

# Town of Franklin

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[www.franklinma.gov](http://www.franklinma.gov)

OFFICE OF THE TOWN ADMINISTRATOR

## Memorandum

February 7, 2020

To: Town Council

From: Jamie Hellen, Town Administrator

### Re: Resolution 20-14: The Town of Franklin Civil Discourse Pledge

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Based on some concerns I have heard from the Council, I have drafted the Town of Franklin Civil Discourse Pledge to encourage civility and respect of all citizens, employees and business in our day to day work as stewards of the public trust.

The following resolution follows a series of administrative actions to help educate and modernize our approach to harassment in the workplace, but also set the tone throughout the entire community. A few notes:

- In 2018, the Town Administration and Human Resources Director sponsored employee harassment training for all municipal employees.
- On March 10th, 2020, the Town Administration and Human Resources Director are requiring all Town Department Heads do an in depth Harassment Prevention training focused on how to identify harassment in the workplace, how to prevent it and how to educate staff to be better at what they do. This is an intensive 3 hour training all department heads are required to attend.
- Later this year, the Town will also revisit another round of harassment training for all municipal employees. We hope to do this every 2 years, if needed.

As you may recall, in June of 2019, for the first time in over a decade, the Town Council updated its Town bylaws on protected classes in the community and workplace. A copy is attached.

I have also attached our recently revised Harassment Policy for all municipal staff. I want to personally commend the incredible influence and work our Human Resources Director, Karen Bratt, has done to lift the standard in our municipal departments on this issue.



## TOWN OF FRANKLIN

### BY-LAW AMENDMENT 19-843

#### Chapter 25 - Human Resource Management

A By-law to Amend the Code of Franklin at Chapter 25 – Human Resource Management.

BE IT ENACTED BY THE FRANKLIN TOWN COUNCIL THAT the Code of the Town of Franklin is amended at Chapter 25 – Human Resource Management.

#### Chapter 25 – Human Resources Management

GENERAL REFERENCES Administration of government

##### § 25-1. Purpose and intent.

A.— The purpose of the Personnel Bylaw is to establish a framework for public human resources management for the Town of Franklin based on merit to support the operational needs of Town government. Systems and procedures developed as a result of this bylaw provide means to recruit, retain, and develop employees to provide cost effective and outstanding customer service to the community. All human resources actions in the Town shall be made without regard to race, color, religious creed, national origin, ancestry, sex (including pregnancy, childbirth and related medical conditions), gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, sexual orientation, active military personnel, and genetics. Actions will be based on merit and fitness without regard to sex, race, religion, color, age, handicap, political affiliations, personal relationships, or other non-job-related factors. They shall be based on merit and fitness.

B.—

This bylaw and policies adopted pursuant to this bylaw are not intended to be all-inclusive. Final discretion as to interpretation and as to the appropriate course of action concerning a personnel matter shall be that of the Town Administrator.

##### § 25-2 Authority of Town Administrator.

The Town Administrator is the appointing authority for all positions and employees except elected officers and employees of the School Department in pursuance of the provisions of MGL c. 41, §§ 108A and 108C, and the Town Charter, § 4.2.5. All human resource management actions are under the authority of the Town Administrator.

##### § 25-3 Definitions.

CHARTER — Franklin Town Home Rule Charter.

#### POLICIES

This term includes policies, procedures, rules and regulations.

## **THE BYLAW**

Human Resource Management Bylaw.

## **TOWN CODE**

Code of the Town of Franklin.

### **§ 25-4 Applicability; conflicts.**

- A. All Town departments and positions shall be subject to the provision of this bylaw and policies adopted pursuant to this bylaw, except elected officers and employees of the School Department in pursuance of the provisions of MGL c. 41, §§ 108A and 108C.
- B. To the extent that there is a direct conflict between the language of a collective bargaining agreement and this bylaw or policies adopted pursuant to it, the provisions of the collective bargaining agreement shall prevail.
- C. Nothing in this bylaw shall be construed to conflict with any provision of the Town Charter; to the extent that any apparent conflict exists, it shall be determined in favor of the Charter.

### **§ 25-5 Construal of provisions.**

- A. State Civil Service Law and Regulations. Nothing contained in this bylaw shall be construed to conflict with MGL c. 31 and regulations adopted in conformance with MGL c.31.
- B. Other statutes. Nothing contained in this bylaw or in policies adopted pursuant to it shall be construed to conflict with any statute of general application, special law enacted for the Town of Franklin or any permissive statute accepted by the Town of Franklin. To the extent that any apparent conflict exists, statutory language shall control.

### **§ 25-6 Responsibility for administration.**

- A. The Town Administrator is the appointing authority for all municipal positions, excluding elected officials and employees working under the direct direction of the School Committee. This applies to all hiring, promotion, and termination actions.
- B. The Town Administrator, in accord with § 4-2-3(g) of the Home Rule Charter, is responsible for the daily administration of the human resource management system. The Town Administrator or his/her designee shall be responsible for the development of the human resources system which meets the current and projected needs of the Town. The Town Administrator or his/her designee shall conduct research to keep the human resources systems and policies current with industry best practices. Policies may address topics including, but not limited to, recruitment and selection, compensation for employees, benefit programs, time off, methods of selection of personnel, employee conduct, performance management, safety and workplace violence, employee relations, training and employee development.

### **§ 25-7 Delegation of authority.**

- A. The Town Administrator may appoint a Human Resources Director for the Town of Franklin who will impartially and equitably oversee all personnel activities of Town



government in administering this bylaw, but the Town Administrator shall retain responsibility for all such delegated acts and approval of personnel matters.

B. ~~From time to time the Human Resources Director will review and amend the classification and compensation plan, which establishes position titles, grades and salary ranges for all non-union employees. minimum and maximum salaries for pay ranges. This compensation plan shall be submitted to the Town Council for approval prior to implementation.~~ Adjustments to the classification and compensation plan will be based on current job responsibilities and market conditions. A copy of the most recent plan shall be filed with the Town Clerk.

**§ 25-8 Management policies.**

A. The Town Administrator shall adopt policies to implement this bylaw and will ensure that policies reflect professional practices, are kept current with federal and state laws and regulations, and are in accord with the Home Rule Charter and other provisions of the Town Code.

B. The Town Administrator will ensure that department heads, supervisory personnel and employees have access to current policies to promote efficiency and economy of government.

C. The Town of Franklin is an equal opportunity employer, ~~and does not make any personnel decisions on the basis of an applicant's race, gender, national origin, religion, age, color, or disability status.~~ Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action because of race, color, religious creed, national origin, ancestry, sex (including pregnancy, childbirth and related medical conditions), gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, sexual orientation, active military personnel, genetics, race, creed, color, national origin, age, sex, handicap, political affiliation, or other nonmerit factor is prohibited except where such factor is a bona fide occupational requirement.

**§ 25-9 Employee rights and responsibilities.**

A. Employees who choose to work for the Town of Franklin can expect a workplace free from discrimination, harassment, or political pressure.

B. Employees are expected to conduct business with integrity and to report any instances of irregularity or fraud. They must not use their position for personal gain, nor engage in any conduct which may reflect unfavorably upon the Town.

**§ 25-10 Adoption of policies.**

The Town Administrator is empowered and authorized by this bylaw to adopt human resource management policies defining the rights, benefits, and obligations of employees subject to this bylaw. ~~Such policies shall become effective in accordance with the following procedure:~~

A. The Town Administrator may develop, amend or revise rules, regulations, policies, and procedures to meet the current needs of the Town of Franklin.

B. The new or amended policies and their proposed effective date shall be communicated to employees and posted on the town website.

C. Copies of the new or amended policies shall be filed with the Town Clerk.

D.

~~B. distributed to the Town Council at a regularly scheduled meeting. The Town Council shall have 30 days to accept, reject or amend the policy. If the Town Council takes no action within 30 days, the proposed policy shall take effect.~~

~~C. The new or amended policies shall be communicated to employees.~~

~~Copies of the new or amended policies shall be filed with the Town Clerk.~~

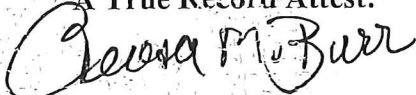
**§ 25-11 Severability.**

The provisions of this bylaw and the policies adopted pursuant to this bylaw are severable. If any bylaw provision or policy is held invalid, the remaining provision of the bylaw or policy shall not be affected thereby.

This by-law Amendment shall become effective in accordance with the provisions of the Franklin Home Rule Charter

DATED: June 26<sup>th</sup>, 2019

A True Record Attest:



Teresa M. Burr  
Town Clerk

VOTED: Passed  
UNANIMOUS ✓  
YES 8 NO 0  
ABSTAIN —  
ABSENT 1  
RECUSED —

  
Glenn Jones, Clerk

# **TOWN OF FRANKLIN**

## **HARASSMENT AND SEXUAL HARASSMENT POLICY**

### **I. Introduction**

It is the goal of the Town of Franklin to promote a workplace that is free of harassment. Harassment of employees occurring in the workplace or other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by the Town. Further, any retaliation against an individual who has complained about harassment or retaliation against individuals for cooperating with an investigation or a complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from harassment, the conduct that is describe in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Town of Franklin takes allegations of harassment seriously, we will respond promptly to complaints of harassment. If it is determined that such inappropriate conduct has occurred, the Town will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the legal definition of harassment or sexual harassment.

### **II. Policy**

#### **A. Harassment and Sexual Harassment Prohibited**

Employees are protected from harassment on the basis of their race, color, religion, national origin, ancestry, sex, gender identity, age, pregnancy and pregnancy-related conditions, handicap (disability), sexual orientation, genetics, active military or veteran status, and participation in discrimination complaint-related activities (retaliation). Harassment is prohibited by state and/or federal law, and will not be tolerated by the Town of Franklin.

All Town employees are responsible for ensuring that the workplace is free from all forms of harassment. This policy applies to all employees and officers of the Town. Supervisory and managerial employees must not condone acts of harassment by their subordinate employees, by other Town employees, by regular visitors to Town offices, or by employees of our vendors and contractors. Retaliation against persons complaining about harassment or sexual harassment is also unlawful and is prohibited by this policy.

#### **B. Harassment Defined**

Harassment in General. Harassment is unwelcome verbal or physical conduct, directed at an individual based upon their race, color, religion, national origin, ancestry, sex, gender identity, age, pregnancy and pregnancy-related conditions, handicap (disability), sexual orientation, genetics, active military or veteran status, or participation in discrimination complaint-related activities (retaliation), which disrupts or interferes with another's work performance, or which creates an intimidating, offensive, or hostile environment.

Examples of Harassment. Prohibited behavior includes slurs or other derogatory comments, objects, pictures, cartoons, or demeaning gestures connected to one's membership in a protected group.

Sexual Harassment. In Massachusetts, the legal definition for sexual harassment is this: "sexual harassment" means sexual advances, requests for sexual favors, and verbal, or physical conduct of a sexual nature when:

- a. submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
- b. such advances, requests or conduct have the purpose or effect of unreasonably interfering with the individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment. The legal definition of sexual harassment is broad and in addition to the above examples, other sexually orientated conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating or humiliating to male or female workers may also constitute sexual harassment.

Examples of Sexual Harassment. While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances – whether they involve physical touching or not
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess
- Displaying sexually suggestive objects, pictures, cartoons
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments
- Inquiries into one's sexual experiences
- Discussion of one's sexual activities

All employees should take note that retaliation against an individual who has complained about harassment, and retaliation against individuals for cooperating with an investigation of a harassment complaint is unlawful and will not be tolerated by the Town of Franklin.

### **III. Persons Covered**

This policy prohibits harassment of all employees, including non-supervisory, supervisory, management and executive personnel, all applicants for employment, and citizens or customers.

### **IV. Procedure**

#### **A. Complaint**

If an employee believes that they have been subjected to harassment, the employee has the right to file a complaint with the Town. This may be done in writing or orally.

An employee who believes that they have been subjected to harassment prohibited by this policy has a responsibility to report the harassment as soon as possible to their supervisor, manager, or department head.

Any supervisor, manager or other employee who becomes aware of harassment prohibited by this policy must report it immediately to one of the Harassment Grievance Officers.

If the employee does not feel comfortable reporting the complaint to their management they should contact one of the following Harassment Officers:

Karen Bratt - Director of Human Resources - 508-553-4839

Chrissy Whelton – Assistant to the Town Administrator – 508-553-4885

The Harassment Officers are available to discuss any concerns and employee may have and provide information about the policy on harassment and the complaint process.

If there are other compelling reasons which prevent bringing the problem to the attention of the line management or Harassment Officers, then the employee may report the harassment to Jamie Hellen, Town Administrator.

#### **B. Investigation**

All complaints of harassment will be investigated promptly and impartially by the Harassment Officer or by another qualified individual selected by the Town.

The investigation will include a private interview with the person filing the complaint and with witnesses. The individual conducting the investigation will also interview the person alleged to have committed sexual harassment.

An individual conducting an investigation into a complaint of harassment will keep information as confidential as possible, and disseminate it on a “need to know” basis only. Others involved in the investigation in any capacity must also respect the privacy of those involved by keeping information learned during the course of the investigation confidential.

As soon as practicable after the completion of the investigation, the official responsible for conducting the investigation will, to the extent appropriate, advise the employee who brought the harassment complaint and the employee accused of harassment of the results of the investigation.



If it is determined that inappropriate conduct has occurred, the Town will act promptly to eliminate the offending conduct, and where it is appropriate, will also impose disciplinary action.

If either employee is dissatisfied with the handling or result of the investigation, the employee should bring the matter immediately to the Town Administrator, preferably in writing, stating the reasons for that dissatisfaction.

### **C. Disciplinary Action**

Anyone who is found, after the investigation, to have engaged in harassment prohibited by this policy will be subject to appropriate disciplinary action from counseling up to and including discharge from employment. This policy shall not limit the authority of the Town to take disciplinary action against an employee who engages in inappropriate conduct, regardless of whether it satisfies the definition of harassment or sexual harassment under this policy.

Employees covered by a collective bargaining agreement who are charged with sexual harassment and who are subject to disciplinary action are entitled to representation by their respective union.

### **D. False Accusations**

False accusations of harassment (i.e. the alleging of incidents or behavior that are proven, through investigation, not to have occurred at all) may result in severe disciplinary action up to and including termination. A finding that either harassment did not occur or that there is insufficient evidence, does not necessarily, in itself, establish that an accusation was false.

### **E. Retaliation Prohibited**

No one who brings a harassment complaint in good faith will be subject to any adverse employment action for doing so, regardless of whether the complaint is ultimately determined to have merit. Any employee, including supervisors and managers, who retaliates against an employee for making a complaint of harassment will be subject to disciplinary action, which may include termination of employment. Retaliation should be reported to management using the procedure set forth in this policy for complaints of harassment.

### **V. State and Federal Remedies**

In addition to the above, if you believe you have been subjected to harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies requires that claims be filed within 300 days from the alleged incident or when the complainant became aware of the incident.

**United States Equal Employment Opportunity Commission (“EEOC”)**

[www.eeoc.gov](http://www.eeoc.gov)

Boston Area Office  
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203

Phone: 1-800-669-4000

Fax: 617-565-3196

**Massachusetts Commission Against Discrimination (“MCAD”)**

[www.mass.gov/mcad](http://www.mass.gov/mcad)

1 Ashburton Place, Suite 601  
Boston, MA 02108

Phone: 617-994-6000

Fax: 617-994-6024

E-mail: [assistanttochairman@state.ma.us](mailto:assistanttochairman@state.ma.us)

Exhibit:

An excerpt from the Attorney General's Open Meeting law guide in regards to the social media inquiry from the 2-12-2020 Town Council discussion "What Constitutes a Deliberation".

#### What constitutes a deliberation?

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The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For

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<sup>2</sup> See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

#### What matters are within the jurisdiction of the public body?

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The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body’s members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

#### What are the exceptions to the definition of a meeting?

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There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).



**TOWN OF FRANKLIN  
RESOLUTION 20-14  
THE TOWN OF FRANKLIN  
CIVIL DISCOURSE PLEDGE**

**WHEREAS,** the Town of Franklin is made up of individuals and businesses whose collective cultures and perspectives join to form a healthy community that prides itself on being a place that welcomes people, families and businesses from all walks of life;

**WHEREAS,** the Town of Franklin values all members of this community, including all religions, ancestries, and ethnicities, as well as people of any socioeconomic status, disability, sexual orientation, or gender identity;

**WHEREAS,** the Franklin Town Council wants to assure its residents and visitors that it is a place that celebrates diversity and inclusion and will not tolerate any discrimination prejudice, racism, bigotry, hatred, bullying, or violence towards any person or business within our community;

**WHEREAS,** The Franklin Town Council recognizes that with the rapid ascent of modern technology, including all forms of social media, the internet and television, that new challenges are before all of us; and that the individual Councilors need to set a high standard for civil discourse by providing an environment of trust and honesty with residents and businesses; and

**WHEREAS,** The Franklin Town Council encourages all residents and visitors to celebrate and practice civility, and to respect the diversity of each other's backgrounds and to learn from one another.

**NOW, THEREFORE BE IT RESOLVED,** by the Town Council of the Town of Franklin that:

**Section 1.** The Franklin Town Council will lead by example in promoting civility and respect for all citizens and businesses within the Town of Franklin in utilizing any means of contact with the general public, including but not limited to in-person constituent services, on various social media channels, and while conducting formal business as outlined in the Franklin Home Rule Charter and Franklin Town Council Procedures Manual;

**Section 2.** The Franklin Town Council will have a renewed focus on following the appropriate governmental structures and processes (i.e. chain of command) when responding to citizen or employee feedback as outlined in our Town Charter, Town bylaws, Town Administrative procedures or Massachusetts General Laws, where applicable;

**Section 3.** The Franklin Town Council recognizes that individual Councilor(s)'



participation on various social media channels regarding official Town business is possibly an infraction of the State's Open Meeting Law statute;

**Section 4.** The Franklin Town Council calls upon all city departments, employees, and all who live, work, or visit Franklin to speak out against acts of bullying, discrimination, and hate violence, while also standing up for those who are targeted for such acts. The Town shall exercise all reasonable efforts to ensure that all Town bylaws and administrative policies reflect the most current federal and state laws and employees shall follow the appropriate chain of command as outlined in the most recent approved town policies;

**Section 5.** The Franklin Town Council recognizes that our community is proud to stand as a welcoming and accepting community to all and will act in appropriate ways to implement that standard across our community;

**Section 6.** The Franklin Town Council will oppose any attempts to undermine the safety, security, and rights of individual members of our community and encourages every citizen to do the same; and

**Section 7.** The Franklin Town Council emphatically rejects discrimination, harassment, bullying or any hate-based crimes and prejudice and bigotry in all forms, and takes this opportunity to reinforce our commitment to a diverse, supportive, and inclusive community.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

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**DATED:** \_\_\_\_\_, 2020

**VOTED:** \_\_\_\_\_

**UNANIMOUS:** \_\_\_\_\_

**A TRUE RECORD ATTEST:**

**YES:** \_\_\_\_\_ **NO:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_ **ABSENT:** \_\_\_\_\_

**RECUSED:** \_\_\_\_\_

**Teresa M. Burr, CMC**  
**Town Clerk**

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**Glenn Jones, Clerk**  
**Franklin Town Council**