



## TOWN OF FAIRHAVEN

FAIRHAVEN TOWN CLERK  
RCUD 2023 OCT 26 AM 11:21

### JOINT meeting of the SELECT BOARD and FINANCE COMMITTEE

#### Agenda

October 30, 2023

6:30 p.m.

*Town Hall – 40 Center Street – Fairhaven*

*On March 24, 2023, the bill to extend Open Meeting Law regulations governing remote participation has passed MA legislation and been signed by the Governor. This bill will allow remote and hybrid meeting options for public bodies through March 31, 2025.*

*Pursuant to an amendment to Town Bylaw Chapter 50 § 13,  
all government meetings are available through web/video conference and are recorded.*

#### A. MINUTES:

1. Approve Select Board minutes of October 23, 2023 – Open Session
2. Approve Select Board minutes of October 23, 2023 – Executive Session

#### B. RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT

1. Sewer

#### C. SPECIAL TOWN MEETING WARRANT

1. Special Town Meeting Warrant review

#### D. NEWS AND ANNOUNCEMENTS

#### 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.*

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**MEMORANDUM OF AGREEMENT  
BY AND BETWEEN THE TOWN OF FAIRHAVEN AND  
SEWER DEPARTMENT EMPLOYEES, TEAMSTERS UNION LOCAL 59,  
AFFILIATED WITH THE I.B. OF T.**

NOW comes the Town of Fairhaven (“Town”) and the Fairhaven Sewer Department Employees Unit, Teamsters Union Local 59, Affiliated with the I.B. of T. (“Union”), (collectively “the parties”) who have agreed to modify the collective bargaining agreement (“CBA”) upon the following terms. This agreement is subject to ratification by the Union and the Town of Fairhaven Select Board and subject to funding by Town Meeting;

**WHEREAS**, the Parties currently have a CBA in effect from July 1, 2019, through June 30, 2022.

**WHEREAS**, the Parties hereby jointly agreed to modify the current CBA to reflect the following modifications, additions, and deletions as detailed herein:

- Article XXXIII – Duration:
  - Duration shall be modified to reflect a three (3) year term: July 1, 2022 through June 30, 2025.
  - All references to Duration will be updated in the collective bargaining agreement.
- Article VII – Grievance and Arbitration Procedure:
  - Add a new section, Section (D) that states as follows:

**“(d) Function of the Arbitrator:**  
**The Arbitrator shall be without power or authorities to alter, amend, add to, and/or detract from the language of this Agreement. The decision of the Arbitrator shall be final and binding on the Parties to the extent permitted by law.”**
- Article 13 – Holidays:
  - Add Juneteenth to the enumerated list of holidays following the first sentence of this section.
- Article 16 – Wages:
  - Amend subsection (b) so that the enumerated yearly stipends for Grade I to Grade VII, ranging from \$525.00 to \$1825.00, so that each value listed is increased by fifty (\$50.00) dollars so that the range becomes from \$575.00 to \$1875.00.
  - Amend subsection (c) so that the enumerated yearly stipends for Grade I to Grade IV, ranging from \$100.00 to \$250.00, so that each value listed is increased by fifty (\$50.00) dollars so that the range becomes from \$150.00 to \$300.00.

- Amend the first sentence of subsection (e), which states as follows:

“Cell phone compensation shall be as follows:

	FY20	FY21	FY22
Daily Rate:	\$34.00	\$34.00	\$34.00”

With the following:

**“The cell phone compensation shall be a daily stipend of thirty-eight (\$38.00) dollars.”**

- The current wage chart depicted Schedule A for July 1, 2021 – June 30, 2022 shall be amended to reflect the following wage/COLA increases:
  - 2.5% increase for July 1, 2022 through June 30, 2023;
  - 2% increase for July 1, 2023 through June 30, 2024;
  - 2% increase for July 1, 2024 through June 30, 2025;
- The updated wage chart shall reflect levels 1 through 15 only, removing the current irrelevant levels of 16, 17, 18, 19, and 20.

- Additionally, a temporary/phantom 8<sup>th</sup> step shall be created reflecting a 3% increase from step 7. No employee shall be eligible to rise to this temporary/phantom 8<sup>th</sup> step. As of July 1, 2022, the bottom step (step 1) shall be deleted/dropped, and the remaining steps shall be renumbered so as to reflect seven (7) total steps (i.e. old step 2 shall become New Step 1, old step 3 shall become New Step 2, and so forth until the temporary 8<sup>th</sup> step becomes New Step 7). Employees that were in Step 1 on June 30, 2022, shall be retroactively placed in New Step 1 on July 1, 2022. Retroactively to July 1, 2022, all other employees shall be placed and paid at one (1) step lower than the step that they held on June 30, 2022, in order to reflect the New Step shift. All employees shall rise to the next step in the wage chart upon their employment anniversary with the Town.

For example, an employee with an anniversary of December 15 and who was on Step 5 on June 30, 2022, shall be retroactively placed onto New Step 4 as of July 1, 2022, and paid accordingly. On December 15, 2022, said employee shall then be placed into the New Step 5 and be paid accordingly. This reduction in step number shall not result in a loss of remuneration to any employee as the New Step is at the same rate of pay as the previous higher step with the addition of the corresponding COLA increase detailed above (i.e. New Step 4 as of July 1, 2022 is the same rate of pay of old step 5 as of June 30, 2021 with the corresponding 2.5% COLA increase).

A copy of the updated wage charts is attached hereto as Attachment A. The above language shall also be incorporated into the updated Wage Charts in the CBA to clarify this process.

- Article XVIII – Sick Leave:
- Amend the second and third sentences of subpart Section 8 so that it states as follows:

New Paragraph Number 1 Titled “Annual Sick Leave Buyout”- An employee who is hired **after** July 1, 2022 is not eligible for an annual sick leave buyback.

Employees who were hired prior to July 1, 2022, shall still be eligible for an annual sick leave buyout in the event that the employee meets the following conditions:

- Is employed as of July 30 of the year it is given
- Has a sick balance in excess of 120 days

In the event both of these criteria are met, the employee shall be paid the amount of (1/2) the value of the sick days in excess of 120 days.

The parties understand that this language was changed on or about July 1, 2022 and is not intended to modify any employees hired before that date who will be legacied and entitled to the benefit described above in the same manner and subject to the same terms prior to this change.

New Paragraph Number 2, “Separation Sick Leave Buyout”- An employee hired after July 1, 2022, is **only eligible for a Separation Sick Leave Buyout upon his/her death or retirement**. Any other instances of separation shall **not** result in any sick leave buyout.”

The parties understand that this language was changed on or about July 1, 2022 and is not intended to modify any employees hired before that date who will be legacied and entitled to the benefit described above in the same manner and subject to the same terms prior to this change.

- Article XXV – Miscellaneous:
  - Amend subpart (h) so that it reflects as follows:
 

“The Town will reimburse the employee up to [~~STRIKE AND REPLACE~~] \$225.00 **three hundred fifty (\$350.00) dollars** per fiscal year for ANSI hard steel toe safety boots, with proof of a paid receipt. Boots will be work during working hours.”
  - Add a new subpart, subpart (m), which states as follows:
 

“(m) **For those employees needing bibs and/or other articles of winter clothing, the Town will reimburse the employee up to three hundred fifty (\$350.00) dollars per year with proof of a paid receipt. The employer will select the vendor.**”
  - Add new subpart, subpart (n):
 

“(n)- **On Call work. Employees designated to be “on call” during for a particular week may take home a Town vehicle for transport for Town business.**

- Article IV-Hours of Work- modify (d), paragraph 2, Existing language: “The weekend/Holiday shift shall be no less than six (6) hours. The employee heading the weekend/Holiday overtime list has the option to conduct the shift alone or he/she may split the shift as long as prior notification is given to the Superintendent. [Insert: “**In the event the shift is split in half, each employee shall be paid for a minimum of three (3) hours irrespective of the actual time performed, so long as the job tasks are completed.** ]. Existing language continues unchanged for remainder of subsection: “These provisions shall not apply if weekend/Holiday overtime is not required. In situations where additional time may be needed to complete an assigned weekend/Holiday task, the employee will notify the Superintendent.....”
- Ratification and Integrat on of Agreement: Once a memorandum of agreement is ratified by the union and the Select Board, the Agreement shall be placed on the warrant for Special Town Meeting for funding. Once funded, retroactivity shall apply for all wages as listed in Article 16, above. The parties will work to integrate this MOU into the existing collective bargaining agreement. The parties agree to work in good faith to produce the integrated agreement within thirty (30) days within signing of the memorandum.

IN WITNESS WHEREOF, the Union and the Town, by their authorized representatives, have set their hands to this Memorandum of Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

TOWN OF FAIRHAVEN,  
By Town Administrator  
Duly authorized,

FAIRHAVEN SEWER DEPT. UNION  
By its Bargaining Team,  
Duly authorized,

\_\_\_\_\_  
Angeline Lopes Ellison

  
\_\_\_\_\_

\_\_\_\_\_  
Vincent Furtado, BPW Superintendent

\_\_\_\_\_  
Brian Wotton, BPW

Ratified by Select Board:

\_\_\_\_\_  
Leon E. Correy III, Chair

\_\_\_\_\_  
Charles K. Murphy, Sr., Vice<sup>II</sup> Chair

\_\_\_\_\_  
Stasia Powers, Clerk

\_\_\_\_\_  
Keith Silvia, Member

\_\_\_\_\_  
Robert J. Espindola, Member

TOWN MEETING WARRANT  
TOWN OF FAIRHAVEN  
MASSACHUSETTS

FOR THE  
SPECIAL  
TOWN MEETING  
TO BE VOTED UPON  
TUESDAY, NOVEMBER 14, 2023  
AT 7:00P.M.



**TUESDAY, NOVEMBER 14, 2023**  
IN THE ELIZABETH HASTINGS MIDDLE SCHOOL  
30 SCHOOL STREET  
FAIRHAVEN, MA 02719

# Town of Fairhaven

## WARRANT

### FOR THE SPECIAL TOWN MEETING

**Tuesday, November 14, 2023 at 7:00 p.m.**

On Tuesday, the fourteenth of November, 2023 at 7:00p.m. in the Walter Silveira Auditorium at the Elizabeth I. Hastings Middle School, then and there, the following articles will be before you for a vote.

The Finance Committee has reviewed and provided their recommendation as custom. Contact the Select Board/Town Administrator's office for more information.

### Majority Vote needed unless stated otherwise

#### **ARTICLE 1: BILLS OF PRIOR YEAR**

To see if the Town will vote to pay the unpaid bills of a prior fiscal year. And others that may be brought forward, or take any other action relative thereto  
*Petitioned by: Town Accountant*

<u>Vendor</u>	<u>Amount</u>	<u>Funded From</u>
Stephenson & Brook	\$ 8,000	Surplus Revenue (Free Cash)
Standard Marine Outfitters	\$ 35.98	Surplus Revenue (Free Cash)
Town of Mattapoisett	\$ 6,647	Water Retained Earnings
ASNE	\$ 3,501	Sewer Retained Earnings

Select Board: Recommend Adoption

Finance Committee: Recommend Adoption

**Vote Required: Nine-Tenths (9/10) Vote**

**Motion: To approve as listed in the warrant**

#### **ARTICLE 2: FUND SEWER LABOR CONTRACTS-FY23 & FY24**

To see if the Town will vote to fund the FY23 and FY24 labor contract for the Sewer Department or take any other action relative thereto.

*Petitioned by: Town Administrator*

Select Board: Recommend At Town Meeting

Finance Committee: Recommend At Town Meeting

**Motion: To waive § 50-9 D of the Town Bylaw, Collective Bargaining Agreements Section in accordance with Subsection F**

**Motion: To adopt the sum of \$75,000 to be transferred from Sewer Enterprise Fund Retained Earnings to Sewer Salaries and Wages to fund the FY23 and FY24 labor contract for the Sewer Department**

**ARTICLE 3: SEWER TREATMENT PLANT ADDITIONAL FUNDS**

To see if the Town will vote to amend Article 15A of the June 18, 2022 Town Meeting and raise and appropriate, borrow or transfer from available funds an additional sum of \$20,000,000 to pay additional costs of the sewer treatment plant upgrade, resulting in a total appropriation thereunder of \$70,000,000, or take any action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:                      Recommend Adoption  
Finance Committee:              Recommend Adoption

**Vote Required: Two-Thirds (2/3) Vote**

**Motion: To amend Article 15A of the June 18, 2022 Annual Town Meeting and to raise and appropriate an additional sum of \$20,000,000 to be expended in addition to the \$50,000,000 previously appropriated thereunder, resulting in a total appropriation thereunder of \$70,000,000, to pay costs for Sewer Treatment Plant Upgrade, including the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Select Board, is authorized to borrow an additional \$20,000,000 pursuant to G.L. c. 44, §8(14) or any other enabling authority, resulting in a total borrowing authorized thereunder of \$70,000,000, and to issue bonds or notes of the Town therefore.**

**ARTICLE 4: CAPITAL FEE TRANSFER**

To see if the Town will vote to transfer the Sewer Capital Fee Revenue amount of \$295,959.45 from the June 30, 2023 Sewer Retained Earnings into the Sewer Capital Improvements Stabilization Fund or take any action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:                      Recommend Adoption  
Finance Committee:              Recommend Adoption

**Motion: To transfer the Sewer Capital Fee Revenue amount of \$295,959.45 from the June 30, 2023 Sewer Retained Earnings into the Sewer Capital Improvements Stabilization Fund.**



**ARTICLE 5: WATER STORAGE TANK MAINTENANCE CONTRACT**

To see if the Town will vote pursuant to G.L. Chapter 40 § 62 to authorize the Chief Procurement Officer, in consultation with the Board of Public Works, to enter into a water storage tank maintenance contract to be awarded in accordance with G.L. Chapter 30B § 6, for a maximum term of fifteen years and in an amount not to exceed one million dollars (\$1,000,000) as appropriated under Article 14B of the June 18, 2022 Annual Town Meeting, or take any other action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:                      Recommend Adoption  
Finance Committee:      Recommend Adoption  
**Vote Required: Two-Thirds (2/3) Vote**

**Motion: Adopt as written in the warrant**

**ARTICLE 6: SAFE ROUTES TO SCHOOLS PROPERTY EASEMENT COMPENSATION**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$75,000 from Surplus Revenue (Free Cash) for costs associated with compensation to property owners for the temporary and permanent easements on fifteen parcels on Sconticut Neck Road between David Drown Blvd. and Hiller Ave. that was part of securing a State/Federal Safe Routes to School grant or take any other action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:                      Recommend Adoption  
Finance Committee:      Recommend Adoption  
**Vote Required: Two-Thirds (2/3) Vote**

**Motion: To transfer from Surplus Revenue (Free Cash) the sum of \$75,000 for costs associated with compensation to property owners for the temporary and permanent easements on fifteen parcels on Sconticut Neck Road between David Drown Blvd. and Hiller Ave. that was part of securing a State/Federal Safe Routes to School grant.**

**ARTICLE 7: REPLACE TOWN HALL ALARM PANEL**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$70,000 for emergency costs associated with replacing the fire alarm panel in Town Hall or take any other action relative thereto. thereto.

*Petitioned by: Town Administrator*

Select Board: Recommend Adoption  
Finance Committee: Recommend Adoption

**Motion: To transfer from Surplus Revenue (Free Cash) the sum of \$70,000 for emergency costs associated with replacing the fire alarm panel in Town Hall and associated costs for the project.**

**ARTICLE 8: TOWN CLERK POLL PADS**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$12,700 to purchase eight poll pads for elections and Town Meeting or take any other action relative thereto.

*Petitioned by: Town Clerk's Office*

Description:

The state recommends two poll pads per precinct and two back-up poll pads; the Town currently has six poll pads for elections and needs eight additional to meet the state's recommendation. The state is in the process of making this a requirement for future elections.

Select Board: Recommend Adoption  
Finance Committee: Recommend Adoption

**Motion: To transfer from Surplus Revenue (Free Cash) the sum of \$12,700 for costs associated with the purchase of poll pads.**

**ARTICLE 9: AMEND FY23 COMMUNITY PRESERVATION COMMITTEE APPROPRIATION: WHITFIELD MANJIRO FRIENDSHIP SOCIETY**

To see if the Town will vote to amend previously approved FY23 Whitfield Manjiro Friendship Society – Whitfield Manjiro Cultural Center project (Article 22G of the June 18, 2022 Annual Town Meeting) to include exterior renovations, with no additional funding requested.

*Petitioned by: Community Preservation Committee*

Select Board: Recommend Adoption  
Finance Committee: Recommend Adoption

**Motion: To amend Article 22G of the June 18, 2022 Annual Town Meeting to include exterior renovations.**

**ARTICLE 10: SOLAR CANOPY PROJECT: RECREATION CENTER/COUNCIL ON AGING**

To see if the Town will vote to authorize the Select Board or its designee to enter into a lease, power purchase and an energy storage agreement with Solect Energy Development LLC for solar energy projects located at the Recreation Center and Council on Aging parking lot, through the program created by Power Options or take any other action relative thereto.

*Petitioned by: Town Administrator*

Description:

*This article allows for the Select Board or its designee to negotiate a contract for a solar panel project in the parking lot at the Recreation Center/Council on Aging.*

Select Board:                      Recommend Adoption  
Finance Committee:              Recommend Adoption

**Motion: To authorize the Select Board or its designee to enter into a lease, power purchase, and any energy storage agreement with Solect Energy Development LLC for solar energy projects located at the Recreation Center and Council on Aging parking lot.**

### **ARTICLE 11: REVOLVING FUNDS**

To see if the Town will increase the following Revolving Accounts' spending limits under the provisions of Massachusetts General Law Chapter 44, Section 53 E ½:

<b>Revolving Fund</b>	<b>Authorized to Spend</b>	<b>Revenue Source</b>	<b>FY24 Limit</b>
Mooring Fees	Marine Resources	Mooring fees	\$4,000
Mattress Recycling	Board of Health/ Sanitation	Fees from mattress disposal	\$4,000

Or take any other action relative thereto.

*Petitioned by: Town Administrator*

Select Board:                      Recommend Adoption  
Finance Committee:              Recommend Adoption

**Motion: To adopt as written in the warrant.**

### **ARTICLE 12: APPOINTMENT OF TOWN CLERK**

To see if the Town will vote, pursuant to G.L. c. 41, s. 1B, to change the position of Town Clerk from elected to appointed (hired), said change being contingent upon acceptance of such change by the voters at the next Annual Town Election,

or take any other action relative thereto.

*Petitioned by: Select Board*

Select Board:	Recommend Adoption
Finance Committee:	Recommend Yield To Petitioner

**Motion: To adopt as written in the warrant.**

**See Appendix A on page 10 for Town Clerk Study Report**

**ARTICLE 13: AMEND BYLAWS CAPITAL PLANNING  
COMMITTEE CHAPTER 40 § 2-7**

To see if the Town will vote to amend the language in Bylaws, Capital Planning Committee, Chapter 40 § 2-7 as recommended to reflect actual practice and eliminate conflicts with other statutes. Language changes listed below are **underlined in bold italics** or strike out:

**§ 40-2. Committee established.**

The Select Board shall appoint a Capital Planning Committee (“Committee”) consisting of seven voting members, ~~and three or more nonvoting ex officio members~~, to assist and advise the Town Administrator in preparing a five-year Capital Improvement Plan. The voting members shall serve terms of three years. Initially two voting members shall serve for one year, two for two years, and three for three years, and they may be reappointed. The Committee shall be comprised as follows:

A. Voting members:

- (1) One member of the Board of Public Works or an appointee thereof;
- (2) A person who is a member of the Fairhaven local School Committee or an appointee thereof;
- (3) A resident of Fairhaven who represents the business, financial, or banking community;
- (4) A resident of Fairhaven with experience in the management of construction activities;
- (5) A resident of Fairhaven knowledgeable about the Town’s needs in the areas of open space and recreation facilities or activities;
- (6) ~~The Finance Director/Treasurer/Collector;~~ ***A designee of The Finance Director, or, in the absence of a Finance Director, a Town financial staff member, designated by the Town Administrator, said financial designee to act as Chair of the Committee; and***
- (7) ~~The Town Administrator;~~ and **One resident member appointed by the Select Board**
- (8) ~~Such other nonvoting ex officio members as the Select Board deems~~

appropriate from time to time.

### **§ 40-3. Duties of Committee.**

A. Study proposed capital projects, improvements, and equipment purchases that have a useful life of at least five years and cost over \$20,000 per item;

~~B. Work with Town departments and officers to compile an inventory of the Town's facilities, equipment, machinery and other capital assets;~~

~~B. C.~~ Consider the relative need, impact, timing and cost of these expenditures and the effect each will have on the financial position of the Town of Fairhaven;

~~C. D.~~ Prepare an annual report recommending a Capital Improvement Budget Projects/Plan for the next fiscal year and a Capital Improvement Program Plan, including capital improvements for the next five years. The report shall be submitted to the *Town Administrator who shall then submit it to the* Select Board along with the budget on or before December 31 of for the next fiscal year each year for consideration and approval; [Amended 6-14-2021 ATM by Art. 46]

~~D. E.~~ Present the *The* Capital Improvement Projects Plan and Capital Improvement Program Plan are to be presented at the Annual Town Meeting for its approval of fiscal year expenditures;

F. Monitor the execution of projects authorized;

~~E. G.~~ Explain and defend to the Town Meeting any deviation which the Committee proposes from the Capital Improvement Program Plan.

### **§ 40-4. Report of anticipated capital outlays to Committee.**

~~By October 15 of e~~Each year, each department, board, committee and commission shall provide to the Committee information concerning all anticipated capital outlays requiring Town Meeting appropriation for the ensuing five-year period.

~~§ 40-5. Public hearing on Capital Improvement Plan. [Amended 6-14-2021 ATM by Art. 46] After the annual presentation of the~~ Capital Improvement Plan by the Committee to the Select Board, the Select Board shall, within 30 days of the receipt of the plan, hold a public hearing to present the plan for public comment.

~~§ 40-5.-6 Appropriation for capital improvements. [Amended 6-14-2021 ATM by Art. 46] No~~ appropriation shall be voted for a capital improvement requested by a department, board or commission unless the proposed capital improvement has been considered in the Committee's Capital Improvement Plan, or the Committee has submitted a report to the Select Board explaining the

omission of the proposed capital improvement from its Plan.

Every capital improvement request by a department, board or commission shall be considered in the Committee’s Capital Improvement Plan unless the Committee shall have provided a report to the Select Board explaining the omission of the proposed capital improvement from its Plan.

**~~§ 40-7. Expenditures in preparation for capital improvements.~~**

~~Such Capital Improvement Program, after its adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in prior years, or for preliminary planning for projects to be undertaken more than five years in the future. Notwithstanding the provisions of this section, the Town may appropriate and expend funds for the purchase of land regardless of when improvements to, or use of, the land by the Town is anticipated.~~

~~*Petitioned by: Town Administrator*~~

Select Board:	Recommend At Town Meeting
Finance Committee:	Recommend At Town Meeting

**Motion: To adopt as written in the warrant.**

**ARTICLE 14: CITIZENS PETITION – STREET ACCEPTANCE:  
ALVES WAY**

To see if the Town will vote to accept as a public street Alves Way, or take any action relative thereto.

*Petitioned by: Antonio Alves*

Select Board:	Recommend Yield To Petitioner
Finance Committee:	Recommend Yield To Petitioner

**Motion: To be provided by petitioner**

**ARTICLE 15: CITIZENS PETITION – RECONSIDER ADOPTION  
OF ARTICLE 22, MAY 6, 2023 ANNUAL TOWN MEETING**

To see if the Town will vote to request that the Town of Fairhaven Sustainability Committee reconsider the adoption of **ARTICLE 22: AMEND BYLAWS, CHAPTER 83 ALCOHOLIC BEVERAGES AND DRUGS a new section 5, Prohibit Sale of Alcohol “Nip” Bottles**. The sale of alcoholic beverages in containers less than or equal to 100 milliliters is prohibited within the Town of

Fairhaven effective January 1, 2024 or to any action relative to.

*Petitioned by: The eligible voters of the Town of Fairhaven*

Select Board:	Recommend PassOver
Finance Committee:	Recommend Yield To Petitioner

**Motion: To be provided by petitioner**

**ARTICLE 16: OTHER BUSINESS**

To act upon any other business which may legally come before this meeting.

And you are hereby directed to serve this warrant by posting an attested copy thereof on or near the front or main entrance of the polling place for all Precincts at the Fairhaven Recreation Center, 227 Huttleston Avenue, seven days at least prior to the date of the meeting.

*Appendix A, Article 12, Appointment of Town Clerk, The Final Report of the Town Clerk Study Committee, March 26, 2018*

# APPENDIX A

## **The Final Report of the Town Clerk Study Committee Submitted to the Board of Selectmen - March 26, 2018\***

\* The Town Clerk Study Committee completed their report in 2018 prior to the adoption of Select Board to replace Selectmen or Board of Selectmen

The Town Clerk Study Committee (TCSC) was formed by a vote of the Board of Selectmen in December 2017. It was charged with studying the Town Clerk position, and making a recommendation to the Board of Selectmen on whether the position should be changed from elected to appointed. The timing of this study was selected to coincide with the retirement of a long-time Town Clerk.

Over the course of seven (7) meetings, the TCSC discussed the history of the Town Clerk position, essential functions, and researched how other towns are addressing its changes over the years. In the end, it was the conclusion of the majority of the committee that the advantages of an appointed Town Clerk are too significant to ignore. We understand that there are many voter concerns in the conversion of an elected position to appointed. We hope this report will address those concerns.

### **The Position**

Duties: The Town Clerk position is largely a statutory position, legislated by MGL Ch. 41, Sec. 15. The Town Clerk is charged with recording all votes of Town Meeting, administering oath of office, and overseeing elections 1. Other statutory duties include dog licensing, violation fee collection, maintenance of vital records, meeting notice postings, issues various permits and certificates, and administration of the annual Town Census 2. The Town Clerk serves as the Custodian of all Town Records, as ex officio member of the Board of Registrars, as a Constable, as a Notary Public, as a Records Access Officer, and Keeper of the Town Seal.

Requirements: This position is administrative, and requires thorough knowledge of applicable state, local, and federal statutes and regulations related to the duties and responsibilities of the Town Clerk's office.

### **Policy-Setting vs. Administration of Policy**

Before delving into the concerns frequently raised by voters related to creating the appointed Town Clerk position, the TCSC feels it is important to highlight the difference between "policysetting" officials (who are elected) and "policy-administering" officials (who are better suited to being appointed).



Policy setting: Board of Selectmen  
Board of Health  
Planning Board  
Board of Public Works  
School Committee

Policy administering: Town Administrator  
Police Chief  
Administrative Assessor  
Finance Director/Collector/Treasurer  
Human Resources Director

For these purposes, the majority of the TCSC felt that the Town Clerk fell squarely into the “policy administering” portion of the Town’s governmental reporting structure.

### **Public Outreach**

The TCSC did not have an appropriation; for this reason, public outreach was a challenge. The TCSC conducted an online survey of residents and held an outreach forum at the Town Hall on February 26, 2018. These outreach efforts outlined several common voter concerns in regards to changing the Town Clerk position. Those concerns follow:

❖ Common Public Perception #1: Town Clerk should be a Town resident.

TCSC Majority Response: This is a detailed administrative position that requires a considerable level of expertise and subject knowledge. Errors and omissions could have significant legal and financial implications. The essential functions of this position are reliant on regulatory knowledge, not exclusively community knowledge. Moreover, there is no residency requirement for other department head positions; the TCSC majority did not see a distinction in the Town Clerk position that would make residency advantageous.

❖ Common Public Perception #2: Town Clerk should represent the voters.

TCSC Majority Response: Voters should elect officials that will drive and create policy. The Town Clerk position is administrative and does not create any policy.

❖ Common Public Perception #3: Making the Town Clerk appointed will take a vote away/disenfranchise voters.

TCSC Majority Response: This is the last remaining full-time, professional, elected position in the Town of Fairhaven, and it is a leftover tradition from when the town was a smaller community. The Town has eliminated other elected full-time positions in the past, including the elected Treasurer/Town Clerk in 1987. The Treasurer/Collector position was acknowledged by Town Meeting as a professional position needing a qualified employee. It is the opinion of the TCSC that the time has come to make a similar change to the Town Clerk position.

❖ Common Public Perception #4: If voters do not have confidence in a Town Clerk, they can vote him/her out.

TCSC Majority Response: If an elected Town Clerk fails to perform his/her duties, the voters have two options: recall vote or wait for another election. Both of these options present problems:

- *Recall election:* Recall elections require the signature of 50 voters to initiate, and 20 percent of the registered voters to complete the recall<sup>3</sup>. These signatures would have to be certified by the Town Clerk, and the election would be run by the Town Clerk. Elections cost the Town a considerable amount of money. Recall elections are contentious and dividing.
- *Wait until regular election:* This leaves an employee in question in a sensitive position until the voters can make a decision.

In our appointed scenario, the Town Administrator would address any performance issues, as he would with any other department head. In this way, we believe that the Town Administrator is better equipped to provide immediate accountability and direction to the Town Clerk, where the electorate cannot.

❖ Common Public Perception #5: Why now? Are you not satisfied with the Town Clerks to date?

TCSC Majority Response: This is where the topic gets sensitive for some. It is the opinion of the majority of the TCSC that the town has actually been very fortunate to date. We have had Town Clerks who have taken their role seriously, treated it as a fulltime position, held the same office hours as the rest of Town Hall, and have completed their duties as assigned by MGL. Theoretically, a Town Clerk could be elected, receive a full-time salary for part-time work (or could simply not show up to work), and there would be no immediate accountability to address this.

The timing of this study and recommendation coincides with the retirement of a long-time Town Clerk. Although the statutory duties of the Town Clerk

has not changed over the years, the position has gotten considerably more complicated, with more technical reporting and computer/database skills needed. With a growing need to digitize archives and post agendas digitally to comply with Open Meeting Law and Records Access 4, there needs to be additional training and qualifications for our prospective Town Clerk candidates.

❖ Common Public Perception #6: The Town Administrator will make a political appointment. This is too much centralization of power in the hands of one person.

TCSC Majority Response: The Town Clerk is an administrative, clerical position. If appointed by the Town Administrator (with Selectmen approval) as recommended by the TCSC, then it would be no different than any other professional Town department head. We do not elect our police chief, our highway superintendent, health inspector, etc. These positions report to elected officials who set policy. It is the TCSC majority opinion that the Town Clerk should function the same way. Under the TCSC recommendation, the Town Clerk would report to the Town Administrator, who reports to the Board of Selectmen, and the Board of Selectmen reports to the voters. To this majority, this demonstrates a well-run democracy with a clear reporting structure and immediate accountability for full-time employees.

### **Some Research Highlights**

In addition to the aforementioned issues, the TCSC majority would like to highlight several points to support the creation of an appointed Town Clerk:

**Applicant pool:** The process of running for Town Clerk can be daunting for some qualified applicants. The TCSC majority feels that making the position appointed will increase the applicant pool of qualified candidates.

**Salary:** Under the current elected position, the Town Clerk has to request his/her salary every year. To date, the salary requested has typically reflected the same cost-of-living increases received by union and non-union. The Town Clerk position has certain personnel disadvantages:

- *Classification and Compensation Plan* - because the Town Clerk does not currently fall under the Non-Union Personnel, the position was not included in a recent classification and compensation plan. As a result, while the other nonunion positions will be updated to reflect current job descriptions and salaries/wages that reflect internal and external equity, the Town Clerk position remains untouched, and could fall behind peer employees for pay.
- *Unemployment*-An elected Town Clerk who does not get re-elected is not eligible for unemployment<sup>5</sup>. The TCSC majority felt this was an important detail, as a safety net is important for all employees.

**Elected to Appointed; Never Vice Versa:** In the TCSC's research, we found many instances of communities changing their Town Clerk positions from elected to appointed, but could not find one example of a community changing their appointed Town Clerk to elected. To the TCSC majority, this indicated that, once communities make this change, they are satisfied with the outcome.

The TCSC interviewed selectmen, town moderators, and town managers from communities with appointed town clerks (Everett, Gardner, Middleborough, Norton, Norwood, and Yarmouth). These communities were selected because they were similar in land size, population, house value/per capita income to Fairhaven. Officials from these communities indicated that the appointed Town Clerk position was working well and that they were happy with the outcome. More communities are trending toward the appointed Town Clerk model, with about one-third of Massachusetts communities now having an appointed Town/City Clerk instead of elected<sup>6</sup>.

### **Legislation, Appointment, and Reporting**

It is the recommendation of the TCSC majority that the Board of Selectmen sponsor a homerule petition article on the Annual Town Meeting warrant. This article will petition legislation to make a change to the Town governmental structure, abolishing the elected Town Clerk position and creating an appointed Town Clerk. Further, it is the recommendation of the TCSC majority that this appointed Town Clerk position report to, and be appointed/dismissed by the Town Administrator with Selectmen approval, consistent with other department head positions.

### **Conclusion**

The TCSC would like to thank the Board of Selectmen for this opportunity. The TCSC majority hopes that the Board will sponsor a Town Meeting article to petition legislation to make the Town Clerk position appointed, and reporting to the Town Administrator. Change is always difficult, but progress always requires change. The TCSC majority believes the creation of a Town Administrator has modernized and improved the Town's reporting structure. The TCSC majority would like to continue this trend of restructuring/improving the governmental structure, through the creation of the appointed Town Clerk position.

Respectfully,

Ann Richard, Chair

Mark Badwey

Kyle Bueno

Anne O'Brien, Clerk

Phil Washko

Attachment: Proposed Town Clerk Job Description for the Town of Fairhaven

<sup>1</sup> MGL Ch. 41, Section 15

<sup>2</sup> Fairhaven MA I- (1970, January 01). Retrieved March 21, 2018, from <http://www.Fairhaven-MA.gov/>

<sup>3</sup> Town of Fairhaven eCode 360. (1991, January). Retrieved March 22, 2018, from [https://ecode360.com/search/FA1596?query=recall election](https://ecode360.com/search/FA1596?query=recall+election)

<sup>4</sup> Division of Open Government, Office of the Attorney General. (n.d.). Open Meeting Law, G.L. c. 30A, §§18-25. 5

<sup>5</sup> Check eligibility for unemployment benefits. (n.d.) Retrieved March 21, 2018, from <https://www.mass.gov/service-details/check-eligibility-for-unemployment-benefits>

<sup>6</sup> O'Malley, D. (n.d.) Clerks Elected Appointed (Secretary of State, Elections Division). November 20, 2017



## **JOB DESCRIPTION**

**Job Title:** Town Clerk

**Level:** Schedule B, Level 15

**Hours:** 40 hours per week

**Supervisor:** Town Administrator

**Status:** FLSA Exempt, Non-Union

### **Summary**

The Town Clerk performs highly responsible administrative and supervisory functions in connection with the maintenance of official municipal records, the issuing of various licenses and official Town documents, management of the Town census, and the direction of election activities. The Town Clerk exercises independent judgment and initiative in the planning, administration and execution of the services of the Clerk's office, in the interpretation and application of laws, regulations and procedures.

### **Essential Functions:**

- Plans, directs and supervises the work of the Town Clerk's Office, including preparation, monitoring and oversight of department operating budget
- Responsible for all Town Clerk functions established by Massachusetts General Laws, or as may be required by federal and local law, policies and procedures
- Supervises personnel in all aspects (i.e., recruitment of personnel, assignment of duties, performance evaluations and supervision, payroll preparation, maintenance of personnel records)
- Serves as Custodian of all Town records for which no other custodian is defined; has custody of books, reports, records and laws received from the Commonwealth; certifies public records

- Serves as Chief Election Officer for the Town, with full responsibility for the complete administration of fair and impartial federal, state, and local elections, including but not limited to maintenance of accurate voter registration lists, absentee ballots, maintenance and accuracy of election systems and equipment, and campaign finance law administration
- Serves as ex officio member and clerk of the Board of Registrars
- Serves as Custodian of Vital Records
- Attends all Annual and Special Town Meetings; records all votes and other action taken at town meetings; assists Town Moderator in the preparation and conduct of town meetings; records and certifies all appropriations; responsible for transmitting Town Meeting adoption of bylaws to the Attorney General's Office for approval, Town Meeting acceptance of provisions of the Massachusetts General Laws and Special Acts to the Secretary of State, and authorizations for borrowing to the Department of Revenue
- Administers the Annual Town Census
- Issues a variety of state and local licenses, permits and certificates; collects fees as necessary
- Serves as Keeper of Official Seal of the Town; administers oaths to elected and appointed officials and employees; complies with Massachusetts General Laws' requirements relative to the Conflict of Interest and Open Meeting Laws
- Receives, posts, and/or files all notices and minutes of meetings of all town boards and committees, as appropriate; handles public notice filings; records and files applications, maps, and decisions of the Planning Board; records and maintains files on preliminary and definitive subdivision plans; records and files all decisions of the Zoning Board of Appeals and appeals of such decisions
- Responds to inquiries and requests for information from the public, Town officials and employees, and other government officials, among others
- Performs similar or related work as required or assigned
- Posts agendas and minutes on the Town website

**Judgement:**

The Town Clerk has access, and must exercise discretion regarding, confidential and sensitive information. Errors could result in significant confusion and delay,

result in improper disclosure of confidential information, could have legal and financial repercussions, and/or cause adverse public relations. The Town Clerk must be completely honest, reliable, discreet and have good judgement.

### **Knowledge, Skills and Abilities**

- Excellent communication skills, both oral and written
- Ability to deal tactfully, courteously, and professionally
- Ability to maintain confidentiality and to exercise sound judgement and discretion
- Highly organized, detail oriented, and able to manage ongoing projects with minimal supervision
- Ability to operate all standard office equipment and software, including databases and spreadsheets
- Ability to establish and maintain complex record-keeping systems
- Ability to plan work ahead of time, handle multiple tasks, prioritize, multi-task, meet strict deadlines, and work in high-pressure situations
- Proficiency in typing, spreadsheets, creating presentations, documents, and use of database software

### **Education and Experiences/ Special Requirements**

- This position requires a bachelor's degree and at least five (5) years of experience as a Town Clerk or Assistant Town Clerk. Preference is a certification as a Certified Massachusetts Town Clerk. Such certification shall be required within three (3) years. The required education is to be supplemented with specialized training associated with the position of Town Clerk
- The position requires the ability to be bonded and remain bonded during the entire tenure in the position.
- The position requires that the individual have a commission as a notary public or obtain such within one (1) calendar year.

### **Working Conditions**

- Standard office environment with frequent interruptions from visitors and staff, and shifts in workload prioritization



- Must be able to travel/attend required and optional meetings, training sessions, conferences, seminars, court dates and resident appointments (day and evening) as required
- Must be able to attend night meetings and hearings

*This job description does not constitute an employment agreement between the employer and employee, and is subject to change by the employer as the needs of the employer and requirements of the job change. This is an “at will” position.*