

TOWN OF CHELSEA
PERSONNEL POLICY

Adopted June 20th, 2023

Personnel Policy Town of Chelsea, Vermont

Section 1: Title and Authority

This policy shall be known as the Town of Chelsea personnel policy. It has been adopted by the Town of Chelsea Selectboard pursuant to 24 V.S.A. §§ 1121 and 1122.

This personnel policy does not constitute a contract of employment. Employment with the Town of Chelsea is *at will* and not for any definite period or succession of periods of time. The Town or the employee may terminate employment at any time, with or without notice.¹ The selectboard reserves the right to amend any of the provisions of this personnel policy for any reason and at any time, with or without notice with the signature of at least three board members.

This personnel policy will be administered by the Selectboard or its authorized representatives. The Highway Supervisor is an authorized representative.

Section 2: Persons Covered

This personnel policy applies to full-time and part-time employees of the Town of Chelsea. Except as stated herein, elected officers and their statutory assistants, members of Town boards and commissions, volunteers, seasonal employees, and persons who provide the Town with services on a contract basis are not covered by this policy.²

For the purposes of this policy, a full-time employee is an employee who works at least 32 hours per week on a regular and continuing basis. A part-time employee is an employee who works fewer than 32 hours per week on a regular and continuing basis. Employees shall be prorated for benefits based on the number of hours the employee is scheduled to work.

Where a conflict exists between this policy and any collective bargaining agreement or individual employment contract, the latter will control.

Section 3: Equal Employment Opportunity

The policy of the Town of Chelsea is to provide equal opportunity to all employees and applicants without regard to ancestry, sexual orientation, gender identity, age, race, color, religion, sex, national origin, and physical or mental condition.

Section 4: Conditions of Employment

Any employee, who has completed original probation, and who is required to have a Commercial Drivers License, and whose CDL is suspended for one hundred twenty (120) days or less for the first time in their career in Town service shall be reassigned to non-CDL duties during the pendency of such suspension. In the case of a second suspension of any length

during the next ten (10) years from the date of the first suspension, or any suspension in excess of one hundred twenty (120) days in length, the employee shall be terminated with two (2) weeks' notice or pay in lieu of notice. Any such action will be considered to be for just cause.

Section 5: Probationary Period

All new employees will be required to complete an original six-month probationary period. The purpose of this probationary period is to determine whether the employee is suited for the job. During the probationary period, an employee may be terminated at any time at the sole discretion of the Town. Notwithstanding any other provision of this policy, an employee terminated during the probationary period will have no right to appeal such termination.

At the end of a six-month probationary period a written evaluation will be conducted by a designee of the Selectboard. Probationary employees may be extended in probationary status for an additional three (3) months, disciplined, laid off or dismissed at the discretion of the Selectboard.

Section 6: Permanent Employees

All employees shall receive an evaluation one year after receiving a satisfactory or higher rating on an original probationary period, and then annually thereafter. This date will become known as the anniversary date of employment. The results of such evaluations will be submitted to the employee, the employee's supervisor, and the Selectboard, and will become a part of the employee's personnel file.

Section 7: Conduct of Employees

In an effort to support relationships among employees, supervisors, and board members that are free of any form of discrimination, neither party shall discriminate against, intimidate, nor harass any employee because of race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, gender identity, workers' compensation, nursing mothers, credit history, flexible work arrangements, parental and family leave, filing a complaint or grievance, or any other factor for which discrimination is prohibited by law.

All employees are considered representatives of the Town and as such are expected to conduct themselves in a courteous, helpful, and respectful manner in all their interactions with the public and with other employees.

All employees are expected to faithfully execute the duties and responsibilities of their office to the best of their ability and in compliance with the provisions of this personnel policy.

Section 8: Hours of Service

Regular winter work hours for the road crew shall be 6:00 a.m. to 2:30 p.m., Monday through Friday, with ½ hour for lunch, starting with the pay period that encompasses November 1st.

Regular summer work hours for the road crew shall be 6:00 a.m. to 4:30 p.m., Monday through Thursday, with ½ hour for lunch, starting with the pay period that encompasses May 1st.

The above work hours are in place unless the Highway Supervisor and the Selectboard agree otherwise.

Regular work hours may be adjusted, and employees may be expected to work more than 40 hours per week as circumstances require.

All road crew employees are required to be available for work on an on-call basis, during the winter work hours. Unavailability shall be pre-approved with the Highway Supervisor.

All Town employees are required to be available for work in the case of an emergency, weather related or otherwise.

All employees are expected to be in attendance during regular work hours. Employees who will be absent from work are expected to notify their supervisor in advance whenever possible. Employees that are calling in sick are expected to notify their supervisor as soon as possible but at least 1 (one) hour before start time.

Section 9: Gratuities and Gifts

Employees may not directly or indirectly ask, demand, exact, solicit, accept, or receive a gift, gratuity, act or promise beneficial to that individual, or another, which could influence any action or inaction associated with their official duties on behalf of the Town, or create the appearance of impropriety in connection with any actions or inactions associated with their official duties on behalf of the town.

Section 10: Outside Employment

The primary occupation of all full-time employees shall be for the Town. Employees may not engage in any outside business activities during their normal working hours. Employees are prohibited from undertaking outside employment that interferes with their job performance or constitutes a conflict of interest.

Prior to accepting any outside employment, employees shall disclose their intent to do so to their supervisor, or selectboard chair in writing. Clearance from the Town that such employment does not constitute a conflict of interest shall be obtained. The Town shall respond in writing within three business days.

A conflict of interest means a direct or indirect personal or financial interest of an employee, his or her close relative, household member, business associate, employer, or employee. A close relative includes a spouse, civil union partner, co-habitant, parent, stepparent, grandparent, child, stepchild, grandchild, sibling, aunt or uncle, niece or nephew, parent-in-law, and sibling-in-law.

Section 11: Political Activity

No employee shall use their official authority for the purpose of interfering with or affecting the nomination or election of any candidate for public official, or demand or solicit from any individual direct or indirect participation in any political party, political organization, or support of any political candidate. Employees are prohibited from using Town facilities, equipment, or resources for political purposes and from pursuing political activities while working.

This personnel policy is not to be construed to prevent employees from becoming or continuing to be members of any political party or organization, from attending political party or organization meetings or events, or from expressing their views on political matters, so long as these views are clearly articulated as being those of the individual and not of the Town, and these activities do not interfere with the individual's ability to effectively perform their duties and take place or are expressed during non-working hours. Nor is this personnel policy to be construed as prohibiting, restraining or in any manner limiting an individual's right to vote with complete freedom in any election.

Section 12: Nepotism

The Town, in recognition of the potential for a conflict of interest to occur in the workplace where a close relative is responsible for supervising or evaluating the work performance of another close relative, prohibits the hiring or transferring of relatives, when doing so will result in a close relative supervising or evaluating another close relative, or a close relative supervising or evaluating the immediate supervision of another close relative. Recognizing that the Town of Chelsea is a small community, the Selectboard reserves the right to make exceptions to this provision under certain circumstances. These circumstances and any provisions shall be documented in writing and stored in the employee's file.

A close relative includes a spouse, civil union partner, romantic co-habitant, parent, stepparent, grandparent, child, stepchild, grandchild, sibling, aunt or uncle, niece or nephew, parent-in-law, and sibling-in-law.

Section 13: Alcohol and Drug Use

Reporting to work or working under the influence of alcohol or drugs is strictly prohibited, unless the drug is prescribed, does not cause impairment of the employee, and is used in the manner prescribed by a duly licensed physician or dentist.

Any employee who has completed an original six (6) month probationary period and fails a required drug or alcohol test shall be reassigned to non-CDL duties in accordance with current rules and regulations and may be asked to participate in Vermont League of Cities and Towns

Employee Assistance Program. In the case of a second failed drug or alcohol test during the next ten (10) years from the date of the initial failed drug test, the employee shall be terminated with two (2) weeks' notice or pay in lieu of notice.

Section 14: Tobacco Use

In recognition of the hazards that tobacco poses to the health of employees, and in accordance with 18 V.S.A. §§ 1421 et seq. and §§ 1741 et seq., the Town hereby prohibits employees' use of tobacco in any form in all publicly owned buildings, offices, and enclosed areas, and in all Town vehicles.³

Section 15: Personnel Records

Personnel records will be maintained for each employee of the Town. In accordance with Vermont's Public Records Law, any employee or the employee's designated representative may inspect or copy their personnel file at a mutually agreeable time during regular office hours. The Town reserves the right to have its representative present at the time its files are examined or copied.

Section 16: Use of Town Computer System⁴

The Town computer system is to be used by employees for the purpose of conducting Town business. Occasional, brief, and appropriate personal use of the Town computer system is permitted, provided it is consistent with this policy and does not interfere with an employee's job, duties, and responsibilities.

Employees should have no expectation of privacy regarding anything created, sent or received on the Town computer system. The Town may monitor all computer transactions, communications, and transmissions to ensure compliance with this policy and to evaluate the use of its computer system. All files, documents, data, and other electronic messages created, received, or stored on the Town computer system are open to review and regulation by the Town and may be subject to the provisions of Vermont's Public Records Law.

Employees may not introduce software from any outside source on the Town's computer system without explicit prior authorization from their supervisor. Employees may be held responsible for any damage caused by using unauthorized software or viruses they introduce into the Town computer system.

Employees who have a confidential password to access the Town's operating system should be aware that this does not mean the computer system is for personal confidential communication, nor does it suggest that the computer system is the property of that person.

Transmission of electronic messages on the Town computer system shall be treated with the same degree of propriety, professionalism, and confidentiality as written correspondence. The following are examples of uses of the Town computer system which are prohibited:

- Communications that in any way may be construed by others as disruptive, offensive, abusive, discriminatory, harassing, or threatening;
- Communications of sexually explicit images or messages;
- Transmission of chain letters or solicitations for personal gain, commercial or investment ventures, religious or political causes, outside organizations, or other non-job-related solicitations during or after work hours;
- Access to Internet resources, including web sites and news groups, that are inappropriate in a business setting;
- Any other use that may compromise the integrity of the Town and its business in any way.

Email messages that are intended to be temporary, non-substantive communications may be routinely discarded. However, employees must recognize that emails sent, received, or stored on the Town computer system are subject to Vermont's Public Records Law and may be covered by the State of Vermont's retention schedule for municipal records.⁵

For purposes of this section, computer system means all computer-related components and equipment including, but not limited to, host computers, file servers, workstation terminals, laptops, software, internal or external communication networks, the world wide web (www), the Internet, commercial online services, bulletin board systems, back up systems and the internal and external e-mail systems accessed via the Town's computer equipment.

Section 17: Pay Plan

Employees are paid weekly on Wednesday's.

A. In accordance with the provisions of the Fair Labor Standards Act, as amended, it shall be the policy of the Town of Chelsea to pay one-and-one-half (1 ½) time the hourly rate of pay to all employees (except elected officials and salaried employees) for required work performed for more than forty (40) hours during a given weekly pay period. Each employee shall fill out their time sheet and submit it to their supervisor or designee for approval. The workweek is from Sunday to Saturday. Time sheets shall be submitted to the Treasurer no later than Tuesday morning. Checks will be issued on Wednesday except when Wednesday falls on a holiday, in which case the checks will be issued on Tuesday.

An hourly employee shall be paid for the actual number of hours worked during each pay period. Salaried employees shall be paid an annual rate divided by the number of pay periods per year. An employee absent without leave may forfeit pay at the discretion of the department head and selectboard, with approval for this to be granted in writing. When submitting for approved time off using sick, vacation, personal, or bereavement leave, each employee shall be paid at the regular rate. Only hours worked in excess of 40 hours per pay period shall be paid at the one-and-one half time rate. After at least one year of service, an employee who leaves the service of the Town shall be paid for unused comp and vacation time, not to exceed a combined total of eighty (80) hours.

B. When it is necessary for an employee to work on Saturday or Sunday, pay will be at their regular hourly rate.

C. Call-Out Pay - When an employee is called out to work during hours that are not regular work hours, they shall receive a minimum of two (2) hours' pay. If the employee works less than one hour, then the hour not worked cannot be credited toward statutory overtime pay due.

D. When an employee, in a single workweek, works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

E. Payments that are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work or other similar causes, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for the hours of employment. No part of such payments may be credited toward overtime compensation due to the Fair Labor Standards Act.

F. The provisions of these regulations shall prevail except in cases where contrary contractual agreement exists between the employee and the Selectboard.

G. When an employee is absent due to injury while on the job and a claim under Worker's Compensation will be paid, the Town of Chelsea will pay the employee their regular wages until Workers' Compensation begins.

Section 18: Eligibility for Benefits⁶

Full-Time: A full-time employee works on a continuing basis (indefinite term). The full-time employee is subject to all rules and regulations and receives all benefits and rights as provided by the Personnel Policy.

Permanent Part-Time Employees: Permanent part-time employees are employees who work regularly, but for less than forty (40) hours per week. Permanent part-time employees working more than twenty (20) hours per week shall be subject to all rules and regulations and receive all benefits and rights as provided by the Personnel Policy, on a prorated basis, subject to the eligibility requirements of the insurance carrier.

Part-Time Employees: Part-time employees who work less than twenty (20) hours per week are not eligible for benefits under this Personnel Policy.

Seasonal Employees: Seasonal employees are hired for a specific project of short duration and are not eligible for benefits under this Personnel Policy.

Emergency Appointments: To prevent stoppage of public business, loss of services, or serious inconvenience to the public, appointment of employees on a temporary basis may be authorized with the approval of the Selectboard in accordance with these rules for a period not to exceed sixty (60) days.

The town offers the following group health insurance program for the benefit of its eligible full and part time employees. The town will offer single insurance coverage to eligible employees, with the co-pay that is in effect at that time, with the option of the employee purchasing 2-person or family coverage at their own expense.

- **MVP Health Care**

The town reserves the right to change insurance carriers, or to add, delete or amend insurance benefit programs in its sole discretion. The town also reserves the right to change the amount or percentage of its contribution to the cost of any group health insurance program, which will be reviewed annually. Employees will be provided with advance notice of any change in the contribution rate.

Section 19: Holiday Leave⁷

Full- and part-time employees will receive the following paid holiday leave:

- New Year's Day (January 1)
- Memorial Day (Last Monday in May)
- **Town Meeting Day (First Tuesday in March)**
- Independence Day (July 4)
- Labor Day (First Monday in September)
- **Indigenous Peoples Day (Second Monday in October - Floating)**
- **Veteran's Day (November 11)**
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25)

Full-time employees will receive holiday leave pay at the employee's regular rate of pay. Part-time employees will receive prorated holiday leave pay based on the number of hours the employee is regularly scheduled to work on that day. Those required to work on a holiday will be compensated at one- and one-half times their regular rate of pay for the hours worked in addition to their holiday leave pay.

Holidays falling on a Saturday will be observed the preceding Friday. Holidays falling on a Sunday will be observed the following Monday.

Holidays that fall during an employee's vacation leave will not be charged as vacation leave.

A floating holiday may be observed by the employee on the day it is celebrated, or hours may be banked, to be used at the employee's discretion with prior permission by the Highway Supervisor or Selectboard. A floating holiday must be used in the same fiscal year that it was earned. If the time remains unused at the end of the fiscal year, that time is forfeited.

Section 20: Vacation Leave

Full- and part-time employees will accrue vacation at the following annual rates. At the end of the first payroll period following a satisfactory rating on the probationary evaluation, and at the end of every full pay period thereafter, the employee shall be credited with vacation leave for that payroll period, as follows:

<u>Years of Service</u>	<u>Accrual Rate</u>
0 – 3	.77 hours per pay period
3 – 7	1.53 hours per pay period
7 – 15	2.30 hours per pay period
15 +	3.076 hours per pay period

Full-time employees will receive vacation leave pay at the employee's regular rate of pay. Part-time employees will receive prorated vacation leave pay based on the number of hours the employee is regularly scheduled to work in a week.

Employees are strongly encouraged to take an annual vacation. If an employee does not use all the employee's vacation leave in a year, the employee may carry 40 hours of unused vacation leave forward to the next year. Any hours remaining over forty (40) hours shall be forfeited.

An employee who resigns from employment with the Town will be compensated for up to eighty (80) hours of unused comp and vacation leave, provided that the employee gives at least two weeks' written notice of resignation.

Section 21: Sick Leave

Upon hire, employees will be credited with a bank of 40 hours of paid sick leave on which they may draw during their first months of service. At the end of the first payroll period following a satisfactory rating on the probationary evaluation, and at the end of every full pay period thereafter, the employee shall begin to accrue leave at the following rate:

<u>Years of Service</u>	<u>Accrual Rate</u>
0 – 1	---
1 – 2	.92 hours per pay period
2 – 3	1.07 hours per pay period
3 – 4	1.23 hours per pay period
4 – 5	1.38 hours per pay period
5 +	1.53 hours per pay period

An employee may use sick leave for an illness or injury that prevents the employee from performing the employee's job duties. An employee may also use sick leave to attend the following appointments that cannot be held outside normal working hours:

- A medical or dental appointment

- A medical or dental appointment for a dependent
- An injury or illness of a dependent
- An appointment eligible for short-term family leave under the provisions of the Vermont Parental and Family Leave Act (21 V.S.A. § 472a).

An employee who misrepresents their claim for sick leave may be subject to disciplinary action up to and including dismissal.

Full-time employees will receive sick leave pay at the employee's regular rate of pay. Part-time employees will receive prorated sick leave pay based on the number of hours the employee is regularly scheduled to work in a week.

If an employee does not use all of the employee's sick leave in a year, the employee may carry sick leave forward to the next year.

Upon separation from employment, an employee will not be compensated for unused sick leave.

Section 22: Personal Time

Full-time employees will receive four (4) paid personal leave days per year. This will be granted at the end of the first payroll period following a satisfactory rating on the probationary evaluation. An employee may use personal leave to attend appointments that cannot be held outside normal working hours such as, but not limited to:

- A funeral
- Any type of appointment
- Any educational function or event involving a dependent

Requests for the use of personal time shall be submitted in advance to the supervisor if possible.

Section 23: Bereavement Leave

Full-time employees will receive forty (40) hours of bereavement leave to make arrangements for services or to get affairs in order upon the loss of an immediate family member. Immediate family means an employee's parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, stepchild or ward who lives with the employee, any person residing with the employee, and any family member for whom an employee is primarily responsible either to arrange for health care or to provide care to.

Section 24: Parental and Family Leave

Eligible employees may receive leave as described in the Family and Medical Leave Act (FMLA) and the Vermont Parental and Family Leave Act (PFLA). These federal and state laws will determine employee eligibility, the qualifying reasons for such leave and the length of leave.

The Town reserves the right to designate any qualifying leave of absence granted under this policy as leave under FMLA or the PFLA. Where an employee's leave request is covered by the PFLA and the FMLA, the Town will adhere to the law that provides the most benefits to the employee. If an employee is entitled to leave under both the PFLA and FMLA, the leave periods will run concurrently.

For the purpose of determining the twelve-month period in which an employee may be entitled to PFLA and/or FMLA leave, the Town will use a rolling twelve-month period measured backward from the date an employee uses such leave.

Section 25: Short Term Family Leave⁸

In accordance with the Vermont Short Term Family Leave Law, eligible employees may be entitled to take unpaid leave not to exceed four hours in any thirty-day period and not to exceed twenty-four hours in any twelve month period for the following purposes:

- To participate in preschool or school activities directly related to the academic educational advancement of the employee's child, step-child, foster child, or ward;
- To attend or accompany the employee's child or other family member to routine medical or dental appointments;
- To accompany the employee's parent, spouse or parent-in-law to other appointments for professional services related to their care and well-being; or
- To respond to a medical emergency of the employee's family member.

The Town may require that leave be taken in a minimum of two-hour segments. At the option of the employee, accrued paid leave may be used. An employee shall make a reasonable attempt to schedule appointments for which leave may be taken outside of regular work hours. An employee shall provide the Town with the earliest possible notice of the intent to take short term family leave, but in no case later than seven days before leave is to be taken, except in the case of an emergency.

Section 26: Leave of Absence Without Pay

All requests for leaves of absence without pay for any reason other than those covered by federal, or state law must be submitted in writing to the employee's supervisor and must set forth the purpose for which the leave is requested. All leave requests must be for a definite period and include a specified date of return.

If a leave of absence without pay is granted, the employee may, at the Town's sole discretion, continue the employee's group health plan coverage by paying the required premium in accordance with the payment schedule established by the Town. Other employee benefits (e.g., sick leave, vacation, seniority, etc.) will not accrue during the unpaid leave period.

Section 27: Military Leave

The Town will comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4303 et seq., and 21 V.S.A. §§ 491 et seq. Employees who take military leave subject to the provisions of these laws will be granted leave without pay. At the option of the employee, any paid leave accrued prior to the commencement of the leave may be used.

Section 28: Jury Leave

The Town will compensate employees for their service as jurors. In accordance with 24 V.S.A. § 499, employees will otherwise be considered in the service of the Town for purposes of determining seniority, benefits, credit towards vacations, sick leave, and other rights, privileges, and benefits of employment.

The Town expects its employees to serve when summoned for jury duty and will not request that an employee be excused from serving except in unusual circumstances which jeopardize service to the public. It is the obligation of the employee to notify their supervisor as soon as they are called for jury duty. The Town will compensate the employee for the difference between their regular rate of pay and their compensation for their service.

When Town employees are called to serve as a witness in a court proceeding due to their status as an employee of the Town, the Town will compensate the employee for the difference between their regular rate of pay and their compensation as a witness. The Town will pay the difference only when the employees' regular rate of pay exceeds their compensation as a witness.

Section 29: Overtime and Compensatory Time Off

In accordance with the Fair Labor Standards Act, the Town compensates all nonexempt employees at the rate of one and one-half hours for each hour *actually worked* in excess of forty hours in any workweek. Employees employed in executive, administrative or professional capacities as defined by the FLSA are exempt from this requirement.^{9 10}

When overtime is available authorized representatives of this policy shall make a reasonable effort to distribute overtime as equitably as possible among all employees.

In lieu of overtime pay, employees may accrue compensatory time off ("comp time") subject to the following conditions:

- Comp time is earned at a rate of one- and one-half hours for each hour worked more than forty hours in any work week.
- An employee may accrue a maximum of forty hours of comp time per year (40 hours of comp time represents 26.67 hours of actual overtime work) to be used within the year they are earned. An employee who has accrued 40 hours of comp time will be paid overtime compensation for additional overtime hours of work.

- At the Town's discretion, an employee may be paid in cash in lieu of a request for compensatory time off.
- An employee receiving payment for accrued comp time will be paid at the regular rate of pay earned by the employee at the time the employee receives such payment.
- **Call-Out Pay is not eligible for comp time.**

An employee who has accrued comp time and requested use of comp time will be permitted to use such time off within a reasonable period after making the request if such use does not unduly disrupt the Town's operations. Requests for use of comp time must be submitted to the employee's supervisor, who will have sole discretion to grant or deny the request. Requests for use of comp time will not unreasonably be withheld.

Section 30: Employment Discrimination

Vermont and federal law prohibit employment discrimination or retaliation based on race, color, religion, sex, or national origin, sex or age, or against a qualified individual with a disability with respect to all employment practices. Vermont law also prohibits discrimination based on sexual orientation, ancestry, HIV status, and place of birth. It is also unlawful to retaliate against employees or applicants who have alleged employment discrimination.

Employees are encouraged to bring any complaints alleging unlawful discrimination to the attention of the employee's supervisor or Selectboard who will arrange a meeting to discuss the matter. The meeting will take place as soon as reasonably possible, but in no case later than seven calendar days from receipt of notification. If the Supervisor or Selectboard is unable to resolve the matter during this meeting, the aggrieved party may submit a written, signed complaint within seven (7) additional calendar days. The Supervisor or Selectboard will then have an additional fifteen (15) calendar days in which to investigate and to issue a report with recommendations to the full Selectboard. The Selectboard will, within ten calendar days, notify the aggrieved of its decision.

Section 31: Sexual Harassment

Sexual harassment in the workplace is illegal under federal and Vermont law and is strictly prohibited. The Town is committed to providing a workplace free from this unlawful conduct. All employees have the right to work without being subjected to insulting, degrading or exploitative treatment on the basis of their gender. It is against the policies of the Town for any individual, male or female, to sexually harass another individual in the workplace. In accordance with 21 V.S.A. § 495h, the Town has adopted the following sexual harassment policy. All employees are required to read this policy before signing the employee acknowledgement form.

Sexual harassment is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- submission to that conduct is made either explicitly or implicitly a term or condition of employment;

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- submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Examples of sexual harassment include, but are not limited to, the following when such instances or behavior come within one of the above definitions:

- either explicitly or implicitly conditioning any term of employment (e.g., continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- touching or grabbing a sexual part of an individual's body;
- touching or grabbing any part of an individual's body after that party has indicated, or it is known, that such physical contact was unwelcome;
- continuing to ask an individual to socialize on or off-duty when that person has indicated he/she is not interested;
- displaying or transmitting sexually suggestive pictures, objects, cartoons or posters if it is known or should be known that the behavior is unwelcome;
- continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;
- retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's duties or work environment, etc.);
- derogatory or provoking remarks about or relating to an employee's sex;
- harassing acts or behavior directed against a person on the basis of his or her sex;
- off-duty conduct which falls within the above definition and affects the work environment.

It is also unlawful to retaliate against employees for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

Any individual who believes that they have been the target of sexual harassment, or who believes they have been subjected to retaliation for having brought or supported a complaint of harassment, is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop.

Any employee who wishes to report sexual harassment should:

- Contact their supervisor if not involved in the concern.
- Contact any member of the Selectboard.
- Contact the Administrative Assistant to the Selectboard.

Once the Town receives a complaint of sexual harassment, it will take all necessary steps to ensure that the matter is promptly investigated and addressed. If sexual harassment is found to have occurred, the Town will take appropriate action, ranging from a verbal warning up to and including dismissal.

Complaints of sexual harassment or retaliation may also be filed with the following agencies:

Vermont Attorney General's Office
Civil Rights Unit
109 State Street
Montpelier, VT 05609-1001
Tel: (888) 745-9195

Equal Employment Opportunity Commission
JFK Federal Building
15 New Sudbury Street, Room 475
Boston, MA 02114
Tel: (800) 669-4000 (voice)
For Deaf or Hard of Hearing (844) 234-5122

These agencies may conduct impartial investigations, facilitate conciliation, and, if they find that there is probable cause or reasonable grounds to believe sexual harassment occurred, they may take a case to court.

Section 32: Employee Discipline

The Town of Chelsea has adopted a progressive discipline process to identify and address employee and employment related problems. The Town's progressive discipline process applies to all employee conduct that the Town in its sole discretion, determines must be addressed by discipline.

The progressive discipline process does not apply to elected officers and their statutory assistants. However, an elected officer may choose to follow the requirements of this policy for discipline and termination of their statutory assistants. A statutory assistant means an individual appointed to their position by an elected officer of the Town having express statutory authority to appoint an assistant. Statutory assistants include the assistant clerk and the assistant treasurer.

Under the town's progressive discipline process, an employee may be subject to disciplinary action, up to and including termination, for violation of the provisions of this personnel policy and/or failure to maintain an acceptable level of performance. The Town may take prior disciplinary action into consideration when disciplining or terminating an employee. Violations of different rules may be treated as repeated violations of the same rule for purposes of progressive discipline.

Most often, employee conduct that warrants discipline results from unacceptable behavior, poor performance, or violation of the Town's policies, practices, or procedures. However, discipline

may be issued for conduct that falls outside of those identified areas. The Town also reserves the right to impose discipline for off-duty conduct that adversely impacts the legitimate interests of the Town. The Town reserves the right in its sole discretion to bypass progressive discipline and to take whatever action it deems necessary to address the issue at hand. This means that more or less severe discipline, up to and including termination, may be imposed in a given situation at the Town's sole discretion.

The Town also retains the right to unilaterally eliminate positions or reduce the work hours of a position or positions due to economic conditions, shortage of work, organizational efficiency, changes in departmental functions, reorganization or reclassification of positions resulting in the elimination of a position or for other related reasons.

Probationary employees are not subject to the Town's progressive discipline process. Notwithstanding any other provision of this policy, an employee terminated during the probationary period will have no right to appeal such termination.

The Town will normally adhere to the following progressive disciplinary process but reserves the right to bypass any or all steps of progressive discipline when it determines, in its sole discretion, that deviation from the process is warranted: (1) verbal warning; (2) written warning; (3) suspension; and (4) termination.

Employees are prohibited from engaging in the conduct listed below and may receive discipline, up to and including termination, for doing so. This list has been established to provide examples of behavior that could warrant a range of disciplinary sanctions. Appropriate levels of discipline may be based on the severity of employee conduct. This list is not exhaustive.

- Refusing to do assigned work or failing to carry out reasonable assignments of job duties.
- Being inattentive to duty, including sleeping on the job.
- Falsifying a timecard or other record or giving false information to anyone whose duty is to make such record.
- Being repeatedly or continuously absent or late, being absent without notice or satisfactory reason or leaving one's work assignment without appropriate authorization.
- Conducting oneself in any manner that is offensive, abusive, or contrary to reasonable community standards and expectations of public employees.
- Engaging in any form of harassment including sexual harassment.
- Misusing, misappropriating, or willfully neglecting Town property, funds, materials, equipment, or supplies.
- Unlawfully distributing, selling, possessing, using or being under the influence of alcohol or drugs when on the job or subject to duty.
- Fighting, engaging in horseplay, or acting in any manner which endangers the safety of oneself or others. This includes acts of violence as well as threats of violence.
- Stealing or possessing without authority any equipment, tools, materials, or other property of the Town or attempting to remove them from the premises without approval or permission from the appropriate authority.
- Marking or defacing walls, fixtures, equipment, tools, materials, or other Town property, or willfully damaging or destroying property in any way.

- Willful violation of Town rules or policies.
- Knowingly not using Personal Protective Equipment.

Section 33: Employee Termination Process¹¹

The Town of Chelsea has adopted an employment termination process. Most often, employee conduct that warrants termination results from unacceptable behavior, poor performance, or violation of the Town's policies, practices, or procedures. However, termination may result from conduct that falls outside of those identified areas. The Town need not utilize this termination process but may take whatever action it deems necessary to address the issue at hand.

The Town also retains the right to unilaterally eliminate a position and thus terminate employment or reduce the work hours for some or all employees due to economic conditions, shortage of work, organizational efficiency, changes in departmental functions, or reorganization. In such cases, this termination process does not apply.

Probationary employees are not subject to the Town's termination process. Notwithstanding any other provision of this policy, an employee terminated during the probationary period will have no right to appeal such termination.

An employee being considered for termination will be provided with written notice. The notice will contain a brief statement of the reasons termination is being considered and the date, time, and place of a pre-termination meeting with the employee's supervisor.

At the pre-termination meeting, the employee will be afforded an opportunity to present the employee's response to the reasons for termination. If the employee declines to attend the pre-termination meeting, the employee may submit a written response to the pre-termination notice not later than the scheduled date of the meeting.

Within seven days of the date of the meeting, the supervisor will provide the employee with a written notice informing the employee whether he/she has been terminated. If the employee has been terminated, the notice will provide the general reasons therefore and will also inform the employee of the opportunity to request a post-termination hearing before the selectboard by giving written notice of such request to the supervisor within seven days. The employee will be informed that the employee's failure to make a timely request for a post-termination hearing will result in such a hearing being waived.

If a request for a post-termination hearing is made, the selectboard will provide the employee with a notice informing the employee of the date, time, and place of the post-termination hearing before the selectboard. The notice will inform the employee of their right to be represented by counsel, to present and cross-examine witnesses and to offer supporting documents and evidence. The notice will also inform the employee of their right to have the hearing conducted in executive session in accordance with 1 V.S.A. § 313.

At the post-termination hearing, the employee will be afforded the opportunity to address the basis for termination by hearing and examining the evidence presented against the employee, cross-examining witnesses, and presenting evidence on his/her behalf. The selectboard will

make such determinations as may be necessary in the event of evidentiary objections or disputes. When the hearing is adjourned, the Selectboard, under the authority granted by 1 V.S.A. § 313(e), will consider the evidence presented in the hearing in deliberative session.

The Selectboard will render a written decision within fourteen days after the close of the hearing, unless otherwise agreed upon by the parties.

Section 33: Severability

If any provision of this personnel policy or the application hereof to any person or a circumstance(s) is held invalid, this invalidity does not affect other provisions or applications of the personnel rules, which can be given effect without the invalid provision or application. For this purpose, this personnel policy is severable.

ADOPTED this 20th day of June 2023.

SIGNATURES of SELECTBOARD:

Kevin Marshia, Chair

Kelly Lyford, Vice Chair

Leyna Hoyt

Addendum A: Personnel Acknowledgement

I, _____, acknowledge that:

- A. I received a copy of the Town's personnel policy on _____;
- B. I have been given an opportunity to ask questions about said policy and I have been provided with satisfactory information in response to my questions;
- C. I understand that the language used in this personnel policy is not intended to create, nor should it be construed to create, a contract of employment between myself and the Town;
- D. I acknowledge that the Town reserves the right to add, amend or discontinue any of the provisions of this policy for any reason or none at all, in whole or in part, at any time, with or without notice;
- F. I acknowledge that I understand the Town's personnel policy and I agree that I will comply with all of its provisions.

Employee's Signature

Date

VLCT MODEL PERSONNEL POLICY EDITORIAL NOTES

1 At-Will Employment

Under Vermont law, the employment relationship is presumed to be “at-will,” which means that it is terminable at any time, for any non-discriminatory reason or for no reason at all. However, the at-will presumption can be overcome, for example, by the existence of a statute, charter, collective bargaining agreement or personnel manual or policy inconsistent with an at-will relationship. If a contract or policy specifies that an employee may only be fired for “good cause” or specifies grounds for which the employee can be fired, then termination can only take place if good cause or the appropriate grounds are found after due process.

With respect to personnel policies, they may be used as evidence that the employment contract requires good cause for termination. Moreover, personnel policies that contain progressive disciplinary policies can be sufficient to require an employer to terminate an employee only for cause and policies which expressly or impliedly include a promise of specific treatment in specific circumstances may also create an enforceable contract. If an employer’s personnel policies contain any reference to just cause for dismissal or the types of conduct that would warrant dismissal, it is possible that the at-will status has been altered. This may be the case even if the employer’s manual contains disclaimer provisions pertaining to preservation of the at-will status of its employees. Courts will not allow employers to have it both ways.

In other words, if there are disciplinary procedures and specific conduct/discipline provisions in the policies, the mere inclusion of boilerplate provisions that the employee relationship is at-will will not automatically preserve the at-will status. Courts will look to the manual in its entirety, together with the parties’ reasonable expectations and norms of conduct in the workplace to determine at will status. If the employer’s personnel policies are definitive in form and demonstrate intent on the employer’s part to bind itself, there is a strong argument that the at-will status has been modified.

The issue of whether the adoption of a personnel policy is advisable is often confusing for municipalities. This is because there is a tension between the need to clearly establish work rules and policies concerning hiring, promotion, and discipline in order to have a maximally productive and well managed work force, and the concern that the creation of such detailed standards will destroy the at-will employment relationship that allows a municipality to discharge an employee without process, and for any or no cause.

While each municipality must strike this balance for itself, there may arguably be a lower risk of exposure to wrongful discharge claims where employers have adopted and followed clear and detailed personnel policies, as opposed to those employers that have no formal employment procedures or policies. That is, with no written rules or procedures, an employee who is discharged may be more likely to feel as though he was given arbitrary or discriminatory treatment.

To this end, this model personnel policy provides progressive discipline and termination procedures. Given the high probability that a municipal employee's at-will employment status has been modified by statute, charter, collective bargaining agreement, practice, personnel manuals or town policies, VLCT recommends affording all non-probationary employees the termination process as outlined in Section 32. Nevertheless, Section 1 expressly declares employment with a Town to be at-will as it may provide some protection from wrongful discharge liability.

For those employers who seek to preserve the at-will status for employees who are not otherwise protected by statute, charter, collective bargaining agreement or other contract, their personnel policies must be carefully drafted (with the assistance of counsel) to avoid any alteration of the at-will status.

2 Persons Covered

Unless provided otherwise in a municipal charter, the municipal clerk and municipal treasurer are independent officials answerable only to the electorate. By statute, the municipal clerk and treasurer may appoint assistants. These statutory assistants serve at the pleasure of the municipal clerk and treasurer and may hold office for the duration of the clerk or treasurer's term or until the clerk or treasurer revokes such appointment.

These statutory assistants report to the officer appointing them and not to the selectboard. Accordingly, though they are compensated by the town for their work, statutory assistants would not be employees for purpose of this policy.

While not required to do so, some clerks and some treasurers may wish to be included in the town's personnel policies or may wish to have their assistants included. In such instances VLCT recommends a written agreement between the clerk or treasurer and selectboard outlining which provisions of the personnel policy apply to them and/or their assistants.

3 Tobacco Use

With respect to municipalities, the state law prohibits the possession of lighted tobacco products in "the common areas of all enclosed indoor places of public access and publicly owned buildings and offices." 18 V.S.A. § 1742. Place of public access includes "any place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses, including buildings, offices, means of transportation, common carrier waiting rooms, arcades, restaurants, bars and cabarets, retail stores, grocery stores, libraries, theaters, concert halls, auditoriums, arenas, barber shops, hair salons, laundromats, shopping malls, museums, art galleries, sports and fitness facilities, planetariums, historical sites, common areas of nursing homes, hospitals, resorts, hotels and motels, including the lobbies, hallways, elevators, restaurants, restrooms, cafeterias, and buildings or facilities owned or operated by a social, fraternal, or religious club." 18 V.S.A. § 1741(2).

The prohibition against any tobacco use (lighted or unlighted) in any “publicly owned buildings, offices and enclosed areas, *and in all Town vehicles*” is broader than state law. Nonetheless, VLCT recommends a prohibition against all tobacco use and a prohibition against use in Town vehicles” in order to prevent the effects of second hand smoke and to project a professional image in the workplace.

4 Internet and Electronic Mail Policy

This policy, while not required by statute, is important in informing employees what constitutes acceptable and prohibited behavior when using the municipal computer system, resolving reoccurring issues concerning retention of computer passwords, and eliminating any expectation of privacy employees may have if a municipality intends to monitor electronic communications.

5 Retention Schedule

Copies of the State of Vermont Retention Timetable for Municipal Records are available from the Department of Buildings and General Services, (802) 828-3314.

6 Benefits

Most municipalities are required to participate in the following benefits programs: workers' compensation, unemployment compensation, and the Vermont Municipal Retirement System (VMERS). These programs are available to both employees and elected officers who meet the program requirements.

Beyond these required benefits, it is up to a municipality's legislative body to determine which, if any benefits to provide to its employees and under what conditions. Benefits commonly offered to municipal employees include health insurance, life insurance, and long and short-term disability. Boards considering adopting this model policy will need to draft language for this section that specifies the benefits that are offered.

Most towns choose to extend employee benefits equally to both employees and elected officers who meet the eligibility requirements.

7 Holidays

The holidays listed are those legal holidays observed by all state departments, agencies and offices pursuant to 1 V.S.A. § 371. Municipalities are not obligated to observe these holidays and its legislative body may modify this list as it deems appropriate.

8 Short-term Family Leave

The benefits conferred by this policy track State law and apply to those same Towns covered under the Vermont Parental and Family Leave Act. 21 V.S.A. § 472a.

9 Exempt Employees

The Fair Labor Standards Act (FLSA) is a federal law establishing employment standards for hours worked, overtime, wages, child labor and prohibiting sex-based discrimination. The FLSA does not apply to all municipal employees. Those exempted from the Act include volunteers, independent contractors, elected officials and their personal staff members and appointed

officials in policy-making positions, certain recreational employees, certain trainees, and certain “white collar” positions that meet the following criteria:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

10 Overtime

Under the Fair Labor Standards Act (FLSA), municipalities have the option of providing employees with paid time off in lieu of monetary overtime compensation. Compensatory time must be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by the FLSA.

Under the FLSA, employees engaged in public safety, emergency response or seasonal activities cannot accrue compensatory time in excess of 480 hours. All other nonexempt employees cannot accrue more than 240 hours of compensatory time for hours worked. Accrued overtime hours in excess of 480 and 240 must be paid at one and one-half times the non-exempt employee’s regular rate of pay at that time, respectively.

The model policy sets a much lower limit for accrued compensatory time (forty hours). Municipalities may set the limit higher, but may not exceed the statutory limits.

11 Employee Termination Process

By statute, many town officials (town manager, zoning administrator, and appointed road commissioner to name a few) can only be removed for just cause. Prior to finding cause, these officers must be afforded the due process protections described in this section. As described above, VLCT recommends affording *all* employees the due process protections described in this section as we believe, on the balance, that there is a lower risk of exposure to wrongful discharge claims where employers have adopted and followed clear and detailed personnel policies, including policies for progressive discipline and termination.

Nonetheless, adopting progressive discipline and termination processes is not without some legal risk. Municipalities that adopt such processes as part of their employment policies must follow them scrupulously. VLCT recommends discussing the issue of termination and progressive processes with the municipal attorney prior to the adoption of these model policies.