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**Subject:** Re: questions about appointments  
**From:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Date:** Thu, Jun 30, 2022 11:29 am  
**To:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

Justin, one of my associates found Ch. 291 of the Acts of 1918, section 14, which provides that the selectmen "may appoint" one or more field drivers. You can definitely skip that appointment.

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

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**From:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Date:** Thursday, June 30, 2022 at 11:11 AM  
**To:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Subject:** Re: questions about appointments

Hi Justin,

You should still appoint the positions for whom you already have contracts. You should appoint the firm rather than the individual, e.g., Miyares and Harrington LLP rather than Donna Brewer.

To determine required appointments and length of term, we need to determine which ones are *ad hoc* and which are required by statute or bylaw. For the examples that you provided, there is a statute that governs the appointment of fence viewers. Per G.L. c. 49, § 1, the Select Board is required to annually appoint at least two fence viewers (i.e., each to a one year term only). While G.L. c. 49 talks about the duties of a field driver, there is no G.L. that requires appointment of one. I suspect that it is under an old revised statute. There is no case discussing field drivers dated after the nineteenth century. I think that you can skip that appointment.

You'll want the bylaw review committee to compare your appointments with the bylaws. I note, for example, that the bylaw Article II, Section 1 limits the appointment of the gas inspector to a one year term but your chart says you appointed him for 2 years. I note that the bylaw also refers to G.L. c. 25, § 12H, a statute that has been repealed. You'll want to ask the bylaw review committee to remove these anachronisms.

In addition, all the Conservation Commission members terms expire in 2022. G.L. c. 40, § 8C requires that the terms be staggered so that the first appointments are for 1, 2, or 3 years, with the initial terms arranged so that approximately 1/3<sup>rd</sup> of the terms expire each year. Thereafter all appointments are for 3 year terms. As terms expire you want to make the new appointments for differing term lengths to get to this arrangement.

As for the Historical Commission, you are limited to 5 members if the bylaw was approved by the AG. If it was not, Monterey does not have an effective establishment of an Historical Commission. You can submit the bylaw for approval to the AG's Municipal Law Unit now, in which case we are limited to 5 members, or start the process over by having Town Meeting vote to establish an Historical Commission with seven members. Terms should be staggered like the Conservation Commission appointments. The first appointments are for 1, 2, or 3 years, with the initial terms arranged so that approximately 1/3<sup>rd</sup> of the terms expire each year. Thereafter all appointments are for 3 year terms. You can also appoint alternate members for up to 3 year terms, again trying to have a certain number appointed each year. You can't have more alternates than the number of regular members.

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

**From:** Justin Makuc <justin@montereyma.gov>  
**Date:** Thursday, June 30, 2022 at 6:47 AM  
**To:** Donna Brewer <dbrewer@miyares-harrington.com>  
**Subject:** questions about appointments

Hi Donna,

The Board has been working on making annual appointments for FY23, and has a number of questions. Appointment list is attached as word doc here, we have made all appointments other than those highlighted.

#### **Contracted services**

Should we appoint annually the Town Accountant and Town Treasurer, with whom we already have contracts? If we should appoint these positions in addition to the contract agreed to by the Town for their services, should we appoint the name of the firm or the name of the individual (for example: Donna Brewer or Miyares and Harrington LLP)?

#### **Required appointments, appointments of finite length**

Is there a way to determine which appointments are required under MGL and our Town Bylaws and which are at the discretion of the Select Board? Can we remove permanently from the appointment list positions like field driver and fence viewer? How can we determine for each position if it is required by law or not? How can we tell for each position if it requires an annual appointment or can be appointed without a finite end date?

#### **Historical Commission number of seats**

In 1974 Monterey voted to accept Section 8D of Chapter 40 of the General Laws so as to establish an Historical Commission. For years it has remained defunct with no appointments. We have seven interested individuals now. The Town's "Bylaw" from 1974 when we accepted the provision says "The Commission shall consist of five (5) members." Section 8D of Chapter 40 says "The commission shall consist of not less than three nor more than seven members." Are we limited to five members or seven members? Should these appointments be of staggered lengths or all three year appointments?

Thank you,

Justin

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**Subject:** Re: FW: Michael Johnson v. Town of Monterey  
**From:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Date:** Fri, Jul 01, 2022 10:18 am  
**To:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

Hi Justin, I do not know of a harmful legal effect on the town's potential future litigation position, but the amount paid may encourage others to sue knowing what the insurance company is willing to pay in these types of cases and given similar circumstances, if there are any. Only you and Susan are in the best position to determine whether there is any possibility of encouraging other lawsuits.

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

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**From:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Date:** Friday, July 1, 2022 at 10:15 AM  
**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Subject:** RE: FW: Michael Johnson v. Town of Monterey

Hi Donna,

Thank you for the guidance. This topic came up at this week's Select Board meeting. I passed along the advice that you shared that we don't have to disclose what we know to be the settlement amount. The Board would like to know if it could have any harmful effect to disclose the amount or if it might be best to disclose the amount in the spirit of transparency? We do not want to do anything that could damage a future litigating position of course.

Thank you,

Justin

----- Original Message -----

**Subject:** Re: FW: Michael Johnson v. Town of Monterey  
**From:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Date:** Thu, June 23, 2022 1:22 pm  
**To:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

Thanks Justin. These documents are public records so we can produce them unredacted to anyone who asks for them. We are not required to answer questions, though, so we don't have to disclose what we know to be the settlement amount.

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

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**From:** Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>  
**Date:** Thursday, June 23, 2022 at 1:20 PM  
**To:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Subject:** RE: FW: Michael Johnson v. Town of Monterey

Hi Donna,

Sorry I am just getting back to you. This letter is all I have. Seems like Melissa and the MIIA representative have a back and forth on this.

I don't have much to say other than that Don Coburn is the former Chair of the Select Board, but ended in that role in May 2021 before this letter was sent to the Board.

If you have any other questions I can try to answer.

Regards,

Justin

----- Original Message -----

Subject: FW: Michael Johnson v. Town of Monterey  
From: Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
Date: Wed, June 22, 2022 2:54 pm  
To: Justin Makuc <[justin@montereyma.gov](mailto:justin@montereyma.gov)>

Hi Justin, MIIA's counsel forwarded this to me. Is there some background on this request that you can tell me?

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

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**From:** David S. Lawless <[DSL@robinsondonovan.com](mailto:DSL@robinsondonovan.com)>  
**Date:** Wednesday, June 22, 2022 at 2:50 PM  
**To:** [dscoburn@aol.com](mailto:dscoburn@aol.com) <[dscoburn@aol.com](mailto:dscoburn@aol.com)>  
**Cc:** Donna Brewer <[dbrewer@miyares-harrington.com](mailto:dbrewer@miyares-harrington.com)>  
**Subject:** RE: Michael Johnson v. Town of Monterey

Mr. Coburn:

I am directing your inquiry to Town Counsel, who is copied on this email.

Thank you,  
David

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**From:** [dscoburn@aol.com](mailto:dscoburn@aol.com) <[dscoburn@aol.com](mailto:dscoburn@aol.com)>  
**Sent:** Wednesday, June 22, 2022 2:11 PM  
**To:** David S. Lawless <[DSL@robinsondonovan.com](mailto:DSL@robinsondonovan.com)>  
**Subject:** Michael Johnson v. Town of Monterey

[CAUTION: EXTERNAL EMail]

I'm a citizen of Monterey, and I would like to know how much money the case settled for. Please advise.

Don Coburn  
Former Monterey Selectman

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Town of Monterey  
Proposal for use of American Rescue Plan Act (ARPA) funds – Form DRAFT

- Completed forms are due no later than Thursday October 13<sup>th</sup>, 2022.
- Please use as many words and images as you feel necessary to describe accurately your proposal. Do not be limited to this document and feel free to attach supporting documents as appropriate.
- Please reach out with any questions to the Select Board at [selectboard@montereyma.gov](mailto:selectboard@montereyma.gov) or mail to Town of Monterey Select Board / Post Office Box 308 / Monterey, MA 01245.

**Requestor information**

Name of requesting entity (public body, Town department, individual citizen, etc.):

Contact information for submitter:

Name:

Phone number:

Email:

Mailing address:

**Funding information**

Amount of request:

Will additional funds be required to complete the project?

*If yes, where will those funds be obtained?*

Will additional expenses be incurred regularly for maintenance or replacement after the initial project?

*If so, how will maintenance be funded? (Operating expenses within the Line item budget in annual Town Meeting, regular replacement or maintenance to be added to the capital plan, or other – please specify)*

**Proposed project:**

What is the proposed use of these funds?

*Please be as complete and thorough as possible, include drawings, plans, estimates, and anything else you believe will be helpful in our evaluation of the project. Please also include an expected timeline for the project, once potential funds are secured.*

**Statement of benefits:**

How will this project benefit the residents of Monterey?

*Who in the community will be most directly served?*

**Relevance to the purpose of the American Rescue Plan Act:**

How will this project fulfill the purpose of ARPA?

*(Information from the Commonwealth of Massachusetts and KP Law about the ARPA program can be found on the Select Board website*

*<https://www.montereyma.gov/select-board/pages/american-rescue-plan-act-arpa>  
or upon request at Town Hall)*

**Additional comments:**

Is there anything else that the Select Board should know while considering this proposal for use of ARPA funds?

**Date request is submitted:**

Please email completed forms to [selectboard@montereyma.gov](mailto:selectboard@montereyma.gov) or mail to Town of Monterey Select Board / Post Office Box 308 / Monterey, MA 01245.

**Town of Monterey  
Policy Statement**

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

Whereas, the Town of Monterey through its Select Board directs and supervises the use of Town Counsel;

Whereas, the Select Board intends to identify appropriate use of Town Counsel’s time with an appropriate protocol;

The Select Board hereby adopts the following policy:

1. **Town Counsel liaison.** The Chair of the Select Board shall act as the liaison to Town Counsel (hereinafter “Counsel”). In cases where the Chair is not the primary correspondent with Counsel, the Chair shall be copied on all written correspondence to and from Counsel.
2. **Alternate Counsel liaison.** If the Chair of the Select Board must recuse herself on a matter or fails to respond within five business days to a confidential or time sensitive request, the otherwise most senior member of the Select Board (the member whose term will expire earliest) shall act as liaison to Counsel for that matter. If the Chair denies a confidential or time sensitive request, the requestor shall have the ability to make an appeal to the whole Select Board.
3. **Standard process for requests to contact Counsel.** Department heads and chairs of multimember bodies (boards, committees, commissions, councils, etc.) may request authorization to contact Counsel by completing the “Request to Use Legal Counsel” form. Only department heads and chairs of multimember bodies may request to contact Counsel. The Select Board shall consider the completed form at its next regular meeting, unless the completed form indicates that the request is time sensitive or confidential. Regarding questions from Town multimember bodies, unless a matter is time sensitive or confidential, a majority of the body shall, prior to bringing the issue to the Select Board, approve the question in open session.
4. **Time sensitive matters.** For time sensitive matters (when it would not be timely or practicable to delay consideration of the request to the next Select Board meeting), the Chair of the Select Board, as liaison to Counsel, shall be authorized to approve access to Counsel. If the Chair authorizes such action, the Chair shall notify the Select Board of the same at its next meeting. For time sensitive matters (when it would not be timely or practicable to convene the full multimember body), the chair of a multimember body may independently complete the “Request to Use Legal Counsel” form.
5. **Confidential matters.** For matters that would require the advice of Counsel to be requested and/or provided in confidence, the Chair of the Select Board, as liaison to Counsel, shall be authorized to approve access to Counsel. If the Chair authorizes such action, the Chair shall notify the Select Board of the same at its next meeting. The Chair shall maintain the confidentiality of confidential requests to contact counsel. If the question was asked in confidence and would be subject to the attorney-client privilege, the Chair shall simply inform the Board that a confidential request to contact Counsel was approved. Confidential legal advice sought or received by Town government bodies or officials should only be discussed in open session if absolutely necessary, understanding that such action will likely void the protections of the attorney-client privilege. Likewise, the Select Board or any



**Town of Monterey  
Policy Statement**

- government body authorized to seek advice from Town Counsel, may only meet in executive session to discuss such matters as permitted by the Open Meeting Law and in strict compliance therewith.
6. **Additional contact beyond initial request.** To the extent that a Town government body or official requires additional contact with or advice of Counsel in connection with an approved matter or a matter incidental and related thereto, no further Select Board approval shall be required. Notwithstanding the provisions of the prior sentence, however, the Select Board Chair shall be notified of any additional contact with Counsel and shall be copied on any written correspondence to or from Counsel.
  7. **Use of special counsel.** Only the Select Board may authorize use of special counsel.
  8. **Unauthorized contact of Counsel.** Counsel may not respond directly to any legal inquiries other than as set forth herein. Counsel has been instructed to forward any requests for legal services to the Chair of the Select Board to ensure that Counsel is properly authorized to reply. If not authorized to reply, the Chair will notify the requester and Counsel of the same.

**Town of Monterey  
Policy Statement**

**REQUEST TO USE LEGAL COUNSEL – FORM**

Prior to completing this form, please check this box to confirm that you are familiar with the Town's policy for Contacting Town Counsel: <input type="checkbox"/>
Name:
Department/multimember group:
If multimember group, was this request approved by group at a meeting?
Date submitted:
Requesting contact with: <input type="checkbox"/> Town Counsel <input type="checkbox"/> Special Counsel
Form of questions: <input type="checkbox"/> Written questions via email <input type="checkbox"/> Phone conversation <input type="checkbox"/> Other:
Description of legal services needed/issue faced (attach written questions if applicable and/or explanatory documentation):
Is this matter time sensitive? If so, please explain:
Is this matter confidential/subject to attorney-client privilege? If so, please explain:

REQUEST:    Approved    Denied

Date	Select Board, Chair
Date	Select Board
Date	Select Board

For use by Select Board Chair (or alternate Counsel liaison) if request is reviewed by less than a majority of the Select Board. I deem this matter to be:    Time sensitive    Confidential