

TOWN OF MIDDLEBURY
Policy Review Committee
Meeting Minutes – March 29, 2019

In attendance: Gary Baker, Donna Donahue, Victor Nuovo, Beth Dow (staff) and Chris English (staff)

- 1. Call to Order.** Chris called the meeting to order at 8:00 a.m.
- 2. Approve March 15, 2019 Meeting Minutes.** Gary made a motion to approve the March 15th meeting minutes, seconded by Donna. Approved unanimously.
- 3. Review Updates to Section 11 of VLCT Model Personnel Policy – Alcohol and Drug Use.** The Committee reviewed changes to the Alcohol and Drug Use section of the Model Policy. Chris noted that VLCT had significantly expanded this section of the Model Policy - perhaps to reflect evolving case law - which, among other topics, now includes guidance for municipalities relative to Vermont's new marijuana law. Donna said she recommended incorporating the revised Section 11 into the Town's Personnel Policy as a whole and suggested that this section is likely to continue changing as various provisions undergo legal challenges over time. In regard to the marijuana provisions, Beth said she had been in touch with Jim Bernier, with Occupational Drug Testing, LLC., to discuss whether the law addresses employee use of cannabidiol (CBD). She said Jim had advised that, while THC levels in CBD are so low that a CDL drug test normally would not register it, but it was still possible that it could. At this point, he said, all he could suggest is "let the buyer beware."

Chris mentioned that he had spoken with Kathleen about the first paragraph on pg. 7 (directly beneath VLCT's guidance on marijuana), which permits the "limited, responsible consumption of alcohol" on or off premise at Town-sponsored business or social functions, to get her opinion about whether to incorporate this into the Town's policy. Kathleen noted that this provision would be in conflict with the Town's ordinance prohibiting the consumption of alcohol on Town-owned property but that the Town doesn't sponsor events at which alcohol is served, in any event, and so recommended that the paragraph be left out. The Committee concurred.

The Committee also discussed the next paragraph, which states that Town "reserves the right to search and inspect all areas of the work place and its premises" in order to maintain a safe and healthy work environment. Donna said she felt this statement was overly broad in the context of workplace health and safety and could be subject to legal challenge. Beth pointed out that Paragraph 19.01 in the section dealing with Use of Town Equipment already addresses this issue, stating:

"Employees should have no expectation of privacy regarding anything stored in or on Town-owned equipment, including but not limited to desks, filing cabinets, lockers and vehicles. Employees should expect that such areas may be searched at any time to retrieve work-related materials or to investigate violations of workplace rules."

The Committee agreed to omit VLCT's corresponding language in Section 11.

At the completion of the discussion, the Committee agreed to incorporate the language in VLCT's Section 11 into the Town's Personnel Policy, with the two exceptions noted, and replace the existing Section 13 on Alcohol and Drug Use in the Town policy in its entirety. The Committee also agreed that the draft Employee Guidebook was now complete and approved it for presentation to the Selectboard, along with a recommendation to adopt the revisions to the Personnel Policy.

Beth reminded the Committee that it still needed to set time aside to review VLCT's model Drug & Alcohol Policy for CMV Operators and compare it to the Town's existing Policy for Drug and alcohol Testing for Commercial Driver's License Holders, which is many years old and in need of updating. The Committee agreed to take this up at its next meeting.

4. Begin Planning Discussion for Development of New Single-Use Plastic Bag Ordinance. The Committee turned its attention to the proposed ordinance prohibiting single-use plastic bags - the subject of an advisory article at Town Meeting in March – and briefly discussed a timeline for development. Referring to Chris Bray's discussion of S.113 at the March 25th Selectboard meeting, Victor proposed that the Policy Review Committee postpone work on drafting a local ordinance until the final status of the bill is known, arguing that if the bill is signed into law, such an ordinance would first and foremost need to be in compliance with it. Donna said she agreed and proposed making a recommendation to the Selectboard that, while the Policy Review Committee encourages all community all efforts in support of the environment, in view of pending state legislation that would address the same issue as the proposed local ordinance, work to develop the ordinance should be deferred until the final status of S.113 is determined.

After further discussion, the Committee agreed to recommend to the Selectboard that it defer action on developing a local ordinance prohibiting single-use plastic bags, pending final disposition of S.113.

Chris distributed copies of the plastic bag section of S.113 (current as of March 4th), Brattleboro's plastic bag ordinance and a plastic bag ban ordinance draft framework proposed by Amy Mcaninch and Maggie Eaton for Committee members to begin familiarizing themselves with.

Next Steps. The next two meetings of the Policy Review Committee will meet be on Friday, April 12th and Friday, April 26, at 8:00 a.m.

The meeting adjourned at 9:00 a.m.

Submitted by:

Chris English
Assistant Town Manager