

**CHAPTER 3  
CAPE ELIZABETH PERSONNEL CODE**

**[Adopted effective 10/12/94 with amendments through 03/14/2016]**

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**Statement of Personnel Policy**

This Personnel Code is to guide the Town Manager and each department head in the administration of personnel activities. Presentation of this information to all regular employees will also serve to instruct them in their rights as well as their responsibilities while in the employment of the Town. All provisions of this Personnel Code shall apply to all Town employees except as may otherwise be specified in this Personnel Code, in the Town Charter, or in any collective bargaining agreement that may exist. This Personnel Code shall not be construed as limiting in any way the right and authority of the Town Manager and department heads to manage and direct the operations of the Town departments and working force, including the right to plan, direct and control department activities, to schedule and assign work to employees, to determine means, methods, procedures and equipment to maintain the efficiency of departments and their employees, to determine the manning of jobs, create, revise and eliminate jobs, to establish and require observance of reasonable rules and regulations not inconsistent with this Personnel Code, to formulate and adopt ordinances and other regulations incidental to the management of the affairs of the Town and to maintain order. The Personnel Code does not constitute a contract of employment.

**Note:** In any instance where any provision of this personnel code is in conflict with any collective bargaining agreement that may exist, the collective bargaining agreement shall take precedence for employees covered under the agreement.

**Article I      General Provisions**

**Sec. 3-1-1      Employment**

(a)      Equal Employment Opportunity

The Town shall employ, without discrimination as to race, color, religion, sex, national origin, ancestry, age, political affiliation, physical or mental disability, Veteran’s status, status as a whistleblower, sexual orientation or any other legally protected status, the best qualified persons who are available at the salary levels established for Town employment, first preference being given always to citizens of Cape Elizabeth, all other factors being equal. In order to ensure confidence in Town personnel practices, favoritism or nepotism will not be tolerated.

Within the limits of time in which a position must be filled, there shall be as wide a search for qualified candidates as is practicable. The character of the search will vary from position to

position, but may include advertising, open competitive examinations and contacts with special sources of information in each case. It shall be the duty of the Town Manager, or other responsible person or body, to seek out the most desirable employees for the Town.

(b) Police Department Entry Level Vacancies

Vacancies for regular patrol officers and dispatchers within the Police Department shall be filled by the Chief of Police after a process with which scheduled appearances by not less than three (3) candidates receiving the highest scores before an oral interview board of not less than three members who shall be selected as required by the Chief of Police with the approval of the Town Manager. Any applicant who fails to appear for an examination or interview at the time and place specified by the Chief of Police may be dropped from the list of applicants. The oral interview board shall rate each candidate and such rating, the results of the written examination and an evaluation of experience and training, shall be used by the Chief of Police in his final selection of a candidate for the vacant position. All ratings shall remain in force for one year after the date of the written examination from which such ratings were made. If an additional vacancy becomes effective within the aforementioned one-year period, the Chief may, at his option, fill the vacancy utilizing the ratings still in effect or may begin the process anew. [Adopted eff. 6/22/82 and Revised eff. 1/9/02]

(c) Physical Examination

The final candidate for any full-time police, fire or public works positions and part-time volunteer public safety positions shall, at the Town's expense, have a complete medical history and examination made by a licensed physician designated by the Town. The physician shall recommend whether any condition exists which would make the candidate unsuitable for Town employment. Copies of the physician's report shall be forwarded to the appropriate department head and shall be made a part of any successful applicant's personnel record.

(d) Psychiatric and Polygraph Examination

The Chief of Police is authorized to arranged for psychiatric and/or polygraph examination of candidates for original and promotional appointments within the Police Department. The opinion of a licensed psychiatrist that a candidate is mentally, emotionally or temperamentally unsuited for police service shall be sufficient cause for rejection. Polygraph examinations shall be used only to verify qualifications and suitability for police service.

(e) Application Forms

Applications for employment must be filled out on forms approved by the Town Manager. Such forms may require whatever relevant information is deemed desirable and all applications must be signed by the applying person. All applications shall be kept on file for not less than three years. The application process will be public to the extent required by the Maine Freedom of Information Act.

(f) Residency Requirement

There is no residency requirement for Town employees. However, all regular employees should live in close proximity to Cape Elizabeth in order to be readily available for emergency duties and to be at their work site in inclement weather. Department heads may, with the approval of the Town Manager, establish residency requirements for departmental employees provided such requirements are uniformly applied and do not require any employee to live less than 15 miles under/ or 30 minutes response time from the Town Hall. Any such requirements established shall not apply to persons employed at the time of adoption of the requirements, unless such persons move substantially outside a required area after the adoption of any requirements.

(g) Other requirements

All candidates for regular positions must be of high moral character, high school graduates or equivalent and at least 18 years of age. In evaluating moral character, the Town shall consider sufficient evidence of criminal, infamous, and/or dishonest conduct. Any applicant who has been convicted of a felony or who has been convicted of a misdemeanor involving moral turpitude may not be considered for employment.

(h) Immigration Law Compliance

In compliance with the Immigration Reform and Control Act of 1986, the Town is committed to employing only those individuals who are authorized to work in the United States and does not unlawfully discriminate on the basis of citizenship or national origin. All new employees, as a condition of employment, will be required to complete the Employment Eligibility Verification Form I-9 and must present documentation establishing identity and employment authorization. This form must be completed within 3 days of your start date. Failure to comply with this requirement will result in termination of employment.

**Sec. 3-1-2 Promotion**

Town employees shall be given maximum opportunity for promotions. Any vacant positions, which are not entry level, shall be filled in the same manner as detailed in Sec. 3-1-1 (b) or Sec. 3-1-1 (c) when applicable, unless otherwise specified by the Town Charter. Advertising, however, may be limited to within the department involved. Unless waived by the Town Manager at the request of the department head, no person shall be considered for promotion to a supervisory position unless he shall have served at least twelve months in the next lower grade. Promotion shall be based on merit and competence and upon the superior qualifications of the person, and due weight shall be given to seniority.

**Sec. 3-1-3 Compensation**

It is the intent that Town employees be paid on a basis that is commensurate with salaries and wages for comparable public and private work in the Cumberland County area and that will attract and retain well-qualified employees. Compensation of Town personnel shall be fixed by the Town Manager in accordance with a pay classification plan approved by the Town Council or in conformance with any collective bargaining agreement that may exist.

### **Sec. 3-1-4 Training**

Both the Town and its employees profit from the provision of educational training opportunities for employees. The Town strongly encourages participation in programs and courses, which enhance an employee's ability to provide effective service to the community.

Each year, at the time of the annual employee evaluation, supervisors and employees shall prepare a training program for each employee. Training may include specific technical skills, personal development programs and/or course work leading to a degree or a professional designation.

As scheduling permits, the Town will provide release time for any training specifically required by the Town. For required training outside the normal work schedule, the time spent within the training program shall be paid or compensatory leave shall be provided in accordance with the Fair Labor Standards Act.

The Town will pay fees and expenses for required training programs and for optional programs when prior approval is given.

Optional course work intended to lead to a degree or a professional designation, or for a specific course related to one's work, may be reimbursed provided the employee earns a grade of "C" or better. Reimbursement shall be at no higher than the resident rate charged by the University of Southern Maine per credit hour for the same level course. Reimbursement is limited to fifteen credit hours per fiscal year per employee. No reimbursement shall be granted unless the employee received written signed approval from their supervisor and the Town Manager prior to the commencement of the course. The Town may withhold approval if sufficient funds have not been budgeted or if the course being taken does not relate to the training plan agreed upon during the employee's most recent evaluation. The Town does not pay for mileage or for other expenses related to optional course work.

Representing the Town at out-of-state conferences shall be authorized by the Town Manager, if funds permit, and upon such conditions as the Town Manager may determine.

### **Sec. 3-1-5 Retirement**

There is no mandatory retirement age for municipal employees in the State of Maine.

### **Sec. 3-1-6 Hours of Work**

As a general rule, the regular workweek is 40 hours per week, or 8 hours per day. Occasionally overtime work in excess of forty hours per week shall be compensated at the rate of 1-1/2 times the regular hourly rate, or compensatory time off in accordance with Sec. 3-1-8.

### **Sec. 3-1-7 Employment Conditions**

#### **(a) Probationary Period**

Every person receiving an original or promotional appointment to a position in any department shall be evaluated during a probationary period beginning upon appointment and continuing for one year for police department employees and for 180 days for employees of all other departments. The appointing department head may at any time during such period reject for any reason any person appointed to a position. The department head shall forthwith report to the Town Manager in writing each rejection during such period, stating the date the rejection becomes effective and the reason for the rejection. Any probationer rejected as provided in this rule shall be considered permanently separated from the position he has held and shall have no appeal under provisions of this ordinance. Any probationer rejected following a promotional appointment shall revert to the position and pay status from which he was promoted.

#### **(b) Regular Employee Appointment**

A regular employee is defined as one who has completed satisfactorily the probationary period, and works a regular weekly work schedule of at least 35 hours per week as determined by the Town Manager and department head. However, all benefits described in Article II of this Personnel Code shall be provided after 120 days for all employees who work a regular weekly work schedule of at least 35 hours per week unless otherwise specified in the Personnel Code or in any collective bargaining agreement, which may exist.

#### **(a) Part-time Employee**

A part-time employee is a person who is hired to work less than 35 hours per week, and/or who works a position which is seasonal or temporary in nature, or who works on an on call basis. Part-time employees are eligible for only those benefits, which are required by federal and/or state laws unless as otherwise provided in this policy. If a part-time employee with at least 120 days of service becomes a full-time employee, the 120-day waiting period for holiday, sick pay and vacation time shall be waived for that employee.

#### **(b) Outside Employment**

Regular employees may engage in active part-time outside employment on approval of their department head, so long as the department head determines the outside work does not affect the efficiency of the employee's work for the Town, and that the part-time position is not in conflict with the Town position. Department heads may engage in active part-time employment on approval of the Town Manager utilizing the same criteria as departments utilize for regular employees.

### **Sec. 3-1-8 Overtime**

As a general rule, occasional overtime work in excess of established regular hours may be required and will be compensated by overtime pay at the regular rate or by compensatory leave, except it is understood that the salaried positions are paid on the basis of job responsibility and it is the responsibility of the person filling the position to accomplish the work assigned to that

position regardless of hours required to do the work, within reason. Attached in Appendix A is a listing of positions that are salaried. All compensatory leave shall be taken within the pay period that it is earned however, an employee may, in writing, request that during a calendar year up to a total of forty (40) cumulative hours may be taken as compensatory leave outside the pay periods when earned. All compensatory leave shall be scheduled at the convenience of the Town of Cape Elizabeth by the appropriate department head.

### **Sec. 3-1-9 Attendance at Work**

Employees shall be at their respective places of work in accordance with the general departmental regulations pertaining to the hours of work. All departments shall keep regular attendance records and furnish to the Town Manager such periodic reports, as he shall request. In the event of necessary absence because of illness or any other cause, it is the responsibility of employees to see that their department head is advised of the reason for absence within a reasonable time, and at least before the time the employee is expected to report to work.

### **Sec. 3-1-10 Disciplinary Proceedings**

Each department head may discipline any member of his department on account of violation of department rules, inefficiency, incompetence, misconduct, negligence, insubordination, disloyalty or other cause, by suspending the employee from the performance of his duties without pay for not more than ten consecutive workdays for any one offense, but not more than an aggregate of thirty days in any calendar year for more than one offense, or on account of the same or other sufficient cause may, with the approval of the Town Manager, demote or dismiss any such employee. At the time of taking such action the department head shall present to the employee if possible, otherwise mailed to their most recent residence, charges specifically stating the cause for complaint and specifying the sanction therefor, and shall promptly file copies of such charges with the Town Manager. The sanction imposed shall be effective immediately unless otherwise stated. Department heads may also reprimand, in writing, any member of their department on account of violation of department rules, inefficiency, incompetence, misconduct, negligence, insubordination, disloyalty or other cause. Reprimands may be appealed only to the Town Manager and not to the Personnel Appeals Board.

#### **(a) Appeal to the Manager**

An employee who is dissatisfied with the disciplinary action taken by the department head, may appeal in writing the same within three working days to the Town Manager. The Town Manager shall make a separate investigation and inform the employee in writing of his decision and the reasons therefore within seven (7) days or as soon thereafter as practicable. The Town Manager may confirm or reverse the action appealed from or may modify such action including more stringent or more lenient punishment.

#### **(b) Appeal to Personnel Appeals Board**

Any full-time employee who is not a department head, against whom disciplinary action other than reprimands has been taken under this Section, may appeal the same to the Personnel Appeals Board (established under Sec. 4-1-1 of the Code of Ordinances), hereinafter in this

Section "Board," by filing notice thereof with the Town Clerk within three working days after the decision of the Town Manager. The Board shall promptly fix the time for such hearing, which shall be within ten days following receipt of the charges by the department member or such longer time as the department member may require for preparation of his defense.

(c) Hearing

Such appeal shall be heard by the Board in executive session, unless otherwise requested by the employee as set forth in the notice of appeal. Court rules of evidence shall not be applicable and the Board shall hear and weigh all evidence presented which it deems relevant. The employee and department head may each present and cross-examine witnesses, and all testimony shall be given under oath. If the employee against whom charges have been presented shall fail or refuse to give testimony before the Board, the hearing may continue and action may be taken by the Board without the participation of the employee.

(d) Decision

The decision of the Board, which shall be rendered no later than 14 days after the close of the hearing, may confirm or reverse the action appealed from or may modify such action including more stringent or more lenient punishment. If the Board reverses the action appealed from, it may make appropriate orders.

(e) Deadlines

Any deadline for decisions in any Disciplinary Proceeding within this section may be extended if any party in the proceeding had a previously scheduled vacation or an illness requiring hospitalization. Any such extension shall be reasonably granted by any party and no employee shall suffer loss of pay as the consequence of any such extension. Extensions shall be granted under the same conditions if the Personnel Appeals Board is not fully appointed,

(f) Further Appeals

The decision of the Board shall constitute final administrative action and may be further appealed only as provided by the Maine Rules of Civil Procedures; provided, however, that if any provision for arbitration is then in effect and applicable to the charges and department in question, the department head or employee charged may appeal the decision of the Board under the procedures so established, which shall govern all further proceedings.

**Sec. 3-1-11 Job Performance**

The Town Manager may establish reasonable criteria and standards of job performance to be used for the purpose of evaluating candidates for vacant positions and for evaluating current regular employees. All regular employees shall be given annual performance evaluations by their immediate supervisor. These evaluations may be utilized in disciplinary proceedings and in determining compensation. The criteria and standards of job performance shall be consistent for all persons in the same or similar job classification and shall be applied fairly to all persons regardless of age. They shall be consistent with provisions of the Maine Human Rights Act and



the Americans With Disabilities Act, including those provisions relating to the employment of physically and mentally handicapped persons.

**Sec. 3-1-12 Political Activity**

While working for the Town, all employees shall refrain from seeking or accepting nomination or election to any elective office in the Town government, and from using influence publicly in any way for or against any candidate for elective office in the Town government. Town employees shall not work at the polls or circulate petitions or campaign literature for elective Town officials, or be in any way concerned with soliciting or receiving subscriptions, contributions, or political service from any person for any political purpose pertaining to the Town government. This rule is not to be construed to prevent Town employees from becoming, or continuing to be, members of any political organization, from attending political meetings, from expressing their views on political matters, or from voting with complete freedom in any local, state or national election. This section shall not apply to volunteer/call public safety personnel unless they have another position with the town, nor shall it apply to family members of employees.

**Sec. 3-1-13 Order of Layoffs**

In the event it becomes necessary to lay off employees for any reason, employees shall be laid off in inverse order of their seniority, by job title, with displacement rights in the same department. No new employee shall be hired until all employees in the same department on layoff status for not more than twelve months, who desire to return to work, have been recalled. (Rev. Eff. 01/10/11)

**Sec. 3-1-14 Grievances**

(a) Definition

A grievance is a misunderstanding or disagreement that relates to working conditions or relationships considered by an employee, other than a department head, as grounds for complaint, excepting a complaint concerning position classification, pay, demotion, suspension or dismissal, or a complaint concerning the interpretation of application by the Town of any provision in any collective bargaining agreement that may exist.

(b) Policy

The most effective accomplishment of the work of the Town requires prompt consideration and equitable adjustment of employee grievances. It is the desire of the Town to adjust grievances informally and department heads, supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there will be grievances, which will be resolved only after a formal appeal and review. Accordingly, the following procedure is established.

(c) Procedure

An employee shall first present the grievance to the department head who shall make a careful inquiry into the facts and circumstances of the complaint. The department head shall attempt to resolve the problem promptly and fairly. Whenever a grievance is submitted in writing to a department head, the department head shall investigate the grievance and provide a written response with reasons to the employee within seven (7) calendar days after receipt of the grievance.

An employee who is dissatisfied with the decision of the department head shall, within thirty (30) calendar days of the decision, submit the grievance in writing to the Town Manager. The Town Manager shall make a separate investigation and inform the employee and the department head in writing of a decision and the reasons therefor within seven (7) calendar days after receipt of the employee's grievance. The decision of the Town Manager shall be final. The above mentioned seven (7) calendar days response time may only be extended by mutual agreement between the employee and the party required to respond.

#### **Sec. 3-1-15 Payroll Deductions**

The Town provides optional payroll deductions for banks and credit unions and for an annual combined charitable appeal for umbrella organizations in accordance with a Town Council adopted policy. Direct deposit of payroll checks is also available. Payroll deductions and direct deposit shall be authorized in writing by each employee.

#### **Sec. 3-1-16 Mileage Reimbursement**

The town shall reimburse employees who use their vehicles for approved municipal purposes at the rate set by the State of Maine for reimbursing state employees. Any employee with a municipal vehicle or with a set monthly mileage allowance shall annually provide a report to the town on use of the vehicle or mileage stipend so that the town may properly report any private use to the Internal Revenue Service.

#### **Sec. 3-1-17 Solicitation**

Employees may not solicit members of the public for purposes unrelated to town business while on duty or while on municipal property.

#### **Sec. 3-1-18 Smoking**

The Town of Cape Elizabeth maintains a tobacco free environment for its employees and visitors to municipal facilities. There is no tobacco use permitted in any municipal building or in any municipal vehicle. Employees and other visitors shall not utilize tobacco products at any entranceway to any building. Employees may use their regular breaks for use of tobacco products and are not entitled to additional breaks. (Rev. Eff. 3/10/2013)

### **Sec. 3-1-19 Firearms**

Employees, other than those authorized to do so, may not possess or carry firearms of any kind in Town buildings, Town vehicles, or otherwise while working for the Town. Employees may keep their firearm in their personal vehicle, as long as it is covered and the vehicle is locked. (Add. Eff. 9/14/2015)

### **Sec. 3-1-20 Proper Dress (Add. Eff. 9/14/2015)**

Workplace attire and grooming must be neat, clean and appropriate for the work being performed and the setting in which the work is performed. Natural and artificial scents may also become a distraction from a well-functioning workplace, and are also subject to this policy. Department heads may determine appropriate workplace attire and grooming for their area. Managers should communicate their department's workplace attire and grooming guidelines to employees during the orientation and evaluation period. Any questions about the department's guidelines for attire should be discussed with the department head.

Employees are expected to present a professional, businesslike image to residents, taxpayers, visitors, and the public. Acceptable personal appearance, like proper maintenance of work areas, is an ongoing requirement of employment with the Town.

The Police and Fire Department staff may be required to meet special dress, grooming and hygiene standards, such as wearing uniforms or protective clothing, depending on the nature of their job. Uniforms and protective clothing may be required for certain positions and will be provided to employees by the Police or Fire Departments.

At its discretion, a department may, such as during unusually hot or cold weather or during special occasions, allows staff to dress in a more casual fashion than is normally required. On these occasions, employees are still expected to present a neat appearance and are not permitted to wear ripped, frayed or disheveled clothing, athletic wear, tight, revealing or otherwise inappropriate clothing.

Any employee who does not meet the attire or grooming standards set by his or her department will be required to take corrective action, for example leaving the premises to change clothing. Hourly-paid staff will not be compensated for any work time missed because of failure to comply with designated workplace standards.

The Town recognizes the importance of individually held religious beliefs to persons within its workforce. The Town will reasonably accommodate a staff member's religious beliefs in terms of workplace attire unless the accommodation creates an undue hardship. Accommodation of religious beliefs in terms of attire may be difficult in light of issues of safety for the particular employee as well as co-workers. Employees requesting a workplace attire accommodation based on religious beliefs should be referred to the Town Manager.

Violations of the policy can range from inappropriate clothing items to offensive perfumes, body odor and tattoos. If an employee comes to work in inappropriate dress, the employee will be

required to go home, change and return to work.

If an employee's poor hygiene or use of too much perfume/cologne is an issue, the department head should discuss the problem with the employee in private and should point out the specific areas to be corrected. If the problem persists, managers should follow the normal corrective action process.

### **Sec 3-1-21 Safety and Health** (Add. Eff. 9/14/2015)

#### *Fire Safety*

Work areas should be kept clean and free of rubbish and other material that could be a potential fire hazard. Flammable and other potentially dangerous materials are to be stored and maintained in accordance with federal, state and local fire regulations.

Fire extinguishers are located in clearly marked spots throughout the premises. The extinguishers should be checked once each month to make sure they are in proper working condition. They are also certified once a year. Department heads are responsible for showing employees under their supervision and each new employee where the extinguishers are located and for instructing employees in the proper use of the extinguishers. They are also responsible for reporting quickly any fire and for seeing that their employees and visitors to our facility know where the exits are located and that all their people are safely out of the building in the event of a fire.

#### *Well-being*

Employees are entitled to a safe and healthful place in which to work. The Town's goal is to minimize human injury, illness, and property damage caused by accidents, fire or other hazards.

Each employee is expected to fully accept accountability for safety and health inherent in its operations, recognize hazards, anticipate possible risks, and then act to eliminate or control hazards or risks. Safety goes hand in hand with the Town's goals of production efficiency and quality control. A good safety program enhances the Town's opportunity to achieve these goals. Equally important, a good safety program, which is conscientiously implemented and enforced, avoids suffering and hardship resulting from injuries.

The Town aims to:

- a) Develop and establish operating methods with consideration for safety and health;
- b) Maintain compliance with Federal and State agencies;
- c) Encourage and support employees safety training programs;
- d) Hold regular meetings to review and upgrade safety performance;
- e) Recognize achievements through inspection/auditing methods; and
- f) Take immediate action where necessary to improve safety conditions.

Each department head and manager is expected to:

- a) Give sincere, active and constant support to all safety activities and procedures;

- b) Instill a safety awareness in each employee;
- c) Teach each employee what the hazards are involved during his or her employment and how to avoid them;
- d) Assure that each employee is provided with the needed and appropriate safety equipment and protective devices, and to assure that the devices are used;
- e) Take prompt corrective action whenever unsafe conditions or acts are noted;
- f) Make regular safety appraisals of his or her assigned area; and
- g) Investigate and find the cause of accidents and to take corrective action, if possible, through the post injury response program.

Each employee is responsible for keeping his or her own work area clean. Good housekeeping is especially important in our business. Good housekeeping is a necessary adjunct to the maintenance of a safe and healthy workplace. A basic rule of fire prevention is good housekeeping and management will make periodic inspections of the premises, including individual offices, to insure that potential hazards are eliminated and that any and all dangerous practices and conditions are quickly corrected.

Observance of all the Town safety procedures and OSHA standards is a requirement for continued employment, and violators may be appropriately disciplined.

Any safety matter should be referred to the Town Manager.

### **Sec. 3-1-22 Accidents and Injuries** (Add. Eff. 9/14/2015)

Any injury, which occurs on the job, must be reported immediately to the department head regardless how slight the injury may seem. The same applies to illnesses, which appear to be related to the job in any way. A job-related injury or illness, which is not reported by an employee, can result in medical complications, unnecessary loss of time and wages, and delay in or even loss of applicable benefits under the Workers' Compensation Insurance Program. Failure to report such incidents also denies the Town the opportunity to remedy the cause of the injury or illness in the first place.

The department head will determine whether or not the injury requires only basic first aid treatment by the Town personnel trained in first aid, or if it is more serious so as to require treatment at a doctor's office or at a hospital. Whenever there is any doubt about an employee's condition, the department head should escort or make arrangements for the person to be taken to the medical provider or to a hospital.

When a job-related injury/illness, or incident is reported, the department head or manager, with the employee, is responsible for gathering all the pertinent facts about the situation such as: time, place, cause, extent, equipment or process. This information is then put in the First Report of Injury Form and forwarded, within 24 hours of the incident, to the Payroll Supervisor, who is responsible for sending it to the insurance company and the Workers' Compensation Board. Department heads are responsible for conducting an accident analysis and developing modified duty jobs, where or when applicable.

Each employee is expected to observe safety practices on his or her shift so as to keep accidents and injuries at the Town to a minimum.

Department heads are expected to ensure that each employee follows the procedures, which have been established to assure a safe and healthful workplace.

**Sec. 3-1-23 Modified Duty** (Add. Eff. 9/14/2015)

When possible and appropriate for the Town’s staffing needs, modified, short-term, or early return-to-work assignments (“modified-duty”) may be made available to an employee as a positive means of rehabilitation following a disabling work injury.

A medical provider must approve any candidate for modified-duty. Temporary assignments may not last longer than 30 working days. Employees on modified duty can be utilized in any department, performing any function that they are able to do.

As soon as Modified-duty is requested or appropriate, the Town Manager will evaluate any health restrictions and search for modified-duty at the employee’s worksite. If none exists in that area the Town Manager may deem it necessary to look elsewhere within the Town to provide Modified-Duty. If there is no Modified-Duty available or appropriate under the circumstances, the employee will be instructed to return to work on a date when such work exists or when full-duty is possible, whichever comes first. The Town Manager will notify an employee as to availability of work.

The duration of Modified-Duty is limited to an initial period of 30 working days, but the period of Modified-Duty may be extended upon determination of the Town Manager. Extensions may be approved based upon an assessment of the medical evidence, which is presented. Any extension will be re-evaluated by the Town Manager on a weekly basis.

All employees returning to full-duty work must present the Town Manager with appropriate medical documentation authorizing the employee’s return to full-duty work.

**Article II Benefits**

Note: In any instance where the benefits listed in this Personnel Code are not consistent with benefits provided for in any collective bargaining agreement that may exist, the collective bargaining agreement shall take precedence.

**Sec. 3-2-1 Holidays**

Paid holidays for all employees shall be as follows:

- |                     |                             |
|---------------------|-----------------------------|
| New Year’s Day      | Martin Luther King, Jr. Day |
| President’ Day      | Patriots’ Day               |
| Memorial Day        | Independence Day            |
| Labor Day           | Columbus Day                |
| Veterans’ Day       | Thanksgiving Day            |
| Thanksgiving Friday | December 25 <sup>th</sup>   |

Holiday pay is earned from the first day of employment for full-time employees and part-time employees working a regular weekly schedule of fifteen or more hours. Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive holiday time on a pro rata basis. Specifically, an employee shall earn holiday pay at the percentage of a 40-hour workweek they are regularly scheduled to work. For example, an employee who works 16/40ths of a week would earn 16/40th of a holiday or 3.2 hours.

### **Sec. 3-2-2 Sick Leave and Family Sick Leave**

Sick leave shall accrue for regular, employees at the rate of one (1) day for each calendar month of service accumulative to a maximum of one hundred forty days. Upon separation in good standing, an employee will receive reimbursement for one-third of accumulated sick leave after 10 years service but not to exceed 40 days, one-half of accumulated sick leave after 15 years service, but not to exceed 60 days, both computed at the employee's final base rate. Illness for which sick leave may be granted is defined as actual personal illness or bodily injury, doctor's visits, Family Medical Leave as provided for in Sec. 3-2-6, and Family Sick Leave as described below.

The Town Manager or the department head may at any time, as a condition precedent to the continuance of sick pay, require a doctor's certificate or other medically reliable evidence to justify the employee's continued absence from employment.

Probationary employees shall not be entitled to paid sick leave until they have completed 30 days of employment. At the completion of 30 days employment by probationary employees, cumulative sick leave days shall be computed from the original date of full-time employment.

Five days of sick leave will be charged for each calendar week of qualified absence. Absence from duty when sick leave is paid shall not constitute a break in service.

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive sick time on a pro rata basis.

Family Sick Leave: Employees may utilize accrued sick, vacation or compensatory time to care for a child, spouse or parent who is ill. Employees are entitled to elect which type and amount of paid leave to apply to family sick leave. The Town Manager or Department Head may require a doctor's certificate or other medically reliable evidence for the illness of a child, spouse or parent requiring continued absence of the employee.

### **Sec. 3-2-3 Special Leave and Jury Duty**

Special leave with pay shall be granted regular employees as follows:

- (a) A regular employee shall be excused from work for up to five (5) days upon request as required due to death of a spouse, partner, child, stepchild, parent or step-parent residing in the household.

- (b) A regular employee shall be excused from work due to the death of parents, brother, sister, brother-in-law, sister-in-law, grandparents, mother-in-law, father-in-law, stepparent or stepchild, for up to three (3) days. It is intended that this time be used for the purpose of handling necessary arrangements and attendance at the funeral.
- (c) Extension to special leave may be made by the department head upon request of the employee. Extensions may be of time and/or for other family members.
- (d) Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive special leave on a pro rata basis.

Any full time employee or part time employee working a regular weekly schedule of 15 or more hours per week called to jury duty shall have full pay and benefits during that period. The employee shall provide the Town all reimbursements received from the court and shall report to work when released from jury duty if during their regular hours.

#### **Sec. 3-2-4 Military Service Leave (USERRA)**

In accordance with state and federal law, all employees will be granted time off from work for annual training obligations or active service in the United States uniformed services. Employees engaged in active military service will be placed on military leave of absence status.

Full-time employees will be granted paid military service leave, not to exceed two weeks in any calendar year. For each such period of military service leave, the Town will pay the employee the balance between service pay and the employee's regular compensation, the total equaling the regular pay of the employee had he or she been in the service of the Town during the period of leave, provided that the employee on military service leave furnishes the Department head an official statement by military authorities giving the rank, pay and allowances.

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive paid military service leave time on a pro rata basis.

#### **Sec. 3-2-5 Leave for Victims of Domestic Violence**

In accordance with Maine Law, Cape Elizabeth will grant you a reasonable and necessary amount of time off from work without pay if you are a victim of domestic violence, domestic assault, sexual assault or stalking, and you need the time to:

- Prepare for or attend court proceedings,
- Receive medical treatment, or
- Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.



You must request the leave as soon as circumstances make it clear that time off is necessary. Approval of leave will be dependent upon (a) whether your absence will create an undue hardship for the Town, (b) whether you requested leave within a reasonable time, and (c) whether the requested leave is impractical, unreasonable or unnecessary given the facts made available to the Town at the time of your request.

Vacation and sick days do not accrue and holidays are not paid while you are on unpaid leave. You will not be discriminated against for taking or asking for leave.

**Sec. 3-2-6      Vacation**

Vacation is earned from the first day of employment.

	<b>Per Week Hours</b>	<b>Per Year Days</b>
Date of Hire to the 5th Anniversary of Date of Hire	1.84	12
5th Anniversary of Date of Hire to 14th Anniversary	2.61	17
14th Anniversary of Date of Hire to 19th Anniversary	3.38	22
19th Anniversary of Date of Hire to Separation	3.70	24

Vacation time may be granted only for time already accumulated. Vacation cannot be given to another employee.

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive vacation time on a pro rata basis based on a forty hour work week. For example, an employee who averages 16 hours work each week shall earn vacation time at 16/40th of the applicable accumulation rate.

If a holiday falls within a vacation period, it shall not be treated as a vacation day.

An employee may utilize vacation time if sick leave has become depleted. If an employee becomes sick while on vacation, the Town reserves the right, but has no obligation, to offer the employee the option of charging the previously scheduled vacation time to sick leave.

At the end of each calendar year, an employee can carry over to the next year accumulated vacation time not to exceed ten days. Any extension beyond this amount shall be approved by the department head and the Town Manager. As the Town believes it is in the best interest of both the Town and employees for vacation time to be taken each year, no extension may be granted by the department head and the Town Manager unless a specific use of the additional accumulated time has been identified.

Vacation time shall not accumulate after an employee has been absent due to a Workers' Compensation injury after the lapsing of one year from the first date of absence.

Vacation scheduling shall be approved by the department head or by the Town Manager in the case of department heads.

Accrued vacation shall be approved by the department head or by the Town Manager in the case of department heads.

Accrued vacation leave shall be paid to a regular employee in good standing upon separation from the service or to a beneficiary or estate upon death.

### **Sec. 3-2-7 Unpaid Leaves of Absence**

- (a) **Unpaid Leaves.** A regular employee may be granted a leave of absence without pay by the Town Manager upon recommendation of the department head concerned. Such leave of absence without pay shall not exceed one year in length and shall only be granted when it appears because of the past record of the employee, or because of the purpose for which the leave is requested, that it is to the best interest of the Town to grant the leave. Absence from employment for an approved leave of absence shall not constitute a break in service. During such a leave, employment benefits such as vacation and sick pay, pension, etc., shall not accrue.

### **Family and Medical Leave (FMLA) (Rev. eff 9-14-2015)**

The Town may grant up to 12 weeks of family and medical leave during a rolling 12-month period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness), in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified.

In order to qualify to take family and medical leave under this law, the requesting employee must meet all of the following conditions:

1. The employee must have worked at least 1250 hours during the 12 month, or 52 weeks period, immediately before the date when the FMLA leave will begin; and
2. The employee must have worked for the Town for more than 12 months or 52 weeks. The 12 months, or 52 weeks, need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for the entire week even if the employee was on the payroll for only part of a week or if an employee is on leave during the week. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break.

In order to qualify for FMLA leave, an employee must be taking the leave for one of the reasons listed below:

1. The birth of a child in order to care for the child.
2. The placement of a child for adoption or foster care.
3. To care for a spouse, child, or parent with a serious health condition.
4. The serious health condition of the employee.

An employee may take FMLA leave for a serious health condition if the health conditions make the employee unable to perform the functions of the employee's position. A serious health condition is defined as a condition, which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. Illnesses of a serious and long-term nature, resulting in recurring or lengthy absences may be considered a serious health condition. Workers' compensation injuries are considered serious health conditions. Employees with questions about what illnesses are covered under this FMLA policy or under the Town's sick leave policies are encouraged to consult with the Town Manager.

The Town may require an employee to provide a doctor's certification of a serious health condition.

If an employee is taking paid sick leave for a condition which progresses into a serious health condition and the employee requests unpaid leave, the Town may designate all or some portion of related leave taken as FMLA, to the extent that the earlier leave meets the necessary qualifications.

An eligible employee may take up to 12 weeks of FMLA leave under this guideline during any 12-month period. The Town will measure the 12-month period as a rolling 12-month period measured backward from the date the employee uses any leave under this policy. Each time an employee takes FMLA leave, the Town will compute the amount of FMLA leave the employee has taken and subtract it from the 12 weeks of available leave. The balance remaining is the amount the employee is entitled to take at that subsequent time.

If a husband and wife are both employed by the Town, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife together may only take a total of 12 weeks of leave.

5. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military

events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

“Covered active duty” means:

(a) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(b) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

6. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to care for that service member.

Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term “covered service member” means:

(a) A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(b) A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “serious injury or illness”:

(a) In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

(b) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

While an employee is on FMLA leave, the Town will continue the employee's health benefits during the FMLA leave period at the same level and under the same conditions as if the employee had continued to work.

An employee presently pays a portion of the premium for his or her health care. While on paid FMLA leave, the Town will continue payroll deductions to collect the employee's share of the premium. While on unpaid FMLA leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Payroll Department by the first day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The Town will provide 15 days' notification prior to the employee's loss of coverage.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the employee to reimburse the Town the amount it paid for the employee's health insurance premium during the FMLA leave period.

#### Employee Status During FMLA Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one, which is virtually identical in terms of pay, benefits and working conditions. The Town may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all available vacation and compensatory time prior to being eligible for unpaid leave. Sick leave and workers' compensation may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave or workers' compensation policy. The remainder of the FMLA leave will be unpaid, except that some employees may qualify for disability benefits or workers' compensation benefits. Employees should consult with the Town Manager for eligibility and available benefits.

Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. An employee who is taking leave for the adoption or foster care of a child must use all vacation or compensatory time leave prior to being

eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation or compensatory time prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all vacation, compensatory time or sick leave (as long as the reason for the absence is covered by the Town's sick day policy) prior to being eligible for unpaid leave.

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the work week or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill service member over a 12-month period).

The Town may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the Town and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the Town before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

The Town may request certification by a physician of the serious health condition. The employee must respond to such request within 15 days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of FMLA leave or continuation of the FMLA leave.

Certification of a serious health condition shall include: the date when the condition began or begins, its expected duration, diagnosis, and a brief statement of treatment. For FMLA leave because of the employee's own medical condition, the certification should also include a statement that the employee is unable to perform the essential functions of the employee's position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent FMLA leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent FMLA leave or working a reduced schedule.

The Town has a right to ask for a second opinion if it has reason to doubt the certification. The Town will pay for the employee to get a certification from a second doctor, which the Town will select.

If necessary to resolve a conflict between the original certification and the second opinion, the Town may require the opinion of a third doctor. The Town will pay for the opinion. This third opinion will be considered final.

All employees requesting FMLA leave must first notify their department head. The employee will be required to apply, in writing, for an FMLA leave to the Town Manager or designee. Within five business days after the employee has provided this notice, the Town Manager or designee will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the Town with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the Town's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

### **Sec. 3-2-8 Workplace Injuries and Workers' Compensation Insurance Coverage**

The Town of Cape Elizabeth provides upon employment Workers' Compensation Insurance Coverage for all employees. Any employee who sustains a personal injury or compensable illness arising out of and in the course of employment shall be paid during each week of incapacity to work resulting from the injury an amount sufficient, when added to the weekly payment of Workers' Compensation paid pursuant to the laws of the State, to equal regular salary or normal wage for a period not to exceed eight weeks. No additional payments shall be made in any instance when, in the opinion of the department head and Town Manager, the accident occurred as a result of intoxication, willful intent, or violation of rules and regulations on the part of the employee. Eligible employees will automatically be placed on a Family And Medical leave (FMLA) after three days of absence due to the work related injury or illness. (Rev. Eff. 01/10/11)

### **Sec. 3-2-9 Retirement and Disability**

#### **(a) Social Security**

Social Security benefits were adopted on March 3, 1952, and now extend upon employment to all employees of the Town except teachers and volunteer fire fighters. Payroll deductions and Town matching contributions are made in accordance with current regulations. (Rev. Eff. 01/10/11)

(b) Maine Public Employees Retirement System (MainePERS)

The Town of Cape Elizabeth became a participating district in the Maine State Retirement System on April 1, 1966. Membership is limited to those who joined the Cape Elizabeth district prior to July 1, 1990 and to all law enforcement personnel. All employees who participate must contribute a percentage of wages determined by MainePERS ; the contribution being in the form of a deduction from each paycheck. If an employee withdraws from the system, the employee receives only their own contribution plus interest and not any funds the Town may have contributed. (Rev. Eff. 01/10/11)

(c) Defined Contribution Plan

The Town of Cape Elizabeth became a participant in the ICMA Retirement Corporation, Sec. 401A Money Purchase Plan in 1990. The Town will match effective on the employment date regular employees' contributions at 7% of gross wages level with employee's contributions to be paid through payroll deductions. Employees are fully responsible for any fees assessed to participants by the Plan and are responsible for choosing from among a number of investment options for the balances in their accounts. The withdrawal of funds is in accordance with federal regulations. Employees who participate in the MainePERS are not eligible for this defined contribution plan. (Rev. Eff. 01/10/11)

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program.

(d) Deferred Compensation Plan

The Town of Cape Elizabeth became a participant in the ICMA Retirement Corporation, Section 457 Plan on November 14, 1983. The Town does not make a contribution for employees. Employee contributions are as provided by federal law and more information is available at [www.icmarc.org](http://www.icmarc.org). Investment options are the same as in the Sec. 401A Plan. Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program.

(e) Disability.

Employees in the ICMA Retirement Corporation, Sec. 401A Money Purchase Plan are eligible for participation in a disability plan effective January 1991. Coverage is effective on the first day of the next month after employment commences provided the disability carrier has accepted the enrollment. The Town contributes up to 1% of an employee's annual base salary into the Plan. Any additional cost shall be paid by the employee through payroll deductions. Employees in MainePERS are eligible for disability payments in accordance with the regulations of the MainePERS. Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program. (Rev. Eff. 01/10/11)



### **Sec. 3-2-10 Maine State Group Life Insurance**

Employees are eligible to participate in the Maine State Group Life Insurance and Group Accidental Death and Dismemberment Plan. Coverage is effective on the first day of the next month after employment commences provided the insurance carrier has accepted the enrollment. The Plan is offered through MainePERS separate from retirement plan membership. (Rev. Eff. 01/10/11)

### **Sec. 3-2-11 Employee Health Benefits**

The Town participates in the Maine Municipal Employees Health Trust (MMEHT) Comprehensive Plan. Employees have the option of choosing the MMEHT Comprehensive Point of Service Plan (POS C), and effective March 1, 2015 may also choose from among the MMEHT PPO 500 plan and the MMEHT PPO 2500 plan. Single employees shall assume 10% of the cost of their health insurance premium. Employees who have coverage other than single coverage shall assume 20% of the total premium. Any employee who chooses the MMEHT PPO 500 plan or the MMEHT PPO 2500 plan will have established a Health Reimbursement Account which shall provide reimbursement of deductibles and co-pays for up to 70% of the applicable out of pocket maximum. The amount of the monthly premium paid by the employee shall not be included as part of the out of pocket expense. (Rev. eff. 12/08/14)

Coverage will begin on the first day of the next month after employment begins provided the MMEHT has approved all required forms. The Town of Cape Elizabeth reserves the right to participate in a different medical insurance plan, with comparable or better benefits, costs and claims service. The Town also reserves the right to change the health insurance plans if mandated to do so by the federal or state governments. Upon leaving Town employment, federal COBRA requirements permit employees to continue on the Town policy at employee expense. MMEHT will notify departing employees of their options.

Any employee eligible for more than single coverage, but who opts for single coverage or no coverage, shall receive in lieu of coverage, \$120.00 in each two week paycheck or if an employee elects for no coverage and is eligible for family coverage, then that employee shall receive \$250.00 in each two week paycheck in lieu of coverage. If an employee elects for employee and children coverage and is eligible for full family coverage, then that employee shall receive \$90.00 in each two week pay check in lieu of coverage. These in lieu of coverage payment provisions shall not apply to employees who receive coverage under a spouse/partner's plan provided through the Town of Cape Elizabeth or the Cape Elizabeth School Department. All payments shall be prorated for part time employees. Any employee who opts for no coverage must annually show that evidence of coverage elsewhere. The payment shall not be considered part of compensation for purposes of retirement, life insurance and computing hourly wages. The employee shall be responsible for any tax liability. Affected employees must elect their coverage level once a year during the enrollment period or upon hiring. Coverage must be elected before they become effective. (Rev. eff. 12/08/14 and 3/14/16)

The Town pays 90% of the cost of the premium for those with single coverage. The Town pays 80% of the cost of the premium for those with dependent coverage.

Regular permanent employees working at least 30 hours per week are eligible for the above premium payments. Employees working a regular year round schedule of at least 20 hours per week, but less than 30 hours per week receive a pro rata health benefit based on their percentage of hours worked based on a 40 hour work week. (For example, an employee working 25 hours year round per week would receive 25/40ths or 62.5% of the applicable premium. A single employee would have 62.5% of their premium paid. An employee with dependents would have 62.5% of 80% of their premium paid which is 50%)

Elections are binding for the plan year unless during the year the employee has a lifestyle change such as:

1. Marriage or divorce
2. Birth, adoption, or change in custody of a child
3. Death of a spouse or child
4. Gain or loss of a spouse's employment
5. Change in job status from full time to part time by you or your spouse and/or
6. An unpaid leave of absence by you or your spouse.

The change an employee makes must be on account of and consistent with the event.

**(a) Section 125 Plan**

The Town of Cape Elizabeth offers a Section 125 Plan reimbursement account through Horace Mann Insurance. The Town may choose another provider at its option. Medical expense reimbursement accounts are limited to the maximum permitted under federal law. Dependent care reimbursement accounts are limited to \$5,000 per calendar year per family but may be lower if the maximum allowed by federal law is less than \$5,000. The enrollment period for this program occurs once annually or on the initial hire date. (Amended Eff 12/10/2012)

**(b) Fitness**

The Town shall provide up to \$270.00 per calendar year to reimburse any employee who works a regular schedule of at least 20 hours per week for a fitness class, health club membership, a smoking cessation or weight loss program or for any other bona fide program leading to better fitness and health. Reimbursement shall be upon Town receipt of a paid invoice or copy of a cancelled check. (Amended Eff 04/14/2014)

**Sec. 3-2-12 Health Insurance Coverage During Leaves of Absences (Add. Eff. 9/14/2015)**

Health Insurance coverage is continued during a Family and Medical Leave, Disability Leave and Workers' Compensation Leave for a period of twelve weeks, provided the employee continues to pay the employee portion of the health insurance premium. If such a leave goes beyond twelve weeks, coverage will terminate unless the employee elects coverage under COBRA.

For Military Leave, coverage terminates when an employee enters the military. Coverage is continued in the case of short term absences for Military Reserve or National Guard encampments.

With the exception of the above, benefit coverage, in general, terminates when an employee begins the leave of absence. Employees should contact the Payroll Supervisor with specific questions prior to beginning a leave of absence.

During an employee leave of absence, where the Town is prevented from collecting medical insurance premiums through standard payroll procedures, the Town will set up a payment schedule with each employee at the start of the leave. Failure to make the payments on a timely basis will result in termination of the coverage.

#### **Sec. 3-2-13 COBRA (Add. Eff. 9/14/2015)**

When health insurance coverage terminates, employees are eligible to continue to receive health insurance under the group plan for a specified period. If an employee quits, is laid off, or is discharged, their health insurance is terminated immediately. Employees may elect continuation of their coverage for themselves and/or dependents for a certain period of time. Employees who elect coverage are required to make monthly payments at the full group rate. Coverage may terminate whenever an employee:

- Fails to make timely payments under the plan;
- Becomes entitled to Medicare benefits; or
- The Town provided plan ceases for all employees, or the contribution coverage period expires;
- The law otherwise requires or allows termination of coverage.

### **Article III Miscellaneous Policies**

#### **Sec. 3-3-1 Non-Discrimination and Anti-Harassment Policy**

The Town is committed to providing a workplace that is free from discrimination and discriminatory harassment. Harassment is defined as conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. It is a violation of Town policy and/or state and federal law for any employee, Town official, or any other person to discriminate against or harass an employee based on race, color, religion, national origin, ancestry, age, sex, sexual orientation, physical or mental disability, veteran status, or status as a whistleblower, and for any supervisory employee to permit any such act of harassment in the workplace by anyone, whether or not an employee. Any

employee who believes that he or she has been harassed or discriminated against in any way should follow the "Internal Complaint Procedure" set forth below.

#### DEFINITION OF SEXUAL HARASSMENT

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

#### DESCRIPTION OF SEXUAL HARASSMENT

The following type of conduct is considered to be sexual harassment and is not permitted:

- A. Physical assaults of a sexual nature such as:
  - (1) rape, sexual battery, molestation or attempts to commit these assaults; and
  - (2) intentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.
- B. Unwanted sexual advances, propositions or other sexual comments, such as:
  - (1) sexually-oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct in his or her presence is unwelcome;
  - (2) preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
  - (3) subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of that employee's job more difficult because of that employee's sex.

C. Sexual or discriminatory displays or publications anywhere in the work place by employees, such as:

(1) displaying pictures, posters, electronic materials, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the work environment or possessing any such material to read, display or view at work.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work in and around the workplace and who is posed for the obvious purpose of displaying or drawing attention to private portions of his or her body.

(2) reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic; and

(3) displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace (other than restrooms and similar semi-private lockers/changing rooms).

#### INTERNAL COMPLAINT PROCEDURE

Any employee who believes he or she has been the subject of discriminatory harassment should report the incident or act immediately to his/her supervisor or to the Town Manager. In the event a complaint relates to the Town Manager, the complaint should be brought to the Council Chair. The Town will promptly investigate all complaints. Each employee alleging discriminatory harassment will be requested, but not required, to put the specifics in writing. All information will be held in confidence to the extent possible and will be discussed only with those who have a need to know in order to either investigate or resolve the complaint. Any employee who the Town determines has engaged in discriminatory harassment will be promptly disciplined. Disciplinary measures may consist of suspension or termination depending upon the severity of the offense.

No employee will be punished or penalized in any way for reporting, complaining about or filing a claim concerning discriminatory harassment, or for participating in any investigation of a discriminatory harassment complaint.

#### **Sec. 3-3-2 Disability Accommodation**

The Town is committed to complying fully with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act, and ensuring equal opportunity in employment for qualified persons with disabilities. All employment practices and activities are conducted on a non-discriminatory basis.

Hiring procedures have been reviewed and provide persons with disabilities meaningful employment opportunities. Pre-employment inquiries are made only regarding an applicant's ability to perform the essential duties of the position.

Reasonable accommodation is available to all disabled employees where their disability affects the performance of job functions. Employees who believe they may require an accommodation should consult with their supervisor. All employment decisions are based on the merits of the situation, not the disability of the individual.

Qualified individuals with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as in job assignments, classification, organizational structures, position descriptions, lines of progression and seniority lists. Leave of all types will be available to all employees on an equal basis.

The Town will not discriminate against any qualified employees or applicants because they are related to or associated with a person with a disability. Furthermore, the Town is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and the Maine Human Rights Act.

### **Sec. 3-3-3 Employee Computer and Internet Use Guidelines**

The intent of these rules is to provide employees with general requirements for utilizing the Town's computers, networks and Internet services.

These rules provide general guidelines and examples of prohibited uses for illustrative purposes but do not attempt to state all required or prohibited activities by users. Employees who have questions regarding whether a particular activity or use is acceptable should seek further guidance from their department head.

Failure to comply with this policy, these rules and/or other established procedures or rules governing computer use may result in disciplinary action, up to and including discharge. Illegal uses of the Town's computers will also result in referral to law enforcement authorities.

#### **A. Access to Town Computers, Networks and Internet Services**

The level of access that employees have to the Town's computers, networks and Internet services is based upon specific employee job requirements and needs. The computer system is town property and intended for municipal business. All data and other electronic messages within municipal computers and servers are the property of the Town of Cape Elizabeth. E-mail messages and computer use records have been found to be public records and may be subject to the right-to-know laws, depending on their content.

In addition, the town, through its manager and department heads, reserves the right to review the contents of employees' e-mail communications and records of computer use when necessary for town business purposes. Employees may not intentionally intercept, eavesdrop, record, read, alter, or receive other persons' e-mail messages without proper authorization.

## **B. Acceptable Use**

Employee access to the Town's computers, networks and Internet services are provided for administrative, educational, communication and research purposes.

General rules and expectations for professional behavior and communication apply to use of the Town's computers, networks and Internet services.

Employees are to utilize the Town's computers, networks and Internet services for Town-related purposes and performance of job duties. Incidental personal use of Town computers is permitted as long as such use does not interfere with the employee's job duties and performance, with system operations or other system users. "Incidental personal use" is defined as use by an individual employee for occasional personal communications. Employees are reminded that such personal use must comply with this policy and all other applicable policies, procedures and rules.

## **C. Prohibited Use**

The employee is responsible for his/her actions and activities involving Town's computers, networks and Internet services and for his/her computer files, passwords and accounts. General examples of unacceptable uses, which are expressly prohibited, include but are not limited to the following:

1. Any use that is illegal or in violation of other Town policies, including harassing, discriminatory or threatening communication and behavior, violations of copyright laws, etc.;
2. Any use involving materials that are obscene, pornographic, sexually explicit or sexually suggestive;
3. Any inappropriate communications with students or minors;
4. Any use for private financial gain, or commercial, advertising or solicitation purposes;
5. Any use as a forum for communicating by e-mail or any other medium with internal or outside parties to solicit, proselytize, advocate or communicate the views of an individual or non-town-sponsored organization; to solicit membership in or support of any non-town-sponsored organization, or to raise funds for any non-town-sponsored purpose, whether for-profit or not-for-profit. Employees who are uncertain as to whether particular activities are acceptable should seek further guidance from their department head;
6. Opening or forwarding any e-mail attachments (executable files) from unknown sources and/or that may contain viruses;

7. Any malicious use or disruption of the Town's computers, networks and Internet services or breach of security features;
8. Any misuse or damage to the Town's computer equipment;
9. Misuse of the computer passwords or accounts (employee or other users);
10. Any communications that are in violation of generally accepted rules of network etiquette and/or professional conduct;
11. Any attempt to access unauthorized sites;
12. Failure to report a known breach of computer security to the Department head;
13. Using Town computers, networks and Internet services after such access has been denied or revoked;
14. Any attempt to delete, erase or otherwise conceal any information stored on a Town computer that violates these rules.

#### **Sec. 3-3-4 Substance Abuse Policy**

To meet the Town's responsibilities to its employees and the public, the Town must maintain a healthy, productive and safe workplace free from the effects of alcohol or drug abuse. Misusing or abusing controlled substances on the job is prohibited, as is selling, manufacturing, distributing, possessing, using, or being under the influence of alcohol or illegal substances on the job.

Any employee who displays any signs of impairment or substance abuse, or who is in possession of alcohol or illegal drugs, whether on Town premises or while on Town business, is subject to disciplinary action including suspension without pay and/or termination. Where warranted, such employees will be encouraged to obtain proper treatment.

The legal use of prescription medications is permitted on the job only if such use does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger the employee or others. If employees are taking a prescribed medication that may affect their work performance, they are required to advise their supervisor of that fact. If employees are taking a prescribed medication, including medical marijuana, that may affect their work performance, they are required to advise their supervisor of that fact. The law does not permit anyone using prescription medication, including medical marijuana, from performing any safety sensitive tasks while under the influence of the drug, including operating a vehicle.

Drivers who are subject to Department of Transportation regulations will be required to undergo testing for alcohol and controlled substances prior to being permitted to drive. Tests will be



conducted before an employee is initially assigned to driver responsibilities; additionally drivers may be subject to “reasonable suspicion” testing and random testing, as well as testing conducted following an accident. No driver will be allowed to drive or continue driving unless the results of all tests are negative. The Town’s drug and alcohol testing policy for employees required to hold commercial drivers licenses is maintained in the Employee Manual of the Public Works Department.

## **APPENDIX A**

### **Town of Cape Elizabeth Salaried Positions**

Town Manager  
Assistant Town Manager  
Town Clerk  
Town Planner  
Assessor  
Codes Officer  
Chief of Police  
Police Captain  
Fire Chief  
Director of Public Works  
Head Librarian  
Director - Museum at Portland Head Light

**Employee Acknowledgement Form**

The Personnel Code describes important information about Cape Elizabeth and I understand I should consult my department head regarding any questions not answered in the Code. Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the Personnel Code may occur. All such changes will be communicated through official notices, and I understand that revised information may supersede, modify or eliminate existing policies. Only the Town Council has the ability to adopt any revisions to the policies in this code.

I have received the Personnel Code, and I understand that it is my responsibility to read and comply with the policies contained in this Code and any revisions made to it.

Employee's Name: \_\_\_\_\_

Employee's Signature: \_\_\_\_\_

Date: \_\_\_\_\_