

To: Cape Elizabeth Town Council

From: Michael K. McGovern

Re: Draft Changes to Personnel Code

Date: December 14, 2010

The draft of the changes is attached and I have also summarized the changes below.

Sec 3-1-13 Order of Layoffs

The proposed change is that displacement rights would be in the same department instead of in any department. While I do not anticipate any layoffs, the last time we did so was very disruptive to every department. The change has already been made in the public works collective bargaining agreement.

The remaining proposed changes are applicable to new hires and all involve when certain benefits become available.

Sec 3-2-9 (c) Defined Contribution Plan

The Town contributes a 7% match into the ICMA 401 A plan for any employee who is not in the MainePERS system. The Personnel Code currently provides that this is effective after 120 days of employment. The proposal is to have the match effective on the employment date.

Sec. 3-2-9 (e) Disability

For employees in the 401 A plan, the Town pays up to 1% of salary/wages for a long term disability plan. This begins 120 days after commencing work. The proposed change is to have the coverage effective on the first day of the next month after employment commences provided the disability carrier has accepted the enrollment.

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

The Town offers at employee expense, participation in the Maine State Group Life Insurance Accidental Death and Dismemberment Plan. This begins 120 days after commencing work. The proposed change is to have the coverage effective on the first day of the next month after employment commences provided the insurance carrier has accepted the enrollment.

Sec. 3-2-11 Employee Health Benefits

The Personnel Code provides that health benefits begin 120 days after employment commences. The proposed change is to have the coverage effective on the first day of the next month after employment commences provided the insurance carrier has accepted the enrollment.

Appendix A Salaried Positions

The facilities manager position would no longer be listed as a salaried position. Should the incumbent in this currently part-time position work more than 40 hours per week, the time would be compensated in accordance with Sec 3-1-6 of the Personnel Code.

CHAPTER 3
CAPE ELIZABETH PERSONNEL CODE

[Adopted effective 10/12/94 with amendments through 11/10/2007]

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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 permanent 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.

(c) 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.

(d) 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 permanent 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.

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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.

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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 smoke free environment for its employees and visitors to municipal facilities. There is no smoking in any municipal building. Employees and other visitors shall not smoke at any entranceway to any building. Employees may use their regular breaks for smoking and are not entitled to additional breaks.

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 th

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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, 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.

	Per Week Hours	Per Year Days
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.

(b) **Family Medical Leave of Absence.**

Employees who have worked for the Town for at least twelve (12) months and at least 1,250 hours during the prior twelve (12) months may take up to twelve (12) weeks of unpaid Federal Family Medical Leave (FMLA leave) for the following reasons:

- (1) Birth and/or care of a child of the employee;
- (2) Placement of a child into the employee's family by adoption or by a foster care arrangement;
- (3) Care of the employee's spouse, child or parent who has a serious health condition; or
- (4) Inability of the employee to perform the functions of the employee's position due to a serious health condition.

Employees who have worked for the Town for 12 months but for less than 1,250 hours during the past year and are not eligible for Federal Family Medical Leave may be eligible for a 10-week Family Medical Leave under Maine law pursuant to the Maine Family Leave of Absence law, and should follow the procedures set forth below to apply for a leave.

The twelve (12)-month period during which the twelve weeks of FMLA leave may be taken is measured forward from the date an employee's first FMLA leave begins, and the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-

month period. For example, if an employee's first FMLA leave begins on June 1, 2005, the first twelve-month period would be from June 1, 2005 through May 31, 2006. Any subsequent twelve (12)-month period could commence anytime after May 31, 2006.

The right to family leave for the birth and/or placement of a child into an employee's family may only be taken within the twelve (12) months after the date of the birth or placement of the child. In the case of unpaid leave for the birth or placement of a child, intermittent leave or working a reduced number of hours is not permitted, unless both the employee and the Town agree. If both parents are employed by the Town, the combined leave shall not exceed twelve (12) weeks.

For purposes of this policy, a serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- any period of incapacity or treatment in connection with or consequent to in-patient care in a hospital, hospice or residential medical care facility;
- any period of incapacity requiring absence from work or other regular daily activities for more than three (3) calendar days that also involves continuous treatment by or under the supervision of a healthcare provider; or
- continuous treatment by or under the supervision of a healthcare provider for a chronic long-term health condition that is incurable or so serious that if not treated would result in a period of incapacity of more than three (3) calendar days; or
- prenatal care.

In the case of unpaid leave for serious health conditions, the leave may be taken intermittently or on a reduced hours basis only if such leave is medically necessary. Where an employee requests intermittent leave or leave on a reduced hours basis due to a family member's or the employee's own serious health condition, the Town has the option, in its sole discretion, to require the employee to transfer to a temporary alternative job for which the employee is qualified and which better accommodates the intermittent leave or reduced hours leave than the employee's regular job. The temporary position will have equivalent pay and benefits as the employee's regular job.

Employees may use their available vacation and compensatory time during the twelve (12) week family leave period. Available sick time may be used when family leave is taken because of the employee's serious health condition or to care for a child, spouse or parent who has a serious health condition. The remainder of the leave will be unpaid leave. An employee on a Family Medical Leave may be eligible for benefits under the Disability policy in this Code.

When the necessity of leave is foreseeable due to the expected birth or placement of a child, the employee must provide the Town Manager at least thirty (30) days' notice of the employee's intention to take leave. If the date of birth or placement of a child requires the employee's leave to begin in less than thirty (30) days from the date of notice to the Town Manager, the employee must provide such notice as soon as practical. Where the necessity for leave is due to a family member's or an employee's own serious health condition and is foreseeable based on planned medical treatment, the employee must:

- give at least thirty (30) days' notice, or as soon as practical if treatment starts in less than thirty (30) days; and
- make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the Town, subject to the approval of the healthcare provider.

Where the need for leave is unforeseeable, the employee must give notice as soon as practical. The Town may require that any leave request based on a family member's or employee's own serious health condition be supported by certification from a healthcare provider. In that case, the employee must provide a copy of the certification to the Town Manager in a timely manner. (Fifteen calendar days will be allowed to provide the certification.) Certification from the healthcare provider must contain:

- the date the serious health condition began;
- the possible duration of the condition;
- the appropriate medical facts regarding the condition;
- if the leave is based on the care of a spouse, child or parent, a statement that the employee is needed to provide the care and an estimate of the amount of time that need will continue;
- if the leave is based on the employee's own serious health condition, a statement that the employee is unable to perform the functions of his/her job; and
- in the case of intermittent leave or leave on a reduced hours basis for planned medical treatment, the date the treatment is expected to be given and the duration of the treatment.

During family leaves of absence, the Town will continue to pay its portion of the health insurance premiums and the employee must continue to pay his/her share of the premium. Failure of the employee to pay his/her share of the health insurance premium may result in loss of coverage.

During unpaid FMLA leave, the employee shall not accrue employment benefits, such as vacation pay, sick pay, pension, etc. Employment benefits accrued by the employee up to the day on which the family leave of absence begins will not be lost.

The Town may require an employee on FMLA leave to report periodically on his/her status and the intention of the employee to return to work, and also periodic recertification of the medical condition. An employee taking leave due to the employee's serious health condition is required to obtain certification that the employee is able to resume work prior to the return from any FMLA leave.

Employees who return to work from family leave of absence within or on the business day following the expiration of the twelve (12) weeks are entitled to return to their job or an equivalent position without loss of benefits or pay, unless (a) their employment with the Town would have terminated if no leave had been taken; (b) they have given notice of their intent to terminate their employment; or (c) they cannot, with or without reasonable accommodations, safely perform the essential functions of the job to which they may be restored. Certain key employees may not enjoy these reinstatement rights.

Procedure

Applications for family leave of absence must be submitted in writing and signed by the employee's immediate supervisor. Applications should be submitted at least thirty (30) days before the leave is to commence or as soon as possible if thirty (30) days notice is not possible. Appropriate forms must be submitted to the Town Manager to initiate a family leave and to return the employee to active status. All necessary forms are available from the Town Manager. Each employee taking leave which meets the requirements for FMLA leave will be provided the "Response to Your Request for Leave" form.

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.

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.

(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

Deleted: percentage of

receives only their own contribution plus interest and not any funds the Town may have contributed.

(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.

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. 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.

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. .

Sec. 3-2-11 Employee Health Benefits

The Town of Cape Elizabeth participates in the Maine Municipal Employees Health Trust (MMEHT). Employees have the option of participating in either the MMEHT Indemnity Choice Plan or the MMEHT Comprehensive Point of Service Plan. Any employee who chooses the MMEHT Indemnity Choice Plan instead of the MMEHT Comprehensive Point of Service Plan, shall assume 100% of the additional incremental cost in addition to the applicable cost sharing. The Town reserves the right to substitute plans from other providers with similar coverages and claims service and has the right to offer additional MMEHT plans. Coverage is effective on the first day of the next month after employment commences provided the MMEHT or substitute plan has accepted the enrollment.

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 35 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 35 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%)

If any employee is eligible for coverage that is more expensive than single coverage, they may choose single coverage. If an employee can document that they are on a partner's plan, they may opt out of having coverage through the Town. Any savings resulting from the lesser coverage shall be shared 50% by the Town and 50% by the employee. The amount accruing to the employee shall be paid in early June and early December of each year based on the previous six months savings. 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. 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 Maine School Management Association. The Town may choose another provider at its option. Medical expense reimbursement accounts are limited to \$3000 per year. Dependent care reimbursement accounts are limited to \$5,000 per calendar year per family. The enrollment period for this program occurs once annually or on the initial hire date.

(b) Fitness

The Town shall provide up to \$150.00 per calendar year to reimburse any employee 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 11/10/2007)

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.

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
~~Facilities Manager~~
Pool Supervisor

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