



FAIRHAVEN SELECT BOARD-**AMENDED**

Agenda

May 15, 2023, 6:30 p.m.

Town Hall – 40 Center Street – Fairhaven

FAIRHAVEN TOWN CLERK
RECORD 2023 MAY 11 PM 4:47

Pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted in person and via remote means, in accordance with applicable law. This means that members of the public body as well as members of the public may access this meeting in person, or via virtual means. In person attendance will be at the meeting location listed above, and it is possible that any or all members of the public body may attend remotely, with in-person attendance consisting of members of the public. MGL, Ch. 30a, § 20(f) requires anyone that intends to record any portions of a public meeting, either by audio or video, or both, to notify the Chair at the beginning of the meeting.

The meeting can also be viewed on Channel 18 or on FairhavenTV.com

Join Zoom Meeting

<https://us06web.zoom.us/j/89485993911?pwd=OFd5MzJvVnBxQkIxLzdQcFRlbVM0QT09>

Log on or call 1-929-205-6099, Meeting ID: 894 8599 3911, Passcode: 330130

A. TOWN ADMINISTRATOR

1. Staffing Updates
2. Water Flushing Update, BPW Superintendent, Vincent Furtado
3. All Board, Committee, Commission Meeting, June 13, 2023
4. Town Counsel Summary Report of Conservation Commission
5. Benoit Square Update
6. Host Community Agreement
7. Other

B. ACTION ITEMS

1. Joint Transportation Planning Group (JTPG) appointment:
 - a. Joshua Crabb, primary
 - b. Vincent Furtado, secondary
2. Community Development Block Grant (CDBG) loan forgiveness 48 William Street: financial hardship
3. Southeastern Regional Planning and Economic Development District (SRPEDD) Appointment:
 - a. Robert Espindola
4. Municipal Aggregation Renewal
5. Chapter 32, § 21-32, changes to health insurance plan
6. Common Victualer License: Chipotle Mexican Grill of Colorado, LLC
7. IT Cybersecurity Policy
8. Special Town Election Warrant
9. Poll Workers for Special Town Election, Monday, June 5, 2023 (Attachment A)
10. Police for Special Town Election, Monday, June 5, 2023

C. CORRESPONDENCE

1. Town of Fairhaven Parade Team; Fourth of July Parade

D. COMMITTEE LIAISON REPORTS

E. PUBLIC COMMENT

F. BOARD MEMBER ITEMS

G. NEWS AND ANNOUNCEMENTS

The next regularly scheduled meeting of the Select Board is *Monday, June 5, 2023* at 6:30 p.m. in the Town Hall Banquet Room

H. EXECUTIVE SESSION

Pursuant to G.L. c. 30A, § 21(a)(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares (Freire-Kellogg v. Fairhaven)

ADJOURNMENT

Subject matter listed in the agenda consists of those items that are reasonably anticipated (by the Chair) to be discussed. Not all items listed may be discussed and other items not listed (such as urgent business not available at the time of posting) may also be brought up for discussion in accordance with applicable law.

**All Board,
Committee,
Commission
Meeting**

With representatives from
Petrini & Associates PC
Clifford & Kenny, LLP



JUNE
13
2023

6-8 PM

TOWN HALL AUDITORIUM
40 CENTER STREET, FAIRHAVEN, MA

The meeting will be recorded by FairhavenTV

ALL MEMBERS ARE REQUIRED TO ATTEND

Please contact Amy Hart with any questions
ahart@fairhaven-ma.gov or 508-979-4023, ext. 8101

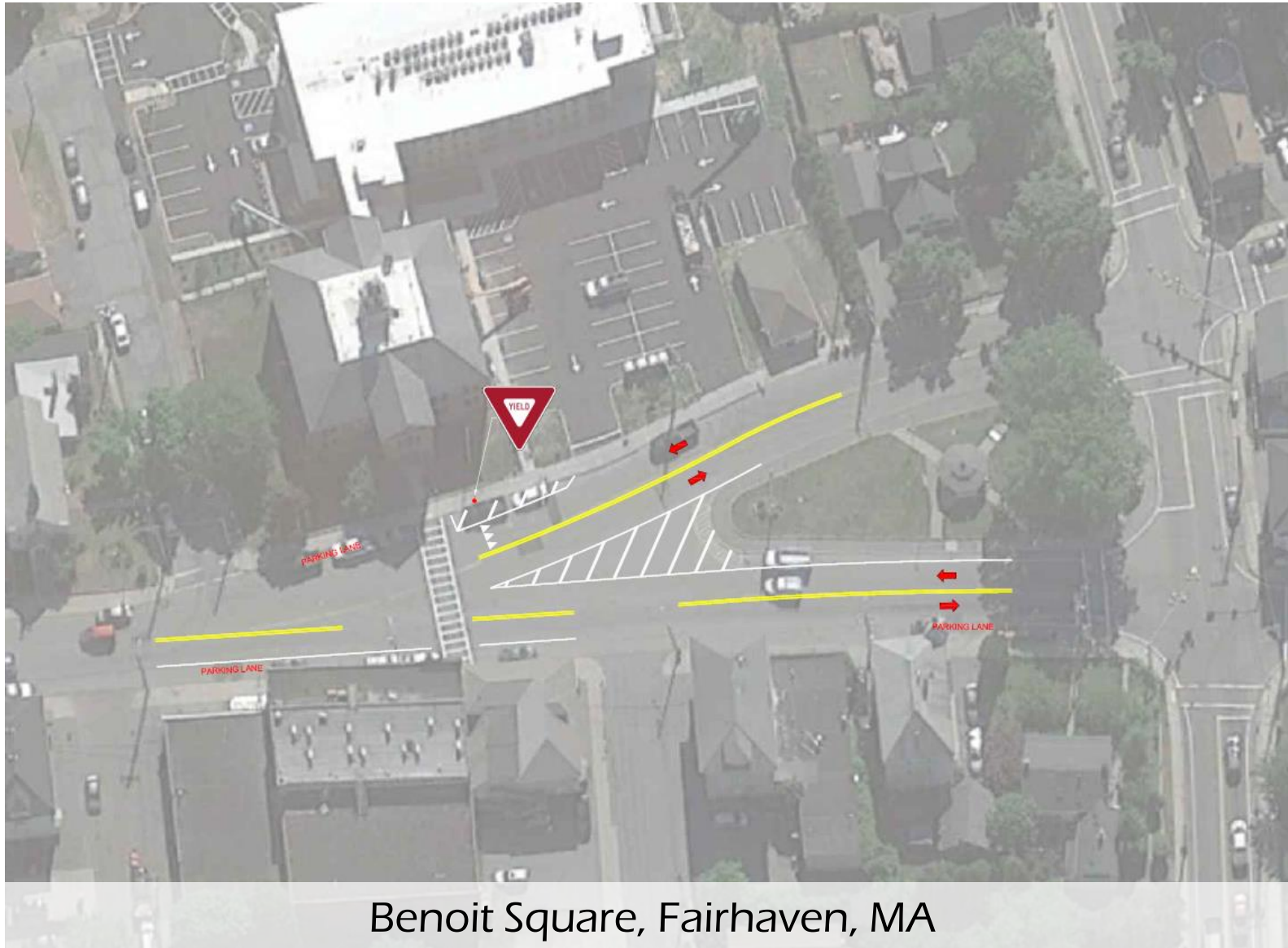


Existing Conditions



Benoit Square, Fairhaven, MA

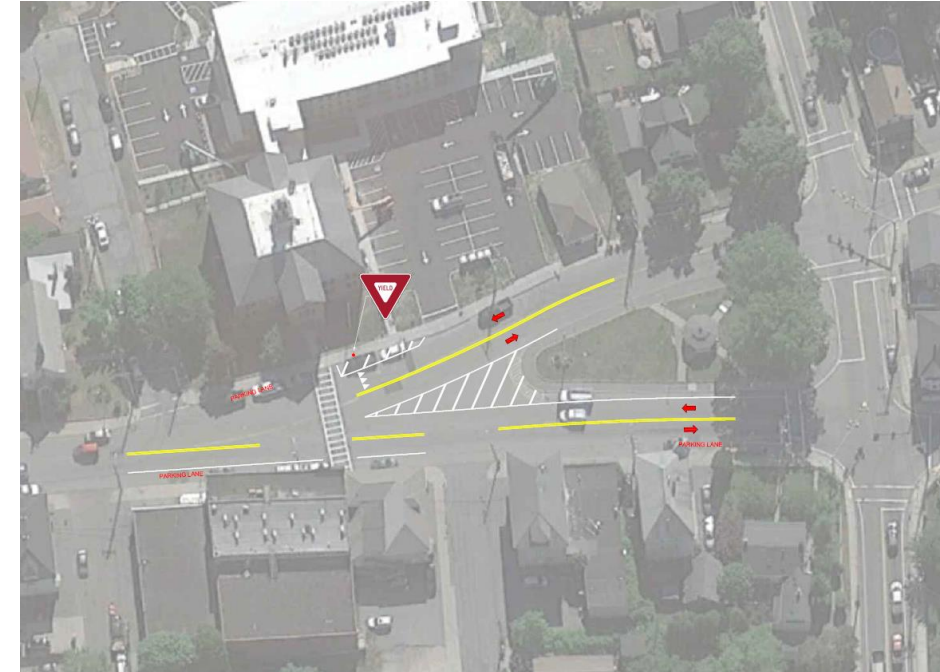
Concept 1 – Painted Island Extension



Benoit Square, Fairhaven, MA

Concept 1 – Painted Island Extension

- Pros
 - Clarifies right-of-way in the square.
 - Implemented using paint only for cost savings.
 - Maintains two-way operations on Main Street and Adams Street.
 - No modifications at the signals.
 - Maintains access to Adams Street residential development.
- Cons
 - Does not reduce conflict points in the Square.
 - Shifts conflict points close to vulnerable users in the crosswalk.
 - Minor impacts to on-street parking in front of the school.



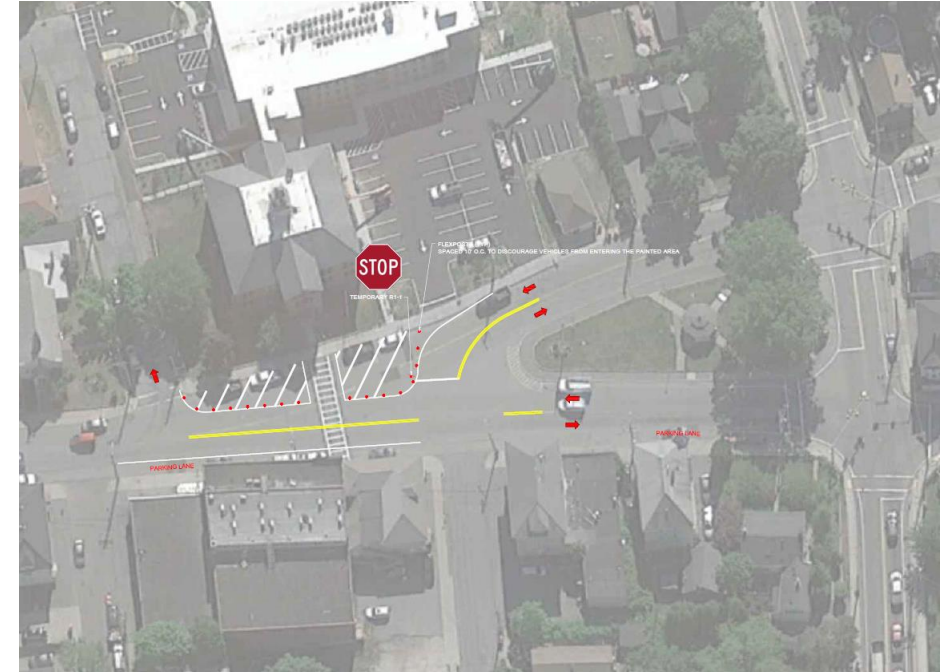
Concept 2 – Painted Bump-out and Flexposts



Benoit Square, Fairhaven, MA – CONCEPT 2

Concept 2 – Painted Bump-out and Flexposts

- Pros
 - T-Intersection on Adams Street is a traffic calming measure.
 - Shortens the length of the crosswalk.
 - Clarifies right-of-way in the square.
 - Maintains two-way operations on Main Street and Adams Street.
 - No modifications at the signals.
 - Maintains access to Adams Street residential development.
- Cons
 - Flexposts increase implementation costs.
 - Eliminates on-street parking in front of the school.





APPOINTING A DESIGNEE TO THE JOINT TRANSPORTATION PLANNING GROUP (JTPG)

The Joint Transportation Planning Group (JTPG) is the regional advisory group for all issues pertaining to transportation in southeastern Massachusetts. It consists of representatives of the chief local elected officials from each of our 27 member cities and towns. Each year, we ask that each municipality **appoint or reappoint its designee to the JTPG** to serve a term commencing June 1, 2023 through June 1, 2024. An alternate should also be appointed to attend meetings if the designee is unavailable.

Meetings are held as needed, but no more than once per month. The primary responsibilities of the JTPG are:

- To advise the Southeastern Massachusetts Metropolitan Planning Organization (SMMPO), MassDOT, Federal Highway Administration (FHA), and Regional Transit Authorities on transportation issues related to the region;
- To advise on the allocation of transportation funds for projects programmed into the Transportation Improvement Program (TIP); and
- To provide a public forum for public participation in the transportation planning process.

Appointing a delegate who is able to attend meetings is important. Attending meetings is imperative to advocate for the placement of a community's projects in the TIP and to be kept informed of transportation issues in the region, including funding and grants.

Please stress to your appointee that they are expected to attend meetings and communicate back to their appointing board.

If an appointee cannot attend a meeting, an alternate (optional) can be appointed to attend on behalf of the City/Town.



Town of Fairhaven
Office of the Town Administrator
40 Center St., Fairhaven, MA 02719

MEMORANDUM

To: Select Board

From: Angie Lopes Ellison, Town Administrator

Date: May 11, 2023

Re: Recommendation for loan forgiveness: Community Development Block Grant (CDBG) 48 William Street: financial hardship

A handwritten signature in blue ink, appearing to be "Angie Lopes Ellison", is written over the "From:" line and extends upwards into the "MEMORANDUM" header area.

After reviewing the documentation provided by the DeOliveira family and recommendations from CDBG Consultant Linda Overing (attached) the recommendation would be to forgive the balance of the loan which is \$24,600.

The Town would not be adversely affected with this request for forgiveness.

MEMORANDUM

To: Marie Ripley

From: Linda Overing

Date: May 2, 2023

Re: Fairhaven-Anti-Speculation/Recapture Policy question

I'm forwarding the information we got from DHCD, the state agency that administers the CDBG program, concerning the Town's ability to forgive the outstanding balance on its loan to the owners of 48 William Street. If the property had not been sold before the completion of the 15-year loan period, the loan would have been 100% forgiven. I recommend the Town forgive the loan now as the DeOliveira family has demonstrated extraordinary hardship due to illness.

Attachment A

Forgiveness

Property owners may request partial or full forgiveness or discharge of housing rehabilitation loans in cases of hardship or emergency beyond the control of the borrower, such as serious illness or job loss, when the property is to be refinanced or sold and repayment of the outstanding loan balance would create a hardship.

Borrowers requesting loan forgiveness shall submit their request in writing to the Department of Planning & Economic Development, with all supporting documents. The Town reserves the right to grant a different amount of forgiveness than requested by the borrower.

Loan forgiveness requests shall be reviewed by the Director of Planning & Economic Development, who will make a recommendation to the Town Administrator, who will make a final recommendation to the Select Board for action. The Town reserves the right to request additional information at any time during the process. The following factors will be taken into consideration in making recommendation and final decision:

- The reason for the request
- The borrower's ability to repay the loan, as indicated by income, assets (including the value of the property subject to the loan) and total debt
- The amount of the loan outstanding and the amount the borrower is requesting be forgiven
- The amount of time that has elapsed since the loan was recorded.

The decision of the Select Board is final. Once denied, applications for loan forgiveness may not be re-submitted unless the circumstances of the borrower have changed substantially.

The Town of Fairhaven will prepare the discharge, but the property owner is responsible for paying any fees to record a discharge.



2023-2024 SRPEDD Commission Member Appointment Form

The **Southeastern Regional Planning and Economic Development District (SRPEDD)** was created by the Massachusetts Legislature, along with 12 other regional planning agencies across the state to undertake regional planning and deliver cost-effective planning-related technical assistance to the municipalities that they serve (in SRPEDD's case: four cities and 23 towns). The key to all such agencies' success and effectiveness in achieving those missions, is the **Regional Commission**, or body of **appointed representatives** from each member municipality. As one would expect, there is call and opportunity for such Commissioners to exercise leadership, share of their expertise, and help to advance their respective regions— be it through land use, transportation, economic development, environmental, or multiple other types of planning. Indeed, it is the Commissioners that define the agency, who through their commitment, dedication, and engagement in the following, help to ensure that the region is most effectively served:

1. **Policy Setting** - Through your participation in Committee and at Commission meetings, you will be asked to vote on important policy matters affecting the region:
 - Regional development policies – adoption of plans and goals.
 - Regional priorities –assessment and establishment of priorities that help to determine and apportion federal and state funding for transportation and economic development projects.
 - Work program direction – deliberation on whether to apply for particular funding, and/or pursue identified projects in conjunction with the annual work program.

2. **Partnering with Member Municipalities** - As a liaison and key point of contact between your municipality and SRPEDD:
 - Provide timely information and updates to your municipality in regards to ongoing planning initiatives, upcoming funding and other opportunities; also, to fellow Commissioners about key planning issues in your community.
 - Help to represent your city/town's perspective in discussion of regional issues.
 - Help to educate and promote awareness of regional planning in your community.

3. **Agenda Setting** – Based on your understanding and familiarity with local and regional needs, help to set the organization's agenda by encouraging focus on prioritized planning issues important and beneficial to the region.

4. **Commission Governance** – Finally, in conjunction with fellow Commissioners and possible service as a SRPEDD officer or committee member, help to provide key oversight on personnel, budget and other areas related to day-to-day operations.

2023-2024 SRPEDD COMMISSION MEMBER

SRPEDD, 88 Broadway, Taunton, MA 02780
 TEL: (508)824-1367 – FAX (508)823-1803 – Email: info@srpedd.org



Town of Fairhaven
M.G.L. Chapter 32B Sections 21-23 Process
Suggested Timeline for Invoking and Implementation

1) Tuesday, May 9th 2023 – (At least 2 calendar days in advance)

Notice of Intent to Invoke Statute sent (certified or hand delivered) to the president of each collective bargaining unit (CBS) and retirees (through RSCME) stating the Select Board's intent to vote to implement the process of Sec. 21-22 for plan design changes to become effective on October 1, 2023.

Monday, May 15, 2023 –

Select Board Meeting

Refresher Discussion of Sections 21-23 Process & Timing

Vote to Invoke statute Sec 21-22 again.

Prior to the Select Board meeting, decide what the Town wants to propose to the PEC. Analysis to be finalized and proposal will be put together before the meeting so it can be sent out immediately after the vote to notify IAC of estimated savings that may be realized after the first 12 months of implementation of plan changes.

2) By Friday, May 26th - (Proposal or 52.03 Notice)

(Within 10 days after receiving proposal or 52.03 Notice)

IAC must meet with the APA to discuss the estimated savings in the proposal.

This is the official beginning of the implementation timeline.

3) By Wednesday, May 31st– Skipping Monday May 29th due to Memorial Day –

(Within 2 business days after IAC meeting or 10 days after receiving the 52.03 notice),

The Town shall provide notice to president/designee of each CBU and RSCME and shall include the number of eligible employees in each bargaining group.

The notice shall request each CBU and RSCME provide a designated Public Employee Committee (PEC) representative.

4) By Wednesday, June 7th – (Within business 5 days of receipt of notice)

Each CBU and RSCME shall designate a PEC representative.

5) By Friday, June 9th–

(No later than 2 business days after APA’s receipt of PEC representatives)

The APA shall give the notice (52.03) that was provided to the IAC, to the PEC representatives, including proposed changes, estimate of savings and the mitigation proposal.

6) On Friday, June 9th -

(When each member of the PEC has received the implementation notice (52.03)

The 30 day negotiation period shall commence. The end of the 30 days would be no later than **Monday July 10th**.

7) No later than Tuesday, August 1st –

60 days advance notice deadline to notify all subscribers shall of any changes in plan design. The Town must also notify BCBS.

8) By Wednesday, June 14th-

(Within 3 business days after the beginning of the 30 day negotiation period)

APA shall notify the Secretary of A&F of the start and end dates of the negotiation period and the name and contact info of the APAs representative for the health insurance review panel.

9) By Monday, June 19th-

(Within 3 business days after sending copies to the Secretary)

The PEC shall select one representative for the panel and give to the APA and the Secretary of A&F.

10) By Thursday, June 29th-

(Within 10 days after receiving this notice)

The Secretary shall provide the APA and the PEC with a list of 3 impartial potential members to serve on the review panel and an actuary to assist the panel.

11) By Wednesday, July 5th-

(Within 3 business days of receiving this list)

The APA and PEC shall jointly select the third member of the panel. If the APA and PEC cannot agree on the person from the list, the Secretary shall appoint the impartial member and notify the parties prior to the end of the 30 day negotiation period.

12) On Sunday, October 1st, 2023 –

Plan design changes go into effect.



TOWN OF FAIRHAVEN - FISCAL YEAR 2024

For Period 10/01/23 Through 9/30/24

Current Plans

Plan Name	Enrollment	I/F	# of Months	Rate	EMPLOYER Share	EMPLOYER Cost	EMPLOYEE Share	EMPLOYEE Cost	TOTAL Cost	Employer %
BLUE CARE ELECT	32	Ind	11	1223.71	734.23	258,448	489.48	172,298	430,746	60.00
OPTIONS DEDUCTIBLE	33	Fam	11	2909.36	1745.62	633,659	1163.74	422,439	1,056,098	60.00
BLUE CARE ELECT TOTALS:						892,106		594,737	1,486,844	
BLUE CARE ELECT	32	Ind	1	1302.03	781.22	24,999	520.81	16,666	41,665	60.00
OPTIONS DEDUCTIBLE	33	Fam	1	3095.56	1857.34	61,292	1238.22	40,861	102,153	60.00
6.4% Projected Renewal (FY25)	BLUE CARE ELECT TOTALS:						86,291		57,527	143,818
NETWORK BLUE NE	108	Ind	11	967.38	580.43	689,548	386.95	459,699	1,149,247	60.00
OPTIONS DEDUCTIBLE	111	Fam	11	2287.83	1372.70	1,676,064	915.13	1,117,376	2,793,440	60.00
HMO BLUE TOTALS:						2,365,613		1,577,075	3,942,688	
NETWORK BLUE NE	108	Ind	1	1029.29	617.58	66,698	411.72	44,465	111,164	60.00
OPTIONS DEDUCTIBLE	111	Fam	1	2434.25	1460.55	162,121	973.70	108,081	270,202	60.00
6.4% Projected Renewal (FY25)	HMO BLUE TOTALS:						228,819		152,546	381,365
Budget Totals:						\$3,572,829		\$2,381,886	\$5,954,715	

GIC BENCHMARK LIKE PLANS ANALYSIS

Assumes existing plans remain with current carrier and active benefit designs mirror GIC benchmark

For Period 10/01/23 Through 9/30/24

Plan Name	Enrollment	I/F	# of Months	Rate	EMPLOYER Share	EMPLOYER Cost	EMPLOYEE Share	EMPLOYEE Cost	TOTAL Cost	Employer %
BLUE CARE ELECT	32	Ind	11	1131.93	679.16	239,064	452.77	159,376	398,439	60.00
BENCHMARK 4	33	Fam	11	2691.16	1614.70	586,135	1076.46	390,756	976,891	60.00
BLUE CARE ELECT TOTALS:						825,198		550,132	1,375,330	
BLUE CARE ELECT	32	Ind	1	1204.37	722.62	23,124	481.75	15,416	38,540	60.00
BENCHMARK 4	33	Fam	1	2863.39	1718.04	56,695	1145.36	37,797	94,492	60.00
6.4% Projected Renewal (FY25)	BLUE CARE ELECT TOTALS:						79,819		53,213	133,032
NETWORK BLUE NE	108	Ind	11	894.82	536.89	637,828	357.93	425,218	1,063,046	60.00
BENCHMARK 4	111	Fam	11	2200.89	1320.53	1,612,372	880.36	1,074,915	2,687,287	60.00
HMO BLUE TOTALS:						2,250,200		1,500,133	3,750,333	
NETWORK BLUE NE	108	Ind	1	952.09	571.25	61,695	380.84	41,130	102,826	60.00
BENCHMARK 4	111	Fam	1	2341.75	1405.05	155,960	936.70	103,974	259,934	60.00
6.4% Projected Renewal (FY25)	HMO BLUE TOTALS:						217,656		145,104	362,759
Budget Totals:						\$3,372,873		\$2,248,582	\$5,621,455	
Savings:						-\$199,956		-\$133,304	-\$333,261	
25% Savings:						-\$83,315				
Employer Net 1st Year Savings:						-\$116,641				

Town changes health plan rates on September 1st of each year.

SELECT BOARD'S MEETING

MONDAY, May 15, 2023

Common Victualer License

Application submitted by:

**Chipotle Mexican Grill of Colorado, LLC
12 Plaza Way
Fairhaven, MA 02719**

Taxes: ok
WC: ok
Bldg.: ok
Health: ok.



**Town of Fairhaven
Massachusetts
Select Board**

40 CENTER STREET
FAIRHAVEN, MA 02719

TEL: (508) 979-4023
FAX: (508) 979-4079
Selectmen@Fairhaven-MA.gov

APPLICATION FOR A LICENSE AS A COMMON VICTUALER

The undersigned hereby makes application for a license as **Common Victualer** with the privilege of doing business on the Lord's Day as provided by General Laws of 1920, Chapter 140, Section 2-21, and Acts amending the same or in addition thereto at

For the year 2023

Firm name Chipotle Mexican Grill of Colorado, LLC.

Signature *Calvin Watkins*

Business Address 12 PLAZA WAY
Fairhaven MA 02719

Telephone # 614.318.7478

Pursuant to M.G.L. Chapter 62C, section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

FEIN: 84-1485992
Social Security Number or Federal
Identification Number

Calvin Watkins
Signature of individual or
Corporate Name

Date: 4.10.23

By: Calvin Watkins
Corporate Officer (If applicable)

Fee: \$25.00

Office Use only

Workers' Compensation ✓
Building Department ✓
Board of Health ✓
Taxes ✓



Fairhaven

Massachusetts

Backup Policy

The network administrator is responsible for maintaining the backups of all Town buildings including Town Hall, Council on Aging, Recreation Center, BPW, Fire Department, and the Police Department. The backups are scheduled daily on Monday-Friday with the exception of Fire and Police which are scheduled daily and run everyday. The data is kept off site at one of the local schools in a locked data closet and the server hosting the backups is password protected. Backups are kept until available space is depleted and the oldest backups will be deleted to create space for more recent backups to occur.

A daily task of the network administrator is to monitor the health of the scheduled backups to ensure they have been run successfully. In the event that the network administrator is out for a prolonged period of time, an appointed designee will assume these responsibilities.

To mitigate the threat of a cybersecurity incident, a weekly snapshot of the data is taken and stored offline in the event that the backup server is compromised or destroyed. A bi-annually scheduled test of three backups will be performed to ensure that backups are being performed correctly and can be restored to machines when necessary. The procedure will be documented to give a realistic picture of the down time that would be experienced in the event a full server rebuild is necessary.

Data Retention

The Town of Fairhaven follows the Massachusetts Statewide Records Retention Schedule for maintaining electronic records. The Town also utilizes a cloud archiving system for e-mail and social media for redundancy purposes and is kept for a minimum of ten years. Local data kept on Town servers is backed up according to the backup schedule listed above and all data is retained for a minimum of ten years. After this period, any data needing to be deleted would be documented by the Director of Technology and signed off by the Town Administrator to leave an audit trail.

Vadar User Accounts

Account management for Vadar users is handled between the IT department and the support team at Vadar. The technology department will receive requests for account changes or creation through email or the town ticketing system. A form will then be sent to the requestor documenting the changes that are required. The technology team will consult with the Town Accountant to ensure the following changes are necessary. The technology department will then follow through with making the changes and coordinate with the Vadar support staff if needed.

WARRANT

FOR SPECIAL/RECALL ELECTION FOR MONDAY, JUNE 5, 2023

COMMONWEALTH OF MASSACHUSETTS
BRISTOL: SS

To the Constable of the Town of Fairhaven in said county

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Fairhaven who are qualified to vote in town elections to vote at::

Precincts One- Six: Fairhaven Recreation Center – 227 Huttleston Avenue

In said precincts in said town on Monday, June 5, 2023 from 10:00 am to 8:00 pm for the purpose of:

PROPOSITION 2 ½ OVERRIDE

Question:

Shall the Town of Fairhaven be allowed to assess an additional \$450,000 in real estate and personal property taxes for the fiscal year beginning July first, two thousand twenty-three?

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said meeting.

Given under our hands this _____ day of _____ 2023

Select Board of Fairhaven,

A TRUE COPY ATTEST:

Leon Correy III, Chair

Elisabeth E Horan, Interim Town Clerk

Charles K Murphy Sr, Vice Chair

Stasia A Powers, Clerk

Keith Silvia

Robert Espindola

I, _____, Constable of the Town of Fairhaven, do hereby certify that I have duly served this Warrant as required by the General Laws of Massachusetts and the By-Laws of the Town of Fairhaven by posting an attested copy thereof in the Town Election location on ____/____/____.

Constable Signature



TOWN CLERK'S OFFICE

FAIRHAVEN, MASSACHUSETTS

TOWN HALL · 40 CENTER STREET · FAIRHAVEN, MA 02719
TELEPHONE: 508-979-4023 x 3 · EMAIL: CLERK@FAIRHAVEN-MA.GOV

To: Select Board
From: Town Clerk's Office
Date: May 11, 2023
RE: June 5, 2023-Poll Workers

Below is the list of the Poll Workers I have scheduled to work at the June 5th Special Election for your approval.

Bernadette Costa	19 Huttleston Avenue	Fairhaven, MA 02719
George Diggle	21 Summer Street	Fairhaven, MA 02719
Dennis Mattos	14 Newton Street	Fairhaven, MA 02719
Christine Alfonse	38 Veranda Avenue	Fairhaven, MA 02719
Claire Millette	138 Main Street 1	Fairhaven, MA 02719
Carole Fauteux	87 Harding Road	Fairhaven, MA 02719
Jodi Duval	46 Wilding Street	Fairhaven, MA 02719
Andrew Romano	440 Bridge Street	Fairhaven, MA 02719
Myles Romano	440 Bridge Street	Fairhaven, MA 02719
Kathryn (Kacie) Silvia	25 Harvard Street	Fairhaven, MA 02719
Kim Mimoso	59 Oliver Street	Fairhaven, MA 02719
Maria (MJ)Carvalho	29 Newbury Avenue	Fairhaven, MA 02719
Anne Ellis	310 Mill Road	Fairhaven, MA 02719
Lisa Moniz	23 Harvard Street	Fairhaven, MA 02719
Donna Ross	18 Cedar Street	Fairhaven, MA 02719
Pauline Parker	38 Blackburn Street	Fairhaven, MA 02719
Cathy Melanson	110 Adams Street	Fairhaven, MA 02719
Michael Thomas	1 Teal Circle	Fairhaven, MA 02719
Joanne St Amand	7 Suzanne Way	Fairhaven, MA 02719
Rebecca Surprenant	10 Nonquitt Avenue	Fairhaven, MA 02719
Peggy Souza	34 McGann Terrace	Fairhaven, MA 02719
Elaine Burgo	147 Merrimac Street	New Bedford, MA 02740
Joseph Sylvia	326 Huttleston Avenue	Fairhaven, MA 02719
Beth Kilanowich	220 Appleton Street	New Bedford, MA 02745
Lori Pina	38 Ash Street	Fairhaven, MA 02719
Sandra Belliveau	124 Weeden Road	Fairhaven, MA 02719
Steve Silvia	347 Main Street, Unit 1	Fairhaven, MA 02719



TOWN CLERK'S OFFICE

FAIRHAVEN, MASSACHUSETTS

TOWN HALL · 40 CENTER STREET · FAIRHAVEN, MA 02719
 TELEPHONE: 508-979-4023 X 3 · EMAIL: CLERK@FAIRHAVEN-MA.GOV

To: Select Board
 From: Town Clerk's Office
 Date: April 28, 2023
 RE: June 5, 2023-Police Officer Assignment

Action is requested in response to the changes made to section 72 of MGL 54, which now charges the Select Board with detailing a sufficient number of police officers or constables for each polling location.

On June 22, the election reform law (the "VOTES Act") was signed into law by Governor Baker. The VOTES Act makes many of the changes from the pandemic permanent (eg., Vote by Mail and Early In-Person Voting). In addition, the assignment of the number of police officers and/or constables at polling places now requires a vote of the Select Board.

The Town of Fairhaven has 6 precincts that will vote in 1 polling location-the Fairhaven Recreation Center, 227 Huttleston Ave. The assigned officers are responsible for delivering the ballots and voting machines to the precincts in the morning, and back to the Town Hall at the end of the night, as well as to preserve order and to protect the election officers and supervisors from any interference with their duties.

In past elections, three (3) officers have been assigned to work at the Rec Center, depending on the expected turnout of the election. Since the Special Election will most likely have a lower turnout than State Elections, my recommendation is to assign two (2) police officers to the polling location, one (1) inside the gymnasium to maintain order in the six precincts, and one (1) to assist with traffic in the parking lot.

The following action is recommended:

MOTION: Move to approve a sufficient number of police officers, but not less than two (2), at the polling location (Rec Center, 227 Huttleston Ave) for the June 5, 2023 Special Election, to preserve order, and to protect the election officers and supervisors from any interference with their duties, and to aid in enforcing the laws relating to elections, as required by Section 72 of MGL Chapter 54.

Further, move to designate the Police Chief the authority to assign specific police officers according to scheduling and availability. The Town Clerk will advise the Police Chief on the location and time the officers are needed.



Town of Fairhaven

Massachusetts
141 Main Street
Fairhaven, MA 02719

Tel: (508) 979-40285
july4thParade@fairhaven-ma.gov

TO: Select Board
FROM: Town of Fairhaven Parade Team
DATE: May 8, 2023
RE: Town of Fairhaven Fourth of July Parade

Dear Select Board members,

It is that time of year again!

Plans are underway for the annual July 4th parade.

The day will begin with the raising of the Big Flag at F.H.S at 8:30 a.m. Followed by the antique car cruise through town and arriving at Cushman Park to meet up with the start of the Parade.

The parade will begin at 9:00 a.m. from Cushman Park (Green Street side) and continue down Green Street to Fort Phoenix, where the we will hold the annual Independence Day ceremony.

Marchers and Floats needed for the July 4th parade, for groups of all sizes to show your American spirit! Applications can be found on the Office of Tourism website. Paper applications are also available in the Visitor's Center. Questions can be directed to july4thParade@fairhaven-ma.gov

We are excited to bring this favorite event back to town.

Sincerely,

Town of Fairhaven Parade Team

Wayne and Vicki Oliveira

Chris Richard

John Medeiros

Committee Liaison Report – Bob Espindola – May 15th, 2023

Broadband Study Committee.

The Broadband Study Committee is planning to meet again next Thursday, May 18th at 7:00 P.M. Among other things, the Committee will discuss the topic of Public Private Partnerships and will also discuss the status of the Fairhaven Housing Authority Broadband Project, where Entry Point has submitted a Request for Proposals document that would cover the construction cost, less the software and electronics required for operation, which will need to be covered under another RFP.

We are waiting for Ms. Ellison to be available for a meeting to discuss further.

Broadband Coalition

The Broadband Coalition will also be meeting on Thursday, May 18th, at 4:00 P.M.

SRPEDD

SRPEDD will be meeting on Wednesday, May 24th for their Annual Meeting.

South Coast Bikeway Alliance held a successful Annual Bike Summit at the James Arnold Mansion in New Bedford last Tuesday. Over 80 people attended and people traveled from Rhode Island and Cape Cod to participate and learn what we have going on along the South Coast that is Bicycle infrastructure related and to share what is going on in their areas.

Pete Sutton, from Mass DOT was inspiring as he talked about twelve different projects currently either funded or being considered along the Route 6 Corridor. He explained that we are in an unprecedented time with funds being made available at the Federal level for bicycle and trail networks and Massachusetts is looking to capitalize on those funds being available.

He presented an interactive map that shows the many established pathways throughout Massachusetts and how the State has a goal to connect as many of them as possible over time. The link below is to an interactive map and “storybook” that explains all the projects that Pete was talking about. Clicking on the pinpoints on the map brings up photos of all the projects.

<https://storymaps.arcgis.com/stories/446e35bc40614e5aaced4a62ff7343b2>

SMMPO – The SMMPO will be meeting at 1:00 on Tuesday, May 16th.

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www.petrinilaw.com

MEMORANDUM

To: Angeline Lopes Ellison, Town Administrator, Town of Fairhaven

From: Heather C. White, Town Counsel *HCW*

cc: Fairhaven Select Board
Conservation Commission
Hugh Bruce Webb, Conservation Agent
Kelly Camara, Administrative Assistant

Date: May 15, 2023

Re: Conservation and Sustainability Department Best Practices and Procedures

This memorandum will provide guidance to the Town Administrator and the Conservation and Sustainability Department (“Department”) regarding the allocation of authority among various Town officials with respect to best practices and procedures of the Department. It is intended to clarify the roles assigned to each individual and group responsible for matters within the purview of the Department in order to promote cooperation and execution of the duties of the Department in an effective and efficient manner.

I. ALLOCATION OF AUTHORITY

- **The Select Board is the appointing authority for the members of the Commission.** Section 8C; General Bylaws §8-1.
- **The Town Administrator shall “[m]anage and direct the daily reporting and supervision of all town departments under the jurisdiction of the board of selectmen...” including the Department.** Chapter 381 of the Acts of 2014 (“Town Administrator Act”), Section 2(e).
- **The Town Administrator is the appointing authority for the Conservation Agent, subject to approval of the Select Board.** Section 2(i) of the Town Administrator Act.
- **The Conservation Agent is the appointing authority for all other Department staff, subject to approval of the Town Administrator.** Section 2(i) of the Town Administrator Act.

Within this overall structure, the Town Administrator plays a strong role in managing and directing the Department. The Town Administrator may take any steps necessary to assist, guide, and direct the Commission and Department staff in carrying out their roles in a manner that is consistent with the laws governing the conduct of governmental affairs and the operation of municipal departments. However, the Town Administrator need not intervene in matters that fall within the explicit statutory jurisdiction and expertise of the Commission, such as substantive determinations on the issuance of Orders of Conditions,

The Department serves an important government function that requires a large volume of administrative tasks to support the Commission in executing its duties. The Town Administrator is positioned to support the effective and efficient operation of the Department, including but not limited to the following matters:

- providing direction to the Commission in the efficient management of daily affairs;
- preparation of materials for meetings;
- taking and managing minutes of meetings;
- addressing issues arising out of interactions between and among Department staff and/or Commission members; and
- supervising the staff of the Department.

Example: One example of a routine Departmental task is the Agent's preparation of packets of material for each meeting of the Commission. The Town Administrator, as the appointing authority for the Conservation Agent and the director of the Department's daily supervision, may establish certain procedures for the Agent to follow with respect to preparation of the packets. Since the Commission is the public body that is responsible for reviewing and issuing decisions on the substantive matters included in the meeting packets, the Town Administrator should consider any requests from the Commission regarding formatting, timing, and transmission procedures. Any procedures prescribed by the Town Administrator should recognize the need for complete and accurate content while avoiding excessive or unnecessary use of Town and staff resources.

Example: A verbatim transcript of each meeting is not required under the Open Meeting Law and is not necessary, especially since each meeting is recorded and may be viewed online at any time. Minutes need only include "an accurate summary of the discussion on each subject." G.L. c. 30A, §22(a). As noted on page 12 of Fairhaven's Boards and Committees Handbook ("Handbook"), "staff members have limited hours and boards and commissions should not ask for more than can be reasonably accomplished in these hours." The Town Administrator may issue guidance to the Commission and implement policies for Department staff to prepare minutes that satisfy the requirements of the Open Meeting Law without overburdening Department staff.

II. ADMINISTRATIVE APPROVALS

An administrative approval is a process by which a conservation commission delegates certain areas of its authority to its agent in order to streamline the process for a property owner to obtain permission for certain minor or emergency actions. This streamlined process not only serves a property owner's interest in avoiding lengthy and costly proceedings for minor work but also helps to avoid overburdening the Commission by reducing the volume of matters requiring consideration and a vote of the full Commission.

If the Commission wishes to delegate authority to the Agent to grant administrative approvals, the best practice is to adopt a Bylaw and/or regulations establishing appropriate procedures for execution by the Agent. The Commission has had a practice in the past of allowing the Conservation Agent to grant administrative approvals, but there is no corresponding provision in the current Bylaw. If the Commission wishes to continue the practice of allowing administrative approvals in the future, a Bylaw amendment and regulations should be adopted to expressly define the authority of the Conservation Agent and the procedures for seeking and obtaining such approvals. Upon request, I am available to draft the procedures and work with the Department to adopt them.

In addition to restricting future administrative approvals, a November 21, 2022 vote of the Commission purported to rescind all prior administrative approvals, except approvals in connection with percolation tests. That vote should not be relied upon as a basis for enforcement action against a property owner who obtained an administrative approval prior to the vote purporting to rescind all such approvals collectively. Each applicant is entitled to notice and consideration of the substantive matters at issue. If any specific concerns arise with respect to any actions of a property owner taken in accordance with a prior administrative approval, I recommend that the Commission review the matter on a case-by-case basis and determine whether such work was performed in accordance with the administrative approval and whether any further approval is needed pursuant to applicable regulations. If the Commission wishes to change or rescind a prior administrative approval, Town Counsel should be consulted to determine whether any substantive change is permissible. If so, then appropriate notice and an opportunity to be heard should be provided prior to any alteration or rescission.

III. USE OF CONSULTANTS

G.L. c. 44, § 53G authorizes various municipal permitting authorities, including the Commission, to adopt rules allowing them to impose "reasonable fees for the employment of outside consultants" to conduct peer review in connection with certain permit applications ("53G fees"). In order to collect 53G fees, the Commission must promulgate rules for implementation of the statutory provisions. 53G fees must be "reasonable," may only be charged for employment of outside consultants, and may only be spent in connection with carrying out the permitting authority's responsibilities under the law. Any unused fees must be promptly returned to the applicant upon completion of the project. As previously advised, 53G fees may be collected only when such expertise is actually needed in connection with the Commission's review of a

particular application, and then only upon receipt of an estimate of cost from such outside consultant for services in connection with the particular project.

On November 21, 2022, the Commission voted to adopt a policy regarding collection of 53G fees. However, that policy is not posted on the Commission's website, and it was not reviewed by Town Counsel. According to the listing of Wetlands Protection Bylaw Fees on the Commission's website, the Commission currently has a practice of requiring all applicants to pay a pre-determined, flat fee for peer review. I recommend that the Commission submit its 53G policy to Town Counsel for review and adopt revisions if needed. I further recommend that an advertised, competitive procurement process be conducted for the procurement of a qualified consultant if the Commission has a frequent need for peer review services. Although such services may be exempt from G.L. c. 30B under certain circumstances, best practices encourage solicitation of proposals so that a highly qualified individual or firm may be selected at a reasonable price.

IV. AUTHORITY OF INDIVIDUAL MEMBERS

Individual Commission members should avoid taking any action on behalf of the Commission that is not authorized by vote of the full Commission. The Handbook provides helpful guidance in this regard as follows:

Speaking for a Board or Committee An individual board member has a right to speak publicly as a private citizen but should not purport to represent the board or committee or exercise the authority of the board or committee except when specifically authorized by that body to do so. If members identify themselves as members when speaking as private citizens, it may be perceived that they speak for the board or committee. Such a perception should be avoided. In addition, it is the policy of the Board of Selectmen that a recused board or committee member refrain from using this individual right of free speech to speak on matters on which a member has been recused in front of that member's board or committee.

The Conservation Commission only has authority when acting as a body at a duly posted meeting. Any action that requires a vote of the Commission at an open meeting cannot be taken by an individual member. No individual Commission member has the authority to issue a violation notice, direct a property owner to take any action, access private property, or speak on behalf of the Commission without a vote of the Commission authorizing such individual to take the particular action. Additionally, no Commission member should represent him or herself as a Town official in connection with personal matters or when speaking as a private citizen.

A. Patrolling for Violations

I recommend against patrolling for violations. Patrolling raises concerns of potential bias and could hinder uniform application of rules and regulations. It also has the potential to unnecessarily add to the already full workload of the Commission and could set the Commission up to fail to meet statutory deadlines for review of applications or statutes of limitations on enforcement matters due to the

inability to manage a cumbersome volume of work. These statutory time limits are binding on the Commission, and failure to meet them is potentially fatal to any decision the Commission may render. Accordingly, it is imperative that the Commission administer and manage its workload in a manner that makes it feasible for the Commission to act in a timely manner.

B. Entry of Private Property and Drone Surveillance

Municipal officials do not have authority to conduct warrantless, non-emergency searches of private property without permission from the owner. The United States Supreme Court has held that warrants are required for non-emergency administrative inspections. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1966). Commission members should not enter private property without permission or an administrative search warrant, and if a member has improperly entered private property they must comply if the property owner asks them to leave.

Bylaws Chapter 192-10 does not alter this constitutional restriction on the Commission's authority. Chapter 192-10.A currently provides as follows:

The Conservation Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.

Although the current language of the Bylaw does not expressly state the need for permission or an administrative warrant, the Bylaw must be applied in a manner that is consistent with state and federal law. The Bylaw as currently written does not grant permission to enter private property without a warrant or permission. An amendment was recently approved by Town Meeting to clarify the limitations on the authority of the Commission to enter private property, and that amendment will take effect upon review and approval of the Attorney General's Office.

In addition to a Commission member's personal, physical entry of private property, certain uses of surveillance devices would constitute "entry" on private property and improperly invade a property owner's privacy. For example, the use of a drone to fly over private property to assess the condition of wetlands would likely be deemed an "entry" even if the operator remains outside the boundaries of the property. The use of drones for surveillance is subject to Federal Aviation Administration ("FAA") regulations as well as Constitutional restrictions. Unless the Town has received a Certificate of Waiver/Authorization ("CoA") from the Federal Aviation Administration for the Commission's use of a drone, such use is subject to the limitations of recreational operators. The FAA's website provides a summary of the applicable limitations, including the following ([Recreational Flyers & Community-Based Organizations | Federal Aviation Administration \(faa.gov\)](https://www.faa.gov/air-traffic/ua/ua-faq)):

Recreational flights - Keep your drone within the visual line of sight or use a visual observer who is co-located (physically next to) and in direct communication with you.

Accordingly, the FAA regulations prohibit the Commission from using a drone to view areas of private property that are not otherwise visible from a public space, as the drone would not be within the operator's visual line of sight when flying over such areas.

The operator of a drone is further restricted by Constitutional limitations on government invasion of privacy. "Under both the Federal and Massachusetts Constitutions, a search in the constitutional sense occurs when the government's conduct intrudes on a person's reasonable expectation of privacy." Commonwealth v. Augustine, 467 Mass. 230, 241 (2014). "At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" Commonwealth v. Mora, 485 Mass. 360, 371 (2020) quoting Silverman v. United States, 365 U.S. 505, 511 (1961). This "right [to be free of unreasonable government intrusion] would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity." Id.

No member of the Department should physically enter or use a drone for purposes of viewing private property without first obtaining permission from the property owner or an administrative search warrant from a court after an authorizing vote of the Commission.

V. CONCLUSION

To summarize the advice above, the following best practices are recommended going forward:

1. The Town Administrator should establish procedures for administrative matters in the Conservation Department, including guidelines for the preparation and content of minutes as well as a schedule, method of transmission, and format of meeting packets. Since the meeting packets are essential to the Commission's functions, it is important that the Town Administrator obtain input from the Commission regarding the meeting packet procedures so that the packets will be as useful as possible to the Commission while balancing the limitations on staff time and Town resources.
2. If the Commission wishes to delegate authority to the Conservation Agent to grant certain administrative approvals, a Bylaw amendment should be proposed at an upcoming Town Meeting to outline the procedures for administrative approvals and the circumstances under which they may be granted. Following adoption of a Bylaw, the Commission may adopt Regulations further defining the procedures. No action should be taken that is inconsistent with a previously granted administrative approval without prior consultation with Town Counsel.
3. Regulations for the collection and use of 53G fees should be submitted to Town Counsel for review and should be revised if necessary to comply with statutory requirements.
4. Unless explicitly authorized by statute or Bylaw, no individual member of the Commission or staff member of the Department should take any action on behalf of the Department without authorization by vote of a majority of the Commission.

5. No Commission member or staff of the Department should represent himself or herself as a Town official in connection with personal matters or when speaking as a private citizen.
6. Commission members should not patrol for violations.
7. No Commissioner or employee of the Department may physically enter or use a drone over private property without permission from the property owner or an administrative warrant.