it may be the case that the Select Board determines the current Town Administrator is the most well equipped to fit the new needs of the Town. A thorough recruitment and interview process will help the Town select the Town Administrator who is best fit to serve the always evolving needs of the Town.

If anyone has any comment on the recruitment and interview process that they wish the Board to consider, I welcome you to offer that comment. Please keep your comment confined to that issue because that is issue for discussion today.

12/3/2023

Select Board

Town of Monterey

435 Main Road

Monterey, MA 01245

We are writing in a show of support of Melissa Noe and her position of Town Administrator. The select board decision to re-advertise her position causes great concern for our own future. For the past two years Melissa has been a part of rebuilding our team at the highway department. She has been helpful with learning all of the ins and outs of benefits, payroll, and procedures. We have found her to be our go to person at town hall and have many thoughts about our own future as employees and the town's commitment to it's employees.

Respectfully,



**Financial Reserve  
Policies and Procedures - DRAFT**

**Approved by:  
Select Board &  
Finance Committee  
Effective: 9/4/19**

**PURPOSE:**

To formalize policies for the level of reserves and appropriate uses of the reserves in order to reduce risk in managing the town's short and long-term needs, to improve financial planning, and to help preserve the town's financial position.

**AUTHORITY:**

MGL Chapter 40 §5B

**APPLICABILITY:**

This policy applies to the short-and long-range budget decision-making duties of the Select Board, Town Administrator, and Finance Committee. It also applies to the related job duties of the Town Accountant and Town Treasurer. It pertains to free cash and the general stabilization fund.

**POLICY:**

The Town is committed to building and maintaining its reserves to have budgetary flexibility for unexpected events and to provide a source of available funds for future capital expenditures.

**Free Cash**

The Division of Local Services (DLS) defines free cash as "the remaining, unrestricted funds from operations of the previous fiscal year, including unexpended free cash from the previous year." DLS must certify free cash before the Town can appropriate it.

The Town will strive to realize year-to-year free cash certifications less than seven percent of the annual operating budget (approximately \$350,000). To achieve this, the Select Board, Town Administrator, and Finance Committee will propose budgets with conservative revenue projections, and department heads will carefully manage their appropriations. If the Town generates free cash consistently higher than seven percent of the annual operating budget (approximately \$350,000), the Select Board, Town Administrator, and Finance Committee will closely examine the situation to determine the cause, and make adjustments accordingly. If there is a specific and obvious explanation why free cash is significantly over the targeted amount on a one-time rather than recurring basis (sale of a valuable property, building, or vehicle, or other reason), that specific overage shall not be considered in evaluating the target.

As much as practicable, the Town will limit its use of free cash to building reserves, funding nonrecurring costs (i.e., one-time expenditures, such as capital projects, unforeseen and extraordinary deficits, and emergencies), and offsetting the Town's unfunded liabilities. The Town will avoid applying free cash to fund the operating budget. The Town will similarly avoid using free cash to reduce the tax rate on the annual tax rate recapitulation sheet, since this is essentially using it to fund recurring costs.

During the annual budget process, the Town should aim to leave free cash equaling one to two percent of the annual operating budget (approximately \$50,000 to \$100,000) in order to maintain a minimum level of funds in free cash for the time period between Town Meeting and the end of the fiscal year, and

to contribute toward the next year's free cash certification, without leaving too much unused money regularly in free cash.

### **General Stabilization Fund**

A stabilization fund is a reserve account allowed by state law to set aside monies to be available for future spending purposes, including emergencies or capital expenditures, although it may be appropriated for any lawful purpose. The Town has established one general stabilization fund.

The Town will endeavor to achieve and maintain a minimum balance of twelve percent of the annual operating budget (approximately \$600,000) in its general stabilization fund. If the fund falls below the target minimum balance, the Town will annually appropriate to it an amount of at least two percent of the annual operating budget (approximately \$100,000), sourced either directly from the levy or by transfers from excess free cash, or other sources, in order to build the fund gradually to meet the target minimum balance.

The Town will endeavor to maintain a maximum balance of twenty percent of the annual operating budget (approximately \$1,000,000) in its general stabilization fund. If the fund is below the target maximum balance, the Town should consider appropriating to it a discretionary amount during the annual budget process, sourced either directly from the levy or by transfers from excess free cash, or other sources, in order to build the fund gradually, but not to exceed the target maximum balance.

Withdrawals from the general stabilization fund should be used to fund one-time capital expenditures, smooth out year-over-year budget differences, mitigate emergencies, or in response to other unanticipated events that cannot be supported by current general fund appropriations. When possible, withdrawals of funds should be limited to the amount available above the minimum target – twelve percent of the annual operating budget (approximately \$600,000). If any necessary withdrawal drives the balance below this minimum, the withdrawal should be limited to one-third of the fund's balance, and the Select Board, Town Administrator, and Finance Committee will develop a detailed plan to replenish the fund to the minimum level within the next two fiscal years.

### **PROCEDURES:**

- Within 75 days of the close of the Fiscal Year, the Accountant shall report the balance in the General Stabilization Fund balance to the Treasurer, Town Administrator, and members of the Select Board and Finance Committee. Prior to and after any Annual or Special Town Meeting at which the General Stabilization Fund is impacted, the Town Administrator shall report the balance of the Fund to the Select Board and Finance Committee.
- Immediately after the certification of Free Cash, and prior to and after any Annual or Special Town Meeting at which Free Cash is used, the Town Administrator shall report the balance of Free Cash to the Select Board and Finance Committee.
- Any votes to expend from the Stabilization Fund shall require a two-thirds vote of the Town Meeting, consistent with the requirements of state law.

## Response to Composite Evaluation

11/30/23

**Page 2 Section 3, 1<sup>st</sup> paragraph:** Please see attached email dated Dec 12<sup>th</sup> that Frank referred to at the 11/28/23 meeting as the basis for his comments about “erroneous information” to explain the fuel overage. Nowhere in this email did I say that the reason for the spike in fuel costs was due to consumption, I did explain that there were concerns about the pump not having controls to monitor usage by departments and suggested a fuel management system that the Director of Operations was recommending. In addition, here are just 2 examples of when the Boards decided against our recommendations to raise the monies in the fuel account:

- The 5/20/20 SB minutes show that despite a request being made to increase the fuel budget by myself and the Director of Operations, the SB and FC level funded it.
- The 2/8/22 SB minutes show that the Board acknowledges that fuel prices have increased dramatically. On 3/1/22 all agreed to raise it to \$30k, less than what the TA and Director of Ops recommended

I would respectfully request that this be removed from the composite evaluation.

**Page 2 Section 3, 1<sup>st</sup> paragraph:** With regard to the comment that I should’ve caught the error in a proposed bylaw for the May ATM warrant. The last version of the warrant was presented to the Board with edits from the Chair of the Board received from counsel on 4/12/23 at 5:39pm. The Board signed that version of the warrant that night. I ask, how was I supposed to catch the errors when I had 21 minutes to do so? (copy of the Chair’s email with the updated warrant attached). I would respectfully request that this be removed from the composite evaluation. I would also suggest that a standard operating procedure be put in place that allows for more time for the final warrant to be reviewed for accuracy by Town Counsel (at least one week prior to signing) as was always done in the past.

**Page 2 Section 3, 2<sup>nd</sup> paragraph:** Please see attached emails from counsel that did allow for the HR Director, Police Chief and myself to terminate an employee with regard to this specific situation. The advice that later followed advising that we should not follow that procedure (but still acknowledged that we could) came at 7:08pm the night before the scheduled termination at 8am the following morning. I would respectfully request that this be removed from the composite evaluation or at the very least amended to acknowledge that there was no “overstepping of authority” and that advice from counsel was being followed.

**Section 8, 1<sup>st</sup> paragraph at the top of page 5:** I respectfully request that the statement that the reporting forms “require what appear to be unnecessarily detailed data” be removed or at a minimum amended to acknowledge that this was only an opinion by a board member and the Town Administrator followed up with the department heads that fill out the forms in question to ask if they felt they were burdensome or time consuming and both employees stated no they were not and that the forms only took them 5 – 10 minutes at most to complete.

**Page 5 Section 10, last paragraph:** As previously stated the Town Administrator is not involved in this process unless and until the Police Chief and/or Fire Chief has been made aware of a closure at which time notice is sent out. Any future situations similar to this where we are not provided with advance notice that a road must be closed, the Police Department will activate the reverse 911 system to alert residents (which I do not have access to) regardless of the timing.

## Town Administrator

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**From:** Town Administrator  
**Sent:** Thursday, November 30, 2023 8:20 AM  
**To:** frank.montereyma.gov  
**Subject:** FW: Fuel

Frank,

Is this the Dec 12<sup>th</sup> email you referred to at Tuesday's meeting?

M

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**From:** Town Administrator  
**Sent:** Monday, December 12, 2022 1:39 PM  
**To:** frank.montereyma.gov <frank@montereyma.gov>; Justin Makuc <justin@montereyma.gov>; Susan Cooper <susan@montereyma.gov>; Scott Jenssen <scott@montereyma.gov>; michele.montereyma.gov <michele@montereyma.gov>; Ilene Marcus <ilene@montereyma.gov>  
**Subject:** RE: Fuel

Frank,

Did you end up getting the 3<sup>rd</sup> vendor to provide us a report or is the information still skewed because we are missing information from one vendor we used?

Fuel budget is \$30k for FY23, plain and simple 😊 and that is gas and diesel for any highway, police or fire vehicles. I also want to note (and I am not accusing anyone) but the pumps are currently not secure and anyone could help themselves (and may have been doing so). Right now Jim has the pump turned off inside the building and the building locked when they are closed but this system of shutting the pump off from the inside only started recently. One thing that I would highly recommend (and Jim too) would be to install a fuel management system that would only allow users with a card or fob to access fuel, it would also track usage by vehicle for us, these systems or at least the one Jim is looking at runs around \$17k I think. Cameras on the highway garage and the transfer station are also things we should be thinking about to manage costs (in case anyone is dumping after hours without a sticker, accessing fuel or materials at the highway, etc), it is a shame we have to think like that but I think that is the direction the world is heading in 😞.

Melissa

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**From:** frank.montereyma.gov  
**Sent:** Monday, December 12, 2022 1:24 PM  
**To:** Justin Makuc <justin@montereyma.gov>; Susan Cooper <susan@montereyma.gov>; Scott Jenssen <scott@montereyma.gov>; michele.montereyma.gov <michele@montereyma.gov>; Ilene Marcus <ilene@montereyma.gov>; Town Administrator <admin@montereyma.gov>  
**Subject:** Fuel

Select Board Members,

Finance Committee Members,

Town Administrator,

Good afternoon,

Attached is my analysis of the fuel (gas and diesel) charges. A Word document summarizes the numbers for gasoline and diesel fuel charges. The 2<sup>nd</sup> part of the Word document shows a projection for the remaining financial year. An Excel spreadsheet is how I got the numbers.

#### Points

- Call or write if you have a question(s), suggestion(s) and yes, criticism.
- The projections number, specifically the costs per gallon, is a guess. We can change it – I'm open to suggestions.
- In my opinion we should keep the spreadsheet updated. I will be willing to work with anyone to insure this is done.
- I think there is information in the worksheets that can be used for doing the operational budget.
- I'm not sure how the fuel charges are budgeted. Melissa, if you provide me the budgeted numbers, I will get some numbers on how much we will be over for the financial year.

#### Caution

- The data was from the vendors, and I have some concern about three entries from the Mirabito Diesel provider.
- On 1/28/2022 they showed us getting two deliveries on this date – seems odd. 531 gallons of diesel fuel.
- On 5/20/2022 they showed we have only had a delivery of 11.40 gallons.
- On 9/7/2021 had a line item with no information in it.

#### Strongly Suggest

- Not sure if someone who is signing off on the fuel invoices. My work experience is the providers can give us a ticket at the end of deliveries that indicate the number of gallons. That ticket should be compared against the invoice.

That's all for now.

Frank

## Town Administrator

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**From:** Justin Makuc  
**Sent:** Wednesday, April 12, 2023 5:39 PM  
**To:** Town Administrator  
**Subject:** Warrant ATM  
**Attachments:** 5.6.23ATM\_JM for 4.12.23 meeting.doc

Hi Melissa,

As requested, I transferred my edits into this version, for consideration at tonight's meeting.

Thanks,  
Justin



**WARRANT**  
**COMMONWEALTH OF MASSACHUSETTS**  
**COUNTY OF BERKSHIRE, SS.**  
**TOWN OF MONTEREY**

To: Julio Rodriguez, Constable of the Town of Monterey in the County of Berkshire,

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn inhabitants of said Town qualified to vote in the elections and Town affairs to meet in the Firehouse of the Monterey Fire Company Ltd. in said Town on Saturday, May 6, 2023, at 9:30 o'clock in the morning, then and there to act on the following articles:

**ARTICLE 1.** To hear and act on the reports of all Officers, Agents and Committees of the Town.

**ARTICLE 2.** To see if the Town will vote to fix the salaries as indicated below to be paid to elected officials for the period July 1, 2023, to June 30, 2024, pursuant to the provisions of Chapter 41, Section 108, of the General Laws, or take any other action relative thereto.

Select Board Chair	\$5,400
Select Board 2 <sup>nd</sup>	\$5,400
Select Board 3 <sup>rd</sup>	\$5,400
Assessors Chair	\$1,743
Assessors 2 <sup>nd</sup>	\$1,743
Assessors 3 <sup>rd</sup>	\$1,743
Board of Health Chair	\$ 400
Board of Health 2 <sup>nd</sup>	\$ 400
Board of Health 3 <sup>rd</sup>	\$ 400
Constable	\$736.06
Moderator	\$375.76
Tax Collector	\$27,855.35
Tree Warden	\$4,000

**ARTICLE 3.** To see if the Town will raise and appropriate certain sums of money, including appropriation and transfers from available funds, to defray charges and expenses of the Town, including salaries of certain Town Officers and employees, debt and interest, and provide for a Reserve Fund for the ensuing year, or raise, appropriate or transfer any other sum of money.

Insert Budget Here

**ARTICLE 4.** To see if the town will vote to fix the maximum amount that may be spent during fiscal year 2024 beginning on July 1, 2023 for the revolving funds established in town by-laws for certain departments, boards, committees, agencies or officers in accordance with Massachusetts General Laws Chapter 44, Section 53E1/2 as follows, or take any other action relative thereto.

Revolving Fund	Department, Board, Agency or Officer Authorized to Spend from Fund	FY24 Spending Limit
Inspectional Services	Building Inspector	\$20,000
Board of Appeals	Zoning Board of Appeals	\$5,000
Composting Bins	Transfer Station	\$1,000
Building & Fire Inspection Education	Building Inspector	\$2,500

**ARTICLE 5.** To see if the Town will vote to amend the following items of Section 5 of the Departmental Revolving Fund bylaw by amending three revolving funds, and creating a new Community Center revolving fund as follows:

A Revolving Fund	B Department, Board, Agency or Officer Authorized to Spend from Fund	C Fees, Charges or Other Receipts Credited to Fund	D Program or Activity Expenses Payable from Fund	E Restrictions or Conditions on Expenses Payable from Fund	F Other Requirements/Reports	G Fiscal Years
Conservation – Wetlands Protection Act	Conservation Commission	Fees and receipts related to wetlands protection and permitting other than NOI	Advertisement and related expenses	Annual Expenditures not to exceed: \$15,000	Fund carryover balance not to exceed: \$25,000	Fiscal Year 2024 and subsequent years
Conservation – Scenic Mountains Act	Conservation Commission	Fees and receipts related to regulation and protection of property pursuant to MGL 131, §39A	Advertisement and related expenses	Annual Expenditures not to exceed: \$500	Fund carryover balance not to exceed: \$5,000	Fiscal Year 2024 and subsequent years
Community Center	Select Board and Community Center Administration	Fees charged by the Community Center for the use of the center	Operational Expenses in excess of regular operating budget	Annual Expenditures not to exceed: \$10,000	Fund carryover balance not to exceed: \$25,000	Fiscal Year 2024 and subsequent years
Bally Gally	Select Board and Director of Operations	Rental monies collected from Bally Gally	Expenses, supplies and contractual services to maintain and repair Bally Gally	Annual Expenditures not to exceed: \$10,000	Fund carryover balance not to exceed: \$50,000	Fiscal Year 2024 and subsequent years

Or take any other action relative thereto.

**ARTICLE 6.** To see if the Town will vote to transfer the sum of \$6,400 from Shared HR Manager Article 35 approved at the May 2021 Annual Town Meeting and \$8,736 from Shared HR Manager Article 11 approved at the May 2022 Annual Town Meeting or any other sum to a new Shared Human Resources Director operating line item, or take any other action relative thereto.

**ARTICLE 7.** To see if the Town will vote to appropriate the sum of \$30,000 or any other sum from Free Cash to be deposited in a Stabilization Fund for the Retiree Health and Life Insurance, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 8.** To see if the Town will vote to appropriate the sum of \$17,906 or any other sum from Free Cash for the Retiree Group Health/Life Insurance Benefit, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 9.** To see if the Town will vote to appropriate the sum of \$3,000 or any other sum from Free Cash to make a contribution to the Local Cultural Council, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 10.** To see if the Town will vote to appropriate the sum of \$3,000 or any other sum from Free Cash for the Town's share of grant to write an Open Space and Recreation Plan, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 11.** To see if the Town will vote to appropriate the sum of \$5,700 or any other sum from Free Cash to purchase electronic voting equipment for elections, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 12.** To see if the Town will vote to appropriate the sum of \$10,000 during the current FY23, or any other sum from Free Cash to resurface the Greene Park baseball field, or take any other action relative thereto.

*The Finance Committee supports this Article, 2-1.*

*The Select Board supports this Article, 2-1.*

**ARTICLE 13.** To see if the Town will vote to appropriate the sum of \$64,920 or any other sum from Free Cash to purchase and outfit a new Police Cruiser and to trade in or sell at auction the 2016 Cruiser, or take any other action relative thereto.

*The Finance Committee supports this Article, 2-1.*

*The Select Board supports this Article, 2-1.*

**ARTICLE 14.** To see if the Town will vote to appropriate the sum of \$25,621 or any other sum from Free Cash to purchase new radios for the Police Department, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 15.** To see if the Town will vote to appropriate the sum of \$51,670 or any other sum from Free Cash to pay for the town's annual assessment to the Southern Berkshire Volunteer Ambulance, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 16.** To see if the Town will vote to raise and appropriate the sum of \$49,600 or any other sum to pay for repairs and maintenance at Town Hall, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 17.** To see if the Town will vote to appropriate the sum of \$30,000 or any other sum from Free Cash to pay for the capital improvements on the fire company property, or take any other action relative thereto.

**ARTICLE 18.** To see if the Town will vote to appropriate the sum of \$129,000 or any other sum to purchase, equip and outfit a Medical Rescue Sport Utility Vehicle (SUV) and to modify and equip the current Med 9 and Brush Truck and to authorize the Town Treasurer with the approval of the Select Board to borrow said amount or take any other action relative thereto. (Requires Secret Ballot and 2/3 Vote)

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 19.** To see if the Town will vote to appropriate the sum of \$52,000, or any other sum from Free Cash to pay for a battery powered hydraulic rescue tools for the Fire Department, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 20.** To see if the Town will vote to appropriate the sum of \$6,600, or any other sum from Free Cash to pay for new pagers for the Fire Department, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 21.** To see if the Town will vote to appropriate the sum of \$10,000, or any other sum from Free Cash to pay for a replacement Master Stream Nozzle for Truck 172 for the Fire Department, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*

**ARTICLE 22.** To see if the Town will vote to appropriate the sum of \$50,000, or any other sum from Free Cash 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, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 23.** To see if the Town will vote to appropriate \$1,863.19 from certified Free Cash to be expended in accordance with the Massachusetts State-Subdivision for Statewide opioid settlement funds, funds to be used to supplement and strengthen resources available to communities and families for substance use disorder prevention, harm reduction, treatment, and recovery, or take any other action relative thereto. ~~To see if the Town will vote to appropriate a sum of money from the FY23 General Fund Revenue when certified as Free Cash to be expended in accordance with the Massachusetts State-Subdivision for Statewide opioid settlement funds, funds to be used to supplement and strengthen resources available to communities and families for substance use disorder prevention, harm reduction, treatment, and recovery, or take any other action relative thereto.~~  
*The Select Board supports this Article, 3-0.*

**ARTICLE 24.** To see if the Town will vote to transfer the remaining sum of \$29,854.86 from Article 25 approved at the May 2017 Annual Town Meeting for Highway Garage Sliding & Painting to the general stabilization account, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

**ARTICLE 25.** To see if the Town will vote to transfer the remaining sum of \$20,000 from article 8 of the December 2019 Special Town Meeting for Phase I of the Municipal Vulnerability Grant town's portion to the general stabilization account, or take any other action relative thereto.  
*The Finance Committee supports this Article, 3-0.*  
*The Select Board supports this Article, 3-0.*

~~**ARTICLE 26.** To see if the Town will vote to authorize the Select Board to apply for, accept and expend a MassWorks Grant from the MassWorks Infrastructure Program up to the amount of \$1,000,000, and sum will be used for Safety Improvements on an approved town road in Monterey, or take any other action relative thereto.  
*The Select Board supports this article.*~~

**ARTICLE 27:** To see if the Town will vote to adopt a local option room occupancy excise as allowed by G.L. c64G, § 3A, and further to adopt a local excise rate of 6%, or to take any other action relative thereto.

**ARTICLE 28:** To see if the Town will vote to adopt a local option community impact fee in the amount of 3% as allowed by G.L. c 64G, § 3D (a) as it applies to each transfer of occupancy of a "professionally managed unit," which is defined as one of two or more short-term rental units in Monterey not located in a single- or two- or three-family dwelling that includes the operator's (owner's) primary residence. The impact fee applies to transfers of occupancies on or after July 1, 2023 for which a rental contract was entered into on or after January 1, 2023. It does not apply to occupancy for which the rental contract was entered into before January 1, 2023, or to take any other action relative thereto.

**ARTICLE 29:** To see if the Town will vote to adopt a local option community impact fee in the amount of 3% as allowed by G.L. c 64G, § 3D(b) as it applies to short-term rental units in Monterey located within a two- or three-family dwelling that includes the operator's (owner's) primary residence ~~under G.L. c 64G, § 3D(b).~~. The impact fee applies only to transfers of occupancies on or after July 1, 2023 for which a contract was entered into on or after January 1, 2023, or to take any other action relative thereto.

**ARTICLE 30.** To see if the Town will vote to amend Section 3.1 Table of Use Regulations in the Town zoning bylaws by updating them as follows:

Section 3.1 Table of use regulations

Section D. Recreational Uses

Camp and or Recreational Facility, Seasonal or year-round.

Lake Shore District

From Y (Permitted as of Right)

To BA (Special Permit/Board of Appeals), or take any other action relative thereto.

~~ARTICLE 31. To see if the Town will vote to amend the Town bylaws by adopting a new Article XXI, to establish a Department of Municipal Inspections, or take any action relative thereto.~~

~~§ XXI-1. Appointment of Director.~~

~~The town accepts the provisions of MGL c.43C, §§ 13 and 14, establishing a consolidated Department of Municipal Inspections, to include the Building Inspector/Zoning Enforcement Officer, Wiring Inspector. The Select Board shall appoint the Director of Municipal Inspections. The term of such Director shall be three years, subject to removal by vote of the Select Board.~~

~~§ XXI-2. Responsibilities of Department~~

~~The Department of Municipal Inspection shall be responsible for:~~

~~A. The coordination of inspectional functions carried out by any municipal officer or agent within the Department.~~

~~B. Maintenance of all records relating to inspections in a central common index.~~

~~C. A single application process, which would indicate all inspections which might be necessary, including, but not limited to, any inspections under the zoning bylaw and other local bylaws, the Building Code and Plumbing and Gas Codes and any other local inspections within the responsibilities of the officials in this Department, as may be otherwise authorized.~~

~~§ XXI-3. Supervisory Authority of Director.~~

~~All personnel performing inspection functions shall, when performing such inspection services, be subject to the administrative control and direction of the Director of Municipal Inspections, but not otherwise.~~

~~§ XXI-4. Recommendations for appointment of staff.~~

~~The appointment of offices and employees necessary to staff the Department shall be recommended to the Select Board by the Director of Municipal Inspections. To see if the Town will vote to amend the Town Bylaws by adopting a new Article XX, Unreasonable Noise Bylaw, or take any action relative thereto.~~

**ARTICLE 32. To see if the Town will vote to amend the Town Bylaws by adopting a new Article XX, Unreasonable Noise Bylaw,; or take any action relative thereto.**

**§ XX-1. Unreasonable Noise Prohibited.** It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any unreasonable, excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the Town of Monterey. Without limiting the general application of the foregoing sentence, the following acts are declared to be noises that violate this bylaw, but this enumeration shall not be exclusive:

- a) Radio, Musical Instruments, Television, and Public Address Systems. The playing of any radio, television set, amplified or musical instruments, loudspeakers, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, or other type of residence, or in any office, school, church, or of any persons in the vicinity.
- b) Shouting, Whistling, and Chanting. Yelling, shouting, hooting, whistling, singing, chanting, or the making of any other loud noises at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any type of dwelling, or of any persons in the vicinity.
- c) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person. This section shall not apply to farm animals, or animals serving any agricultural or farm-related purpose.
- d) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section

shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.

- e) Construction and Home Maintenance Noise. The operation of vehicles, equipment, tools or machines used as a means of construction, maintenance, repair or demolition of a dwelling, building site, building, bridge, tower or road between the hours of 9:00 p.m. and 7:00 a.m., or the making of any such noise at any time or place so as to annoy or disturb the reasonable comfort or repose of persons in any dwelling, or other type of residence, or in any office, school, church or of any persons in the vicinity.
- f) Excessive Motor Noise. The operation of any unreasonably noisy motor at any time.

§ XX-2. Exemptions. None of the terms or prohibitions of the previous section shall apply or be enforced against:

- a) Noise caused by any emergency vehicle or equipment while engaged in the performance of necessary emergency business.
- b) Noise caused by any necessary excavation in or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the Commonwealth of Massachusetts.
- c) Noise caused by agriculture, as defined by M.G.L. Chapter 128 Section 1A, including but not limited to the operation of farm equipment, sawmills, harvesting equipment, and noises from farm animals.
- d) Noise caused by lawful hunting or other lawful discharge of firearms.
- e) Noise caused by organized sports.
- f) Noise caused by snow removal or road sanding for private drives, roadways or other ways.
- g) Noise caused by operation of a generator to provide electricity to a dwelling, business, or other building during a grid power outage.
- h) Noise from activities which have been granted a special permit pursuant to Section 3 below.

§ XX-3. Application for Permit for Relief. Application for a permit for relief from this Bylaw on the basis of undue hardship may be made to the Select Board. There shall be no permit fee for said permit application. Permit applications shall be acted upon within fourteen (14) business days of permit filing with the Select Board; If the Select Board does not act upon the permit application within fourteen (14) business days, the permit shall be deemed approved. Any permit granted by the Select Board shall set forth all conditions pertaining to the specified noise and a reasonable time limit for its abatement.

§ XX-4. Penalties. This bylaw shall be enforced by the Monterey Police Department. Whoever violates this Bylaw shall be subject to enforcement action by non-criminal disposition as provided in M.G.L. c. 40, §21D. The first violation of this Bylaw may be punished by a verbal or written warning. The second violation this Bylaw within 12 months after the first violation shall be punished by a fine of one hundred dollars (\$100.00). The third violation of this Bylaw within 12 months after the first violation shall be punished by a fine of two hundred dollars (\$200.00). All subsequent violations within 12 months after the first violation shall be punished by a fine of three hundred dollars (\$300.00). Each such act, which either continues or is repeated more than one-half (½) hour after issuance of a written notice of violation of this Bylaw shall be a separate offense and shall be prosecuted as a separate offense. If a violation occurs and the person or persons responsible are not the record owner of the property, the owner shall be notified in writing that the violation has occurred.

- a) If a person or persons responsible for violations of this bylaw cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

§ XX-5. Severability. If any provision of this Bylaw is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Bylaw shall not be invalidated.

ARTICLE 31. To see if the Town will vote to amend the Town bylaws by adopting a new Article XXI, to establish a Department of Municipal Inspections, or take any action relative thereto.

§ XXI-1. Appointment of Director.

The town accepts the provisions of MGL c.43C, §§ 13 and 14, establishing a consolidated Department of Municipal Inspections, to include the Building Inspector/Zoning Enforcement

Officer, Wiring Inspector. The Select Board shall appoint the Director of Municipal Inspections. The term of such Director shall be three years, subject to removal by vote of the Select Board.

§ XXI-2. Responsibilities of Department.

The Department of Municipal Inspection shall be responsible for:

- A. The coordination of inspectional functions carried out by any municipal officer or agent within the Department.
- B. Maintenance of all records relating to inspections in a central common index.
- C. A single application process, which would indicate all inspections which might be necessary, including, but not limited to, any inspections under the zoning bylaw and other local bylaws, the Building Code and Plumbing and Gas Codes and any other local inspections within the responsibilities of the officials in this Department, as may be otherwise authorized.

§ XXI-3. Supervisory Authority of Director.

All personnel performing inspection functions shall, when performing such inspection services, be subject to the administrative control and direction of the Director of Municipal Inspections, but not otherwise.

§ XXI-4. Recommendations for appointment of staff.

The appointment of offices and employees necessary to staff the Department shall be recommended to the Select Board by the Director of Municipal Inspections

**ARTICLE 33.** To see if the Town will vote to authorize the Select Board to acquire by purchase, gift or eminent domain temporary easements and/ or rights in portions of the following parcels of land for the purposes of making certain road and bridge improvements for Curtis Road over the Konkapot River: Assessor's Parcels 226-010, 226-009, 226-008, 231-007 for construction access; or to take any other action in relation thereto.

**ARTICLE 34.** To see if the Town will vote to accept as a public way a portion of Curtis Road, as heretofore laid out by the Select Board and shown on "Monterey – 2023 Town Layout Relocation Plan," prepared for the Town of Monterey Massachusetts by GCG Associates, Inc, dated March 10, 2023, said plan on file with the Town Clerk, as authorized by the Select Board.

**ARTICLE 35.** To see if the Town will vote pursuant to G.L. c. 268A, section 21A, to authorize commissions or boards to appoint members to any office or position under the supervision of such commission or board, or take any other action relative thereto.

**ARTICLE 36.** To see if the Town will vote to authorize any Town board to appoint any member thereof to another office or position for the term provided by law (if any), otherwise for the term not to exceed one year, and to fix the salary and compensation in accordance with G.L. c. 41, § 4A Massachusetts General Laws Chapter 41, Section 4A, or take any other action relative thereto.

**ARTICLE 37.** In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn inhabitants of said Town qualified to vote in the elections and Town affairs to meet in the Monterey Grange 291, Town Hall, 435 Main Road in said Town on **Tuesday, May 9, 2023, at 12:00 o'clock p.m.** and then and there to vote their ballots for the election of the following Town officers:

One member of the Board of Appeals for five years

One member of the Board of Appeals for five years

One member of the Bylaw Review Committee for three years

One member of the Board of Assessors for three years

One member of the Board of Health for three years

One member of the Cemetery Committee for three years

One member of the Finance Committee for three years

One member of the Finance Committee for one year

Two Library Trustees for three years

One Moderator for one year

One member of the Park Commission for three years

One member of the Planning Board for five years

One member of the Select Board for three years

One Tree Warden for one year

All of the above will be voted upon an official ballot provided at the election place by the Town Clerk and Election officers.

The polls will be open at 12:00 noon and remain open until 7:00 o'clock p.m. in the evening.

Hereof fail not and make return of this Warrant with your doings thereon to the Clerk of said Town at or before the time of said meeting.

Given under our hands this 12 day of April, 2023.

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Justin Makuc, Chair

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Scott Jenssen

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Susan Cooper  
MONTEREY SELECT BOARD

**A true copy attest.**

Pursuant to the within Warrant, I have this 13 day of April, 2023, notified and warned inhabitants of the Town of Monterey in accordance with the Town Bylaws and the General Laws of the Commonwealth of Massachusetts.

---

Julio Rodriguez, Constable

Monterey Town Hall  
Monterey Transfer Station  
U.S. Post Office  
Monterey General Store  
Main Rd. at/near intersection of Swann Rd.  
Select Board file



## Town Administrator

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**From:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Sent:** Tuesday, October 17, 2023 1:54 PM  
**To:** Town Administrator  
**Cc:** Justin Makuc  
**Subject:** Re: Termination of Officer

That is correct, Melissa. The agenda should give the officer's name.

[Get Outlook for iOS](#)

---

**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Sent:** Tuesday, October 17, 2023 12:54:42 PM  
**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** RE: Termination of Officer

Thank you. So just to confirm we will be terminating the officer tomorrow and we will add to the 10/24 SB agenda to "ratify the authority of HR, myself and the Police Chief to act on their behalf in the termination of Officer Wilson", and this will all be legal, correct?

Also should the agenda item list the officer's name as above or can we just state termination of a police officer?

Melissa

---

**From:** Donna Brewer [<mailto:dbrewer@miyares-harrington.com>]  
**Sent:** Tuesday, October 17, 2023 12:48 PM  
**To:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** Re: Termination of Officer

You have a couple of options, then, Melissa. You can act as TA to terminate her tomorrow and then have the SB vote at a future meeting to ratify your authority to act on the board's behalf. Or you fire her tomorrow and the SB votes at a future meeting to exercise its own authority to fire her effective 10/18.

Some confusion on notice and a hearing – you are required to give her notice and a hearing but as Eric put in his email, the notice doesn't have to be much. Hence my statement in my 10/12 email that the notice doesn't have to be much and can be by letter. It sounds as if you are giving her no notice. In that case, go ahead and terminate her tomorrow but inform her that if she wants a hearing, she can get a post-termination hearing with the Select Board. At that hearing the SB will just give her the reasons why she is being terminated.

Donna Brewer  
[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)  
(617) 804-2423 dd

---

**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Date:** Tuesday, October 17, 2023 at 12:19 PM

**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>

**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

**Subject:** RE: Termination of Officer

We already have the final check being overnigheted right now for the tomorrow 8am termination (she is usually paid via DD so she's going to wonder why her money didn't go in). If you are saying that we have to have a meeting but the officer does not have to be afforded a hearing, how would we list it on an emergency agenda for tonight without tipping the officer off that they are being terminated in the morning and I assume it would need to be open meeting as an executive session would require giving the officer 48 hours' notice. It should be noted that between the HR Director and myself we notified individually each SB member that the termination was going to occur at 8am on Wed and no one had any concerns and trusted the judgement of the HR, TA and Police Chief to do the right thing.

The reason for terminating the officer as of her next scheduled shift (tomorrow) is because she did not show up for her shifts she was scheduled to work this weekend after a class she was supposed to attend was cancelled

Melissa

---

**From:** Donna Brewer [<mailto:dbrewer@miyares-harrington.com>]

**Sent:** Tuesday, October 17, 2023 11:55 AM

**To:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>

**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

**Subject:** Re: Termination of Officer

Melissa, this does require a vote of the Board as the appointing/terminating authority. The Division of Open Government views conservatively what constitutes an emergency for the purposes of holding a meeting on less than 48 hours' notice. It may conclude that this doesn't qualify since the Town is not required to terminate the officer tomorrow. However, you may still want to go ahead, have an emergency meeting tonight, fire her tomorrow, and if necessary ratify the termination by vote at a properly posted meeting.

Donna Brewer

[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)

(617) 804-2423 dd

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**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>

**Date:** Tuesday, October 17, 2023 at 11:07 AM

**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>

**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

**Subject:** RE: Termination of Officer

Good Morning Donna,

Sorry for the urgency but we want to make sure this is all done right. We know that we don't need a hearing or notice but does this require a vote of the select board to terminate if the officer chooses not to resign since they are the hiring and firing authority? We have the final check ready for tomorrow's termination at 8am. If the Board has to vote to avoid any possible legal issues would they be able to call an emergency meeting tonight to do so.

Melissa

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**From:** Donna Brewer [<mailto:dbrewer@miyares-harrington.com>]

**Sent:** Thursday, October 12, 2023 3:03 PM

**To:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** Re: Termination of Officer

Hi Melissa,

It is critical that you pay her all earned wages on the day she is terminated. That means the check has to be in her hand on that day or direct deposited on that day. It is a violation of the Massachusetts Wage Act to do otherwise and a violation results in automatic treble damages of the unpaid wages plus attorneys fees. Easiest, I think, would be to arrange a special payroll check to be processed calculating her pay through the date of termination and calling her in that day to be terminated and given her last check in hand.

I agree that she is not due payment for unused vacation because under your policy she is not yet eligible for paid vacation.

There is no particular form you need to use to provide her notice. Typically, notice is given by letter.

You can definitely offer her the option to resign rather than be terminated.

Donna Brewer  
[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)  
(617) 804-2423 dd

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**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Date:** Thursday, October 12, 2023 at 2:44 PM  
**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** FW: Termination of Officer

Hello again Donna,

Justin asked that I make you aware of a situation we have here and to have you weigh in on if we are handling everything correct to avoid any future litigation. Basically as you can see from the first part of this chain our Police Chief is having difficulties with one of our full time officers and is recommending termination. Below is also the advice he sought from the Chief's counsel. We would like to make sure of the following before we terminate early next week:

1. Officer Wilson was a part time intermittent reserve officer with us (DOH 4/25/20), she was appointed to a full time officer with a 1 year probationary period on 12/5/22). We would like to confirm that the 1 yr probationary as described by Chief's counsel below is applicable since prior to 12/5 she was a part time officer. I don't know if it matters or not but Sabrina is also currently in the last group of officers to go through the BRIDGE training and has one class left.
2. I have been advised that when we terminate I have to have the employee's last check in hand, as we are a biweekly payroll using Harper's payroll service and don't do checks in house are we allowed to pay it within 7 days or should I make arrangements to have a special payroll processed and have a check overnighted to have in hand?
3. Since she is still in her probationary period are we obligated to pay her for any vacation time she earned or do we not have to since our handbook states that "all full time employees who have been employed by the town for 12 consecutive months shall be entitled to a paid vacation of 1 week"

4. Sophia (HR), myself and Brian intend to work on the notice of reasons tomorrow, is there any specific format you recommend?
5. Are we allowed to offer her the option to resign rather than be terminated?

I think that is it for now.

Respectfully,

*Melissa Noe*

Town Administrator  
Town of Monterey  
413-528-1443 x111

*Be the reason someone smiles today.*

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**From:** Eric Atstupenas <[legal@masschiefs.org](mailto:legal@masschiefs.org)>  
**Sent:** Wednesday, October 11, 2023 3:10 PM  
**To:** mpdchief montereyma.gov <[mpdchief@montereyma.gov](mailto:mpdchief@montereyma.gov)>  
**Subject:** RE: Termination of Officer

Good afternoon Chief,

Under Chapter 41, section 133, all full-time police officers in Massachusetts serve a 1-year probationary period, during which time they can be terminated without the requirement of a hearing, simply by providing them with notice of reasons. There can be no appeal, nor can a grievance be filed under any collective bargaining agreement.

Neither the Civil Service Law nor Chapter 41, section 133, spells out the exact amount of specificity required in the notice terminating a probationary employee. To date, there are no reported cases challenging the adequacy of the notice provided to non-Civil Service officers under section 133. Nor is there a case under Civil Service where a court has found the notice sufficiently deficient to declare it inadequate under Chapter 31. In fact, appointing authorities have considerable discretion during the probationary period and this discretion, particularly with respect to law enforcement positions, is supported by appellate caselaw.

However, in one challenge under Civil Service, the Supreme Judicial Court (SJC) does provide some guidance. In Costa v. Board of Selectmen of Billerica, 377 Mass. 853 (1979) the Supreme Judicial Court reviewed the specificity requirements for probationary employee termination notices. (This case was decided under the Civil Service Law prior to its recodification in 1978, but the applicable provisions of the prior statute are virtually identical to the statute currently in effect.) The plaintiffs in the Costa case were probationary, intermittent police officers whose employment had been terminated by the Select Board. The written termination notice sent to the plaintiff stated as a reason for termination: "Your inability to handle routine calls and cooperate with and gain the cooperation of fellow officers." The notice to another plaintiff referred to "Your inability to answer calls and to take proper police action and failure to follow lawful orders of commanding officers." A third plaintiff's notice referred to an "inability to work in harmony with fellow police officers and lack of aggressiveness necessary to the performance of police functions." The Court noted that each of the notices described negative traits or aspects of the employee's conduct or capacity or of the character or quality of his work which led to the Select Board's decision to terminate, and that the notices did not set out any specific incidents or episodes nor suggest any culpable misconduct on the part of the employees.

Although the Appeals Court had previously concluded that these notices were deficient for not citing specific incidents, the Supreme Judicial Court concluded that these notices were sufficient. In reaching its conclusion, the SJC set forth parameters for permissible termination notices for probationary Civil Service employees. The Court stated that the notice would be insufficient if it merely recited some bureaucratic formula such as “conduct unbecoming an officer” or “for the good of the service.” The Court also stated, however, that if the appointing authority were to charge the probationary employee with actual misconduct, a statement would be required of the specific incidents upon which the misconduct charge was based. The notices in the Costa case fell in the middle range and were statutorily adequate, according to the Court, because they identified observed characteristics of the individual related to one or more of the elements of conduct or capacity or character or quality of work, which were “not satisfactory” according to the appointing authority. The Court also noted that, although the statute does not require a description of incidents or events, “there would surely be no objection to the appointing authority’s citing them.”

Even though probationary employees are not entitled to a hearing to refute the basis for the termination, they may be entitled to a hearing to clear their name in certain circumstances. This is the case where the reasons given will have a “chilling” effect on their ability to get similar work elsewhere. For example, listing as reasons an officer’s dishonesty or criminal activity, might be situations where a name-clearing hearing might be required.

Best,  
Eric

Eric R. Atstupenas, Esq.  
General Counsel  
Massachusetts Chiefs of Police Association, Inc.  
353 Providence Road  
South Grafton, Massachusetts 01560  
Office: (508) 375-7793  
Mobile: (508) 400-3726  
[legal@masschiefs.org](mailto:legal@masschiefs.org)

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**From:** mpdchief montereyma.gov <[mpdchief@montereyma.gov](mailto:mpdchief@montereyma.gov)>  
**Sent:** Wednesday, October 11, 2023 2:36 PM  
**To:** Eric Atstupenas <[legal@masschiefs.org](mailto:legal@masschiefs.org)>  
**Subject:** Termination of Officer

Eric,  
I am looking to terminate an officer who is still in their probation period and it ends Jan 1, 2024. I have several instances where she has not come to work when she was assigned or she has taken herself off the schedule and filled her shift with a PT officer with out permission. She was written up within the last month for the same thing. I was told by my town administrator that since she is still in her probation period and that we do not need

a reason to let her go. Not only is the absenteeism an issue but that she is unmotivated and lacks basic police knowledge. I don't think that she would be a good candidate either for rehabilitation. I personally would like to part ways with her now then try to rehab a bad cop but if you think I need more documentation let me know. Just looking for a little guidance. Thanks,

Brian D. Fahey  
Chief of Police  
Monterey Police Department  
P. 413-528-3211  
F. 413-528-7951

**Town of Monterey  
Policy Statement**

Policy Name: Flag Policy	Approval Authority:	<b>Select Board</b>
Adopted:	Applies to:	All Departments
	Revised:	Reviewed: --

I. Introduction

This Policy is intended to address flags allowed to be flown on Town of Monterey flagpoles.

II. Flags Allowed to Be Flown

The Select Board authorizes the following flags to be flown on Town-owned flagpoles, as an official expression of the Town's governmental speech, to which the strictures of the First Amendment do not apply:

- The official flag of the United States of America;
  - The official flag of the Commonwealth of Massachusetts;
  - The official flag of the Town of Monterey;
  - The official flags of the various branches of military services of the United States of America;
- and/or
- The official MIA-POW flag.

No other flags shall be allowed to be flown on Town of Monterey-owned flagpoles, as those flagpoles and this policy are not intended to establish or serve to create a forum for private expression.

## RIVER ROAD PROPERTY RULES

- Hours of operation are dawn to dusk.
- No alcohol or drugs are permitted on the property.
- No loud music or disorderly behavior.
- Please ~~dispose of litter in trash cans.~~ *carry out all trash.*
- Users of this recreation area assume all liability for any losses.
- Use at own risk.

This public recreational area is made available in accordance with laws governing recreational use.

*(M.G.L. Chapter 21 Section 17c)*





## TOWN OF MONTEREY

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

December 5, 2023

Massachusetts Cultural Council  
10 St. James Avenue, 3rd Floor  
Boston, MA 02116-3803

RE: Massachusetts Cultural Facilities Fund  
Feasibility & Technical Assistance Grant Application  
Town of Monterey - Monterey Community Center

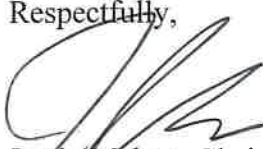
Dear Massachusetts Cultural Council,

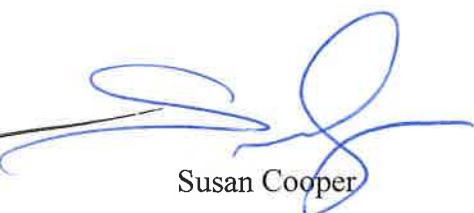
The Town of Monterey Select Board would like to offer its support for a grant application to the MA Cultural Facilities Fund to secure Feasibility & Technical Assistance funding. Grant funds will be used for the preparation of architectural and engineering design plans to build a post and beam pavilion combined with an ADA compliant walkway and additional bathroom at the Monterey Community Center.


The Monterey Community Center provides cultural activities for the community in innovative ways. Ongoing groups include Chair Yoga, Bridge, Mahjong, Tai Chi, Darn Yarners, Super Gentle Yoga, Coffee Club, Ping Pong, and the Native Pollinator Group. Seasonal classes, talks, indoor and outdoor concerts, and community gatherings happen in abundance throughout the year. The Monterey Community Center is a place for cultural enrichment and connection, and proves to be an invaluable space for community members to share their resources, skills and lives together.

A post and beam pavilion with an ADA compliant walkway and additional bathroom will be significant improvements that will save money in the long term and accommodate larger cultural gatherings to indoor and outdoor events at the Monterey Community Center.

Respectfully,

  
Justin Makuc, Chair  
Monterey Select Board

  
Susan Cooper

  
Frank Abbott

Phone: 413.528.1443 x114 Fax: 413.528.9452  
[admin@montereyma.gov](mailto:admin@montereyma.gov)  
[www.montereyma.gov](http://www.montereyma.gov)

## **Termination of police officer**

### *TA job description:*

- *“The TA coordinates appointments to offices, boards/committees and employment with the Town over which the Select Board has final approval or appointing authority. The TA may recommend removal of the same, for cause, in writing and otherwise in accordance with town bylaws.”*
- *“Analyzes program objectives, reviews work operations, estimates and allocates the financial and staff resources required, including recommendations to the Select Board for the hiring, training, and disciplining of employees.”*
- *“Working knowledge of Massachusetts General Laws and regulations”*

On Thursday October 12<sup>th</sup>, Melissa and the Police Chief informed me that they were pursuing the termination of one of the Town’s police officers. The reasons they explained constituted grounds for termination in my opinion: chronic absenteeism, a lack of motivation, a deficiency in basic police knowledge, and a demonstrated inability to follow procedure during routine police situations. I wanted to make sure that a legal process was followed to protect the Town and respect the employee’s rights. Melissa already had an email (provided by the Police Chief) which gave some advice about the situation from the General Counsel of the Massachusetts Chiefs of Police Association (dated Wednesday, October 11<sup>th</sup>).

On Thursday October 12<sup>th</sup>, I asked Melissa to inform our Town Counsel of the details of situation and ask any questions necessary to ensure the process followed was lawful. Melissa emailed Town Counsel on the same day with a list of questions about the termination. These questions centered on the probationary status of the employee, timing of the final paycheck, whether vacation time should be paid out, a notice of reasons, and whether the employee could be offered the opportunity to resign rather than be terminated. This would have been a good opportunity to notify Town Counsel of the planned process for termination and verify its legality well in advance of it being carried out. This opportunity was not taken. Town Counsel replied with answers to each of the questions on the same day, October 12<sup>th</sup>.

During the following week, Tuesday October 17<sup>th</sup>, it became clear to me that Melissa and the HR Director had made a plan to terminate the police officer on Wednesday October 18<sup>th</sup>, without any action by the Select Board – the appointing authority. It is clear in Melissa’s job description and the HR Director’s job description that they do not have the authority to terminate employees on their own. After the Board’s 9:00am meeting (which adjourned at 10:51am) I went into Melissa’s office and asked her to email Donna to clarify this point which seemed obvious to me, and check whether the planned process was legal. Melissa emailed Donna at 11:07am and there were emails back and forth between Melissa and Town Counsel through the late morning and afternoon.

I read the emails toward the end of the day and I went in to Melissa’s office and spoke with her about the situation. I said that it was clear to me from Donna’s emails that the Select Board is the appointing authority and that she and the HR Director did not have the ability to terminate the police officer without Select Board action. She asked me if she should include in

the termination letter that she had mentioned the situation to each Board member, and there was general agreement. This stood out to me as an obvious Open Meeting Law violation. I called Donna and spoke with her to clarify the legal process forward. Donna followed up with an email at 7:08pm – clearly stating “the decision to terminate rests with the Select Board. ... The Select Board has not authorized anyone to terminate this officer. Again, while we can correct this overreach in authority, it is best to avoid the issue in the first place.”

I advised the Police Chief, the HR Director, and Melissa of the change in plan at 9:14pm on Tuesday October 17<sup>th</sup> and signed a notice of executive session termination hearing set to be held on Friday October 20<sup>th</sup> if the police officer did not resign. They ultimately followed through with asking the employee to resign, and she did.

A Town Administrator should know how an employee can be terminated legally. It is clear through MGL and the Town’s job descriptions that the Select Board is the appointing authority in Monterey. Melissa also had the green light to ask any questions she wanted of Town Counsel. When the right questions were asked, Donna clearly explained the legal requirements for moving forward.

If the HR Director and Melissa were to follow through on their plan and terminate the police officer without any prior action or authorization from the Select Board, it had the potential to be problematic for the Town as an illegal termination and also an Open Meeting Law violation. I do not think that the Select Board should need to course correct a situation like this one, especially when an HR Director and a Town Administrator are involved. It is clear from the email chain and the timeline of my meetings with Melissa that the course was only corrected due to significant and persistent involvement from a Select Board member.

**Email chain:**

**Re: Termination of Officer**

Donna Brewer <dbrewer@miyares-harrington.com>

Tue 10/17/2023 7:08 PM

To: Justin Makuc <justin@montereyma.gov>; Town Administrator <admin@montereyma.gov>; hr montereyma.gov <hr@montereyma.gov>; mpdchief montereyma.gov <mpdchief@montereyma.gov>

Hi all, Justin and I spoke about this a little while ago. As I mentioned, the circumstances do not satisfy the Division of Open Government’s understanding of an emergency under the Open Meeting Law such that a meeting can properly be held fewer than 48 hours after posting. If someone complains, the DOG will find a violation. We can correct the defect, but it is best to avoid a defect in the first place.

In addition, the decision to terminate rests with the Select Board. The Police Chief may suspend an officer for up to 5 days. The Select Board has not authorized anyone to terminate this officer. Again, while we can correct this overreach in authority, it is best to avoid the issue in the first place.

The best practice for terminating public employees is to place them immediately on administrative leave (that is, with pay) and giving them notice of the date of a hearing and the reasons for potential discipline and termination. The right to a notice and hearing is a matter of constitutional due process defined by the Supreme Court in a case referred to as *Loudermill*. As stated in the *Costa* case cited by Eric Atstupenas, the notice that must be given to a probationary employee is minimal but it is not nothing. Placing an employee on administrative leave gets the problematic employee out of the workplace immediately but protects their constitutional rights.

I recommend that you start tomorrow's meeting with the officer by telling her that her performance is unacceptable and you intend to recommend to the Select Board that she be terminated. However, you offer her first the opportunity to resign. If she resigns, you can give her the pay check immediately. You'll want her to write a quick letter of resignation. ["I hereby resign my employment as a Monterey police officer effective immediately."] If she doesn't resign, the Chief can put her on administrative leave and take immediate possession of her badge and gun and any other departmental equipment that she may have.

You'll want to give her a letter with notice of the date and time of the Select Board hearing. If you won't have the letter to give her at tomorrow's meeting, you'll want to give it to her later tomorrow. Justin mentioned that he is willing to call a Select Board meeting for Friday afternoon, so the 48 hour deadline would be tomorrow afternoon. The letter need only say:

Dear [name]:

The Select Board will hold a hearing in open session on Friday, October 19, 2023, at Town Hall at [X] o'clock to discuss whether you should be terminated for unacceptable performance, based on your spotty attendance and failure to fulfill your traffic enforcement duties.

If you follow this advice, you'll need to either have a check to give her for her wages as of Friday or make her termination effective on a date that you can get her a pay check.

Let me know if you have any questions.

Donna Brewer  
dbrewer@miyares-harrington.com

**From:** Justin Makuc <justin@montereyma.gov>  
**Date:** Tuesday, October 17, 2023 at 2:38 PM  
**To:** Donna Brewer <dbrewer@miyares-harrington.com>, Town Administrator <admin@montereyma.gov>, hr montereyma.gov <hr@montereyma.gov>, mpdchief montereyma.gov <mpdchief@montereyma.gov>  
**Subject:** Re: Termination of Officer  
Hi all,

If terminating this officer's employment with the Town requires a vote of the Select Board, I say that the Select Board should vote on that action prior to it taking place. While not necessarily a legal requirement, I think it is good practice. I do not like the idea of the SB voting after the fact.

This situation seems to be timely, but not an emergency, as it is interpreted by the Commonwealth for purposes of the OML.

Can I suggest an alternative: the TA, HR Director, and Police Chief meet with the employee tomorrow and discuss with her that they plan to recommend termination to the SB, to be acted on next week. At the same meeting (tomorrow) give the employee the opportunity to resign immediately (or by Thursday PM latest) to inform the SB whether we need to put it on our agenda next Tuesday.

If the employee resigns, that is that. If she does not resign by Thursday, the SB will take steps at next Tuesday's meeting (based on recommendation from TA, PD Chief, and HR director) toward termination, whether it be delegating the power to the TA or holding a hearing itself. We would work with Town Counsel on what is advisable.

I am not trying to create extra work, but want to take the appropriate steps in the right order. I would feel differently if this was an emergency, but it seems like it's not based on its nature and since it has been ongoing for at least weeks.

Sincerely,  
Justin

---

**From:** Donna Brewer <dbrewer@miyares-harrington.com>  
**Sent:** Tuesday, October 17, 2023 1:54 PM  
**To:** Town Administrator <admin@montereyma.gov>  
**Cc:** Justin Makuc <justin@montereyma.gov>  
**Subject:** Re: Termination of Officer

That is correct, Melissa. The agenda should give the officer's name.

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**From:** Town Administrator <admin@montereyma.gov>  
**Sent:** Tuesday, October 17, 2023 12:54:42 PM  
**To:** Donna Brewer <dbrewer@miyares-harrington.com>  
**Cc:** Justin Makuc <justin@montereyma.gov>  
**Subject:** RE: Termination of Officer

Thank you. So just to confirm we will be terminating the officer tomorrow and we will add to the 10/24 SB agenda to "ratify the authority of HR, myself and the Police Chief to act on their behalf in the termination of Officer [redacted]", and this will all be legal, correct?

Also should the agenda item list the officer's name as above or can we just state termination of a police officer?

Melissa

**From:** Donna Brewer [mailto:[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)]  
**Sent:** Tuesday, October 17, 2023 12:48 PM  
**To:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** Re: Termination of Officer

You have a couple of options, then, Melissa. You can act as TA to terminate her tomorrow and then have the SB vote at a future meeting to ratify your authority to act on the board's behalf. Or you fire her tomorrow and the SB votes at a future meeting to exercise its own authority to fire her effective 10/18.

Some confusion on notice and a hearing – you are required to give her notice and a hearing but as Eric put in his email, the notice doesn't have to be much. Hence my statement in my 10/12 email that the notice doesn't have to be much and can be by letter. It sounds as if you are giving her no notice. In that case, go ahead and terminate her tomorrow but inform her that if she wants a hearing, she can get a post-termination hearing with the Select Board. At that hearing the SB will just give her the reasons why she is being terminated.

Donna Brewer  
[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)  
(617) 804-2423 dd

**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Date:** Tuesday, October 17, 2023 at 12:19 PM  
**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** RE: Termination of Officer

We already have the final check being overnighted right now for the tomorrow 8am termination (she is usually paid via DD so she's going to wonder why her money didn't go in). If you are saying that we have to have a meeting but the officer does not have to be afforded a hearing, how would we list it on an emergency agenda for tonight without tipping the officer off that they are being terminated in the morning and I assume it would need to be open meeting as an executive session would require giving the officer 48 hours' notice. It should be noted that between the HR Director and myself we notified individually each SB member that the termination was going to occur at 8am on Wed and no one had any concerns and trusted the judgement of the HR, TA and Police Chief to do the right thing.

The reason for terminating the officer as of her next scheduled shift (tomorrow) is because she did not show up for her shifts she was scheduled to work this weekend after a class she was supposed to attend was cancelled

Melissa

**From:** Donna Brewer [<mailto:dbrewer@miyares-harrington.com>]  
**Sent:** Tuesday, October 17, 2023 11:55 AM  
**To:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>

**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

**Subject:** Re: Termination of Officer

Melissa, this does require a vote of the Board as the appointing/terminating authority. The Division of Open Government views conservatively what constitutes an emergency for the purposes of holding a meeting on less than 48 hours' notice. It may conclude that this doesn't qualify since the Town is not required to terminate the officer tomorrow. However, you may still want to go ahead, have an emergency meeting tonight, fire her tomorrow, and if necessary ratify the termination by vote at a properly posted meeting.

Donna Brewer

[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)

(617) 804-2423 dd

**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>

**Date:** Tuesday, October 17, 2023 at 11:07 AM

**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>

**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

**Subject:** RE: Termination of Officer

Good Morning Donna,

Sorry for the urgency but we want to make sure this is all done right. We know that we don't need a hearing or notice but does this require a vote of the select board to terminate if the officer chooses not to resign since they are the hiring and firing authority? We have the final check ready for tomorrow's termination at 8am. If the Board has to vote to avoid any possible legal issues would they be able to call an emergency meeting tonight to do so.

Melissa

**From:** Donna Brewer [<mailto:dbrewer@miyares-harrington.com>]

**Sent:** Thursday, October 12, 2023 3:03 PM

**To:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>

**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

**Subject:** Re: Termination of Officer

Hi Melissa,

It is critical that you pay her all earned wages on the day she is terminated. That means the check has to be in her hand on that day or direct deposited on that day. It is a violation of the Massachusetts Wage Act to do otherwise and a violation results in automatic treble damages of the unpaid wages plus attorneys fees. Easiest, I think, would be to arrange a special payroll check to be processed calculating her pay through the date of termination and calling her in that day to be terminated and given her last check in hand.

I agree that she is not due payment for unused vacation because under your policy she is not yet eligible for paid vacation.

There is no particular form you need to use to provide her notice. Typically, notice is given by letter.

You can definitely offer her the option to resign rather than be terminated.

Donna Brewer  
[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)  
(617) 804-2423 dd

**From:** Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Date:** Thursday, October 12, 2023 at 2:44 PM  
**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Cc:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** FW: Termination of Officer

Hello again Donna,

Justin asked that I make you aware of a situation we have here and to have you weigh in on if we are handling everything correct to avoid any future litigation. Basically as you can see from the first part of this chain our Police Chief is having difficulties with one of our full time officers and is recommending termination. Below is also the advice he sought from the Chief's counsel. We would like to make sure of the following before we terminate early next week:

1. Officer [redacted] was a part time intermittent reserve officer with us (DOH 4/25/20), she was appointed to a full time officer with a 1 year probationary period on 12/5/22). We would like to confirm that the 1 yr probationary as described by Chief's counsel below is applicable since prior to 12/5 she was a part time officer. I don't know if it matters or not but [redacted] is also currently in the last group of officers to go through the BRIDGE training and has one class left.
2. I have been advised that when we terminate I have to have the employee's last check in hand, as we are a biweekly payroll using Harper's payroll service and don't do checks in house are we allowed to pay it within 7 days or should I make arrangements to have a special payroll processed and have a check overnighted to have in hand?
3. Since she is still in her probationary period are we obligated to pay her for any vacation time she earned or do we not have to since our handbook states that "all full time employees who have been employed by the town for 12 consecutive months shall be entitled to a paid vacation of 1 week"
4. Sophia (HR), myself and Brian intend to work on the notice of reasons tomorrow, is there any specific format you recommend?
5. Are we allowed to offer her the option to resign rather than be terminated?

I think that is it for now.

Respectfully,  
*Melissa Noe*  
Town Administrator



Town of Monterey  
413-528-1443 x111

*Be the reason someone smiles today.*

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**From:** Eric Atstupenas <[legal@masschiefs.org](mailto:legal@masschiefs.org)>  
**Sent:** Wednesday, October 11, 2023 3:10 PM  
**To:** mpdchief montereyma.gov <[mpdchief@montereyma.gov](mailto:mpdchief@montereyma.gov)>  
**Subject:** RE: Termination of Officer

Good afternoon Chief,

Under Chapter 41, section 133, all full-time police officers in Massachusetts serve a 1-year probationary period, during which time they can be terminated without the requirement of a hearing, simply by providing them with notice of reasons. There can be no appeal, nor can a grievance be filed under any collective bargaining agreement.

Neither the Civil Service Law nor Chapter 41, section 133, spells out the exact amount of specificity required in the notice terminating a probationary employee. To date, there are no reported cases challenging the adequacy of the notice provided to non-Civil Service officers under section 133. Nor is there a case under Civil Service where a court has found the notice sufficiently deficient to declare it inadequate under Chapter 31. In fact, appointing authorities have considerable discretion during the probationary period and this discretion, particularly with respect to law enforcement positions, is supported by appellate caselaw.

However, in one challenge under Civil Service, the Supreme Judicial Court (SJC) does provide some guidance. In Costa v. Board of Selectmen of Billerica, 377 Mass. 853 (1979) the Supreme Judicial Court reviewed the specificity requirements for probationary employee termination notices. (This case was decided under the Civil Service Law prior to its recodification in 1978, but the applicable provisions of the prior statute are virtually identical to the statute currently in effect.) The plaintiffs in the Costa case were probationary, intermittent police officers whose employment had been terminated by the Select Board. The written termination notice sent to the plaintiff stated as a reason for termination: "Your inability to handle routine calls and cooperate with and gain the cooperation of fellow officers." The notice to another plaintiff referred to "Your inability to answer calls and to take proper police action and failure to follow lawful orders of commanding officers." A third plaintiff's notice referred to an "inability to work in harmony with fellow police officers and lack of aggressiveness necessary to the performance of police functions." The Court noted that each of the notices described negative traits or aspects of the employee's conduct or capacity or of the character or quality of his work which led to the Select Board's decision to terminate, and that the

notices did not set out any specific incidents or episodes nor suggest any culpable misconduct on the part of the employees.

Although the Appeals Court had previously concluded that these notices were deficient for not citing specific incidents, the Supreme Judicial Court concluded that these notices were sufficient. In reaching its conclusion, the SJC set forth parameters for permissible termination notices for probationary Civil Service employees. The Court stated that the notice would be insufficient if it merely recited some bureaucratic formula such as "conduct unbecoming an officer" or "for the good of the service." The Court also stated, however, that if the appointing authority were to charge the probationary employee with actual misconduct, a statement would be required of the specific incidents upon which the misconduct charge was based. The notices in the Costa case fell in the middle range and were statutorily adequate, according to the Court, because they identified observed characteristics of the individual related to one or more of the elements of conduct or capacity or character or quality of work, which were "not satisfactory" according to the appointing authority. The Court also noted that, although the statute does not require a description of incidents or events, "there would surely be no objection to the appointing authority's citing them."

Even though probationary employees are not entitled to a hearing to refute the basis for the termination, they may be entitled to a hearing to clear their name in certain circumstances. This is the case where the reasons given will have a "chilling" effect on their ability to get similar work elsewhere. For example, listing as reasons an officer's dishonesty or criminal activity, might be situations where a name-clearing hearing might be required.

Best,  
Eric

Eric R. Atstupenas, Esq.  
General Counsel  
Massachusetts Chiefs of Police Association, Inc.  
353 Providence Road  
South Grafton, Massachusetts 01560  
Office: (508) 375-7793  
Mobile: (508) 400-3726  
[legal@masschiefs.org](mailto:legal@masschiefs.org)

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**From:** mpdchief@montereyma.gov <[mpdchief@montereyma.gov](mailto:mpdchief@montereyma.gov)>

**Sent:** Wednesday, October 11, 2023 2:36 PM

**To:** Eric Atstupenas <[legal@masschiefs.org](mailto:legal@masschiefs.org)>

**Subject:** Termination of Officer

Eric,

I am looking to terminate an officer who is still in their probation period and it ends Jan 1, 2024. I have several instances where she has not come to work when she was assigned or she has taken herself off the schedule and filled her shift with a PT officer with out permission. She was written up within the last month for the same thing. I was told by my town administrator that since she is still in her probation period and that we do not need a reason to let her go. Not only is the absenteeism an issue but that she is unmotivated and lacks basic police knowledge. I don't think that she would be a good candidate either for rehabilitation. I personally would like to part ways with her now then try to rehab a bad cop but if you think I need more documentation let me know. Just looking for a little guidance. Thanks,

Brian D. Fahey  
Chief of Police  
Monterey Police Department  
P. 413-528-3211  
F. 413-528-7951

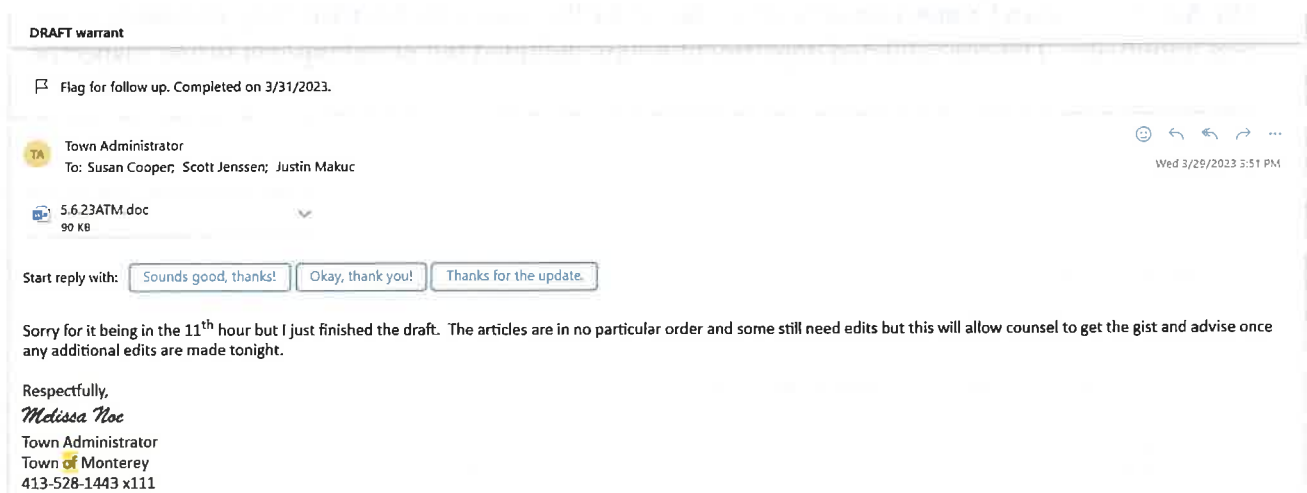
## May Annual Town Meeting Warrant.

Article 32 at this year's Annual Town Meeting was a problem because the most recent and agreed upon version of the proposed bylaw was not the version that appeared in the signed Warrant. We discussed the proposed bylaw at the Board's March 29th meeting and I sent the final version prepared by Town Counsel to Melissa and the other Board members during the meeting. Most notably the language for the department that was supposed to include three employees omitted one of the three (the plumbing/gas fitting inspector) entirely. This in particular would have been apparent to anyone who was familiar with the subject and read through it carefully. It was not noticed by the Town Administrator or the Select Board before the Warrant was signed. We ultimately made changes on the floor of Town Meeting, but that process is cumbersome and could have been avoided if the right version was put in the Warrant.

Upon further inspection of the relevant emails, the final version of the bylaw prepared by Town Counsel and forwarded by me to Melissa and the other Board members was never put into the Warrant. However, a version which was closer to correct and included the plumbing/gas fitting inspector was circulated by Melissa and Town Counsel on March 29<sup>th</sup>, March 30<sup>th</sup>, and April 5<sup>th</sup>. On April 11<sup>th</sup>, Melissa circulated the first version that omitted the plumbing/gas fitting inspector. I circulated a copy on April 12<sup>th</sup> that included the plumbing/gas fitting inspector, but Melissa requested that I make changes to her copy that did not include the plumbing/gas fitting inspector. The Warrant was signed on April 12<sup>th</sup> with the conspicuous error.

### Timeline:

March 29<sup>th</sup> Melissa shared the first draft of the ATM Warrant with the Board at 3:51pm. The consolidated department bylaw included the plumbing/gas fitting inspector.



I sent the final version of the consolidated department bylaw (prepared by Town Counsel) on March 29<sup>th</sup> at 7:16pm during the Select Board meeting. Melissa was present at this meeting, at which I explained I was sending the final version of the consolidated department bylaw. The proposed bylaw included the plumbing/gas fitting inspector, and all other up to date changes. This should have been the version included in the warrant. It was never transferred into the ATM Warrant at any point.

Fw: Monterey / Building Department

Justin Makuc  
To: Town Administrator; Susan Cooper; Scott Jensen

Wed 3/29/2023 7:16 PM

consolidated Dept. Inspections.pdf  
5 KB

From: Donna Brewer <dbrewer@miyares-harrington.com>  
Sent: Wednesday, March 29, 2023 1:34 PM  
To: Justin Makuc <justin@montereyma.gov>  
Subject: Re: Monterey / Building Department

Yes, but I've tweaked the language a bit. Here's the draft, fine to use if you agree on the 3 year term.

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

Melissa sent the Warrant to Town Counsel on March 30<sup>th</sup>. The consolidated department bylaw was not the final version, but it included the plumbing/gas fitting inspector.

Close Previous Next

Draft Town Meeting Warrant

Flag for follow up. Completed on 3/31/2023.

Town Administrator  
To: dbrewer@miyares-harrington.com  
Cc: Justin Makuc

Thu 3/30/2023 11:08 AM

5.6.23ATM.doc  
11 KB

Good Morning Donna,

Please find attached a draft of our annual town meeting warrant. Can you please look it over and let us know if anything needs to be edited? There are some sections with XXX's and highlights that we know we still have to enter data for. Let me know if you have any questions. I do have the track changes turned on if you need to make any amendments.

Thanks!

Respectfully,  
Melissa Roe

On April 5<sup>th</sup>, Town Counsel responded to the ATM Warrant with her own copy including edits and comments. The consolidated department bylaw included the plumbing/gas fitting inspector.

Re: Monterey ATM Warrant

You forwarded this message on Sat 4/8/2023 2:21 PM

Donna Brewer <dbrewer@miyares-harrington.com>  
To: Justin Makuc; Town Administrator

Wed 4/5/2023 11:00 AM

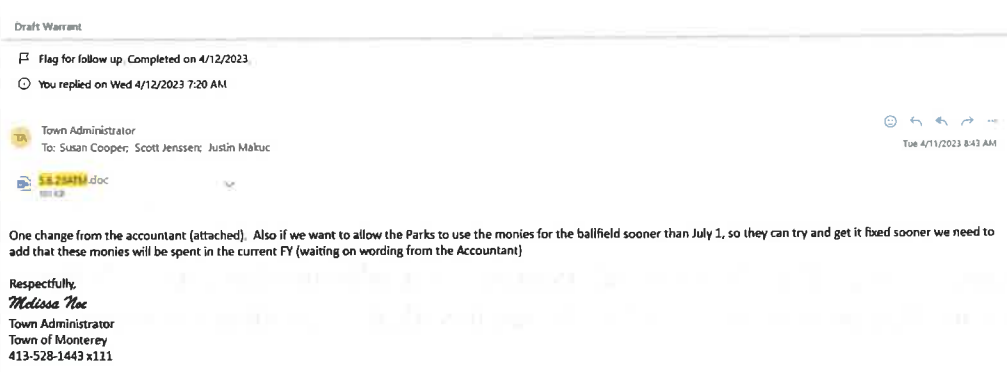
5.6.23ATM Warrant\_DRAFT 4.4.23[...]  
101 KB

Start reply with: Looks great, thank you! Great, thank you! Perfect, thank you!

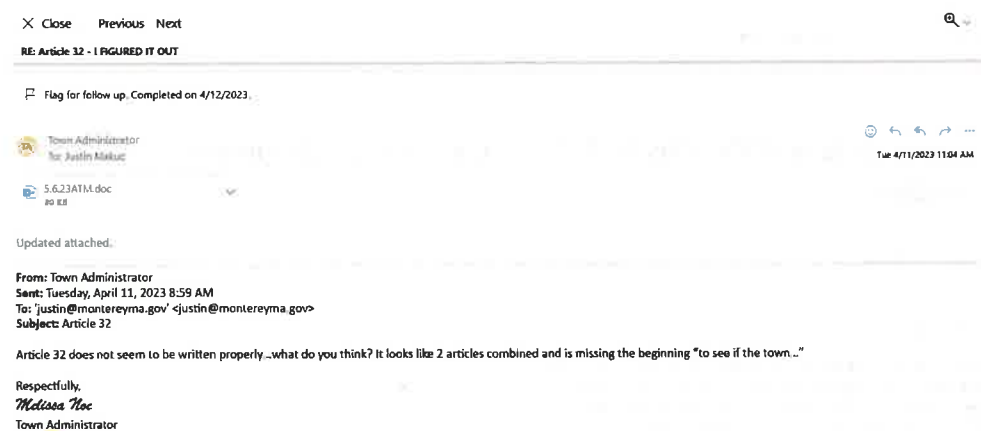
Hi Justin and Melissa, this version of the warrant includes my edits and comments.

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

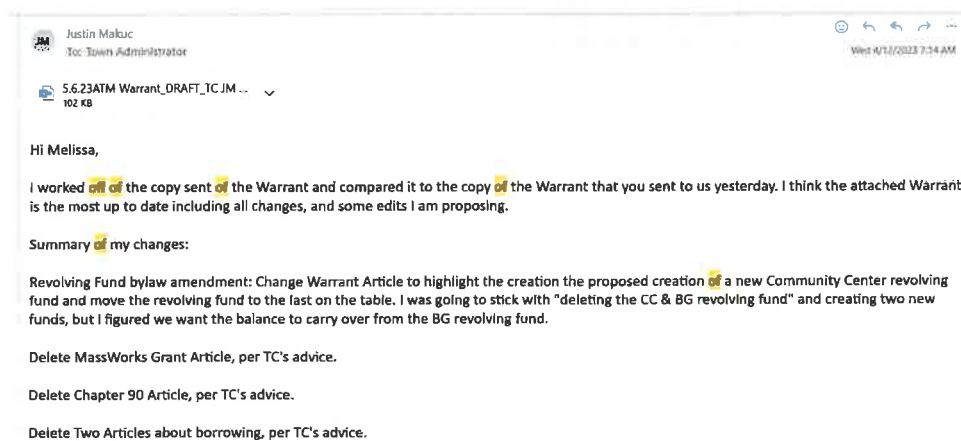
On April 11<sup>th</sup> at 8:43am, Melissa sent an updated copy of the ATM Warrant to the Board. This is the first version of the consolidated department bylaw where the formatting and text is drastically wrong, and the plumbing/gas fitting inspector was removed from the text of the bylaw. This is the point at which the text was altered and never corrected.



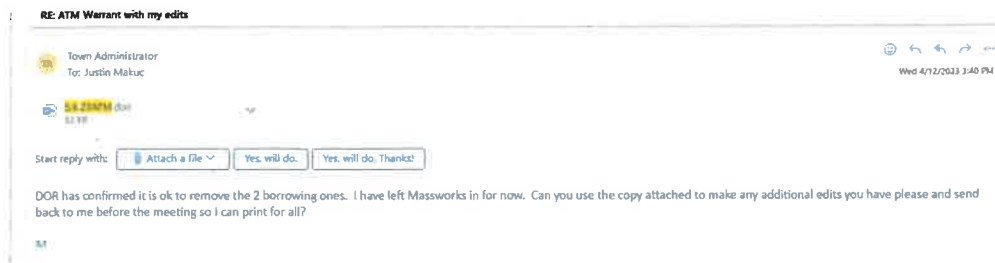
On April 11<sup>th</sup> at 8:59am, Melissa realized that she had technical issues with the consolidated department bylaw, but she said that she figured it out later that morning at 11:04am. The consolidated department bylaw did not include the plumbing/gas fitting inspector in these versions.



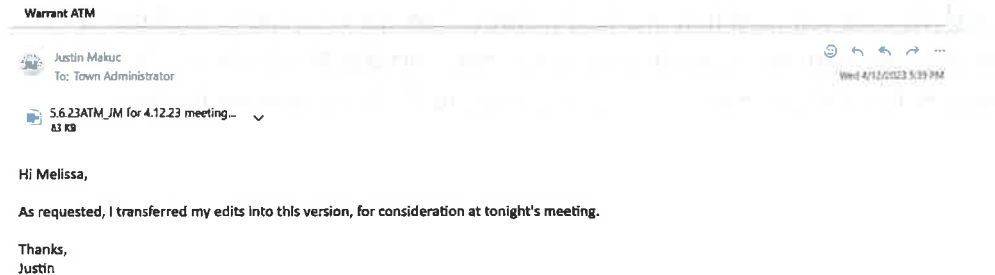
On April 12<sup>th</sup>, I sent Melissa a copy of the most up to date ATM Warrant which I had. In the version I provided at 7:14am, the consolidated department bylaw included the plumbing/gas fitting inspector.



Melissa preferred that I work off of her copy of the Warrant. In the version she provided at 3:40pm, the consolidated department bylaw did not include the plumbing/gas fitting inspector.



I worked off of Melissa's copy of the Warrant and transferred my edits into her copy at 5:39pm. In this version, the consolidated department bylaw did not include the plumbing/gas fitting inspector.



The following changes were made at ATM May 6, 2023 on the floor in order to correct the errors made in preparing the Warrant.

**Article 32. Department of Municipal Inspections Bylaw.**

**Motion:**

In Article 32 "§ XX-1. Appointment of Director":

- Delete "to include the Building Inspector/Zoning Enforcement Officer, Wiring Inspector." and insert it is place "to include the Building Inspector/Zoning Enforcement Officer and an alternate, Wiring Inspector and an alternate, and Plumbing/Gas Fitting Inspector and an alternate."
- Insert ", who may be one of the inspectors" after "The Select Board shall appoint the Director of Municipal Inspections".
- Insert "after notice and a hearing" after "subject to removal by vote of the Select Board".

**Section XX-1 of Article 32 with above amendments:**

**§ XX-1. Appointment of Director.**

The town accepts the provisions of MGL c.43C, §§ 13 and 14, establishing a consolidated Department of Municipal Inspections, to Include the Building Inspector/Zoning Enforcement Officer and an alternate, Wiring Inspector and an alternate, and Plumbing/Gas Fitting Inspector and an alternate. The Select Board shall appoint the Director of Municipal Inspections, who may be one of the inspectors. The term of such Director shall be three years, subject to removal by vote of the Select Board after notice and a hearing.

## Retiree Group Health/Life Insurance Benefit

In this year's May Annual Town Meeting warrant, Article 8 was written to transfer funds (\$17,906) out of Free Cash to the Retiree Group Health/Life Insurance Benefit. The master budget workbook that Melissa kept and the Select Board and Finance Committee relied on for the budget process had consistently proposed this money coming from the Stabilization Fund for the Retiree Health and Life Insurance, rather than Free Cash. This factored into the calculation of available Free Cash. Melissa drafted this Warrant Article incorrectly beginning with the first draft of the Warrant prepared on March 29<sup>th</sup>, and neither the Select Board nor Melissa caught this error until after the Warrant was signed and Town Meeting had voted. Fortunately, there was enough of a cushion in Free Cash to accommodate this \$17,906 error.

Budget workbook and key:

169	Retiree Group Health/Life Stabilization Fund Approp	30,000.00	0.00	30,000.00	0.00	0.00%
170	Retiree Group Health/Life Insurance (from stabilization acct)	16,881.00	0.00	17,905.92	1,024.92	6.07%
171	Fire Company Capital Improvements/Expenses	30,000.00	0.00	30,000.00	0.00	0.00%
172	Mafca Control Lake Garfield (citizen petition)	50,000.00	0.00	50,000.00	0.00	0.00%

Free cash	free cash & stab	Stabilization
Borrow		

Draft Warrant:

ARTICLE . To see if the Town will vote to appropriate the sum of \$17,906 or any other sum from Free Cash for the Retiree Group Health/Life Insurance Benefit, or take any other action relative thereto.

Signed Warrant:

ARTICLE 8. To see if the Town will vote to appropriate the sum of \$17,906 or any other sum from Free Cash for the Retiree Group Health/Life Insurance Benefit, or take any other action relative thereto.

*The Finance Committee supports this Article, 3-0.*

*The Select Board supports this Article, 3-0.*