


MEMORANDUM

TO: Town Council

FROM: David E. Cox, Town Manager 

DATE: June 22, 2023

SUBJECT: Agenda Information – 6/27/2023

The following is additional or summary information regarding matters on the upcoming Town Council Agenda. The numbering below follows the agenda, and some routine or self-explanatory items are not discussed in this memo. As you review your packet materials, please do not hesitate to contact the appropriate staff member or me prior to the Council meeting with any questions or concerns.

**7 Resolutions/Ordinances/Policies/Proclamations**

**7a Proclamation Naming Bevin Park** – In follow up to the request made by the Old Home Days Committee and the original suggestion made by the family that donated the land, the Council is asked to formalize an action naming the grounds north of Center School as Bevin Park. In 1923, the Bevin family donated the parcel of land north of Center School to the town for use as athletic fields. In the deed, the family suggested that the property could be named Bevin Park in honor of the family’s history in Town and in recognition of the donation. It was not a requirement, and it is not believed any formal action was taken to so name the area. This action is intended to honor that request by naming the athletic fields north of Center School as Bevin Park. A bench is being installed adjacent to a walkway into the park with the name and Bevin Park will be dedicated at an event as part of Old Home Days.

Recommendation: Approve the Resolution naming Bevin Park.

**7b Ordinance regarding the Volunteer Stipend** – The Town Council is asked to consider an amendment to the portion of the Town Code that provides for the stipend paid annually to volunteers for the Fire Department, Ambulance Association and the Civil Preparedness Director. The amendment is being suggested to address the changes made at the Ambulance Association in the pay model for individuals that respond. While many members remain volunteers who receive small payments for their response similar to the way they have been paid in the past, some responders are now paid a *per diem* for shifts and function more like traditional employees. As such, the proposed amendment makes clear the requirement that the person receiving a stipend be a volunteer who is paid only a small amount that is less than the threshold established in the Fair Labor Standards Act for “volunteer” and that the person is not paid through the *per diem* process. Additionally, references to specific sections of the various organization bylaws have been removed to prevent confusion in the future. If this seems acceptable, the Council should set a public hearing to occur concurrent with the next regular meeting.

Recommendation: Set a public hearing for July 11.

**7c Ordinance amending the Business Incentive Program** – The Town Council is asked to review revised recommendations from the Economic Development Commission on changes to the ordinance

establishing the tax abatement incentive program for new or existing businesses in Town that invest in building improvements and/or business expansion. EDC Chairperson Marlene Geary will present the proposed changes which are intended to simplify the process for applicants and provide better information for review to the EDC and Council for future considerations. In addition, the Commission is recommending a name change for the program to the East Hampton Tax Abatement Program or ETAP. If the Council finds the adjustments acceptable, a public hearing should be set for the next regular meeting.

Recommendation: Set a public hearing for July 11.

## **8 Continued Business**

**8b Discussion regarding an official representative to the Ambulance Association Board** – As discussed during meetings with the East Hampton Ambulance Association and as part of moving toward a more permanent resolution to the questions related to how this service will be provided in the future, the Council is asked to consider its representation to the East Hampton Ambulance Association board.

Recommendation: Discuss the matter and determine representation.

## **9 New Business**

**9a Consideration of a request for use of the Yellow Ribbon Tree in the Village Center** – On behalf of the VFW Auxiliary, the Town Council is asked to consider a request for permission to put red ribbons on the Yellow Ribbon Tree during Old Home Days in honor of the Fire Department's 100<sup>th</sup> anniversary, which is being celebrated during the event and, in particular, during the parade on Saturday.

Recommendation: Approve the use.

**9b Consideration of a request for contribution to the Bevin Park name bench** – The Town Council is asked to approve a request for a \$2,300 donation to fund the final costs of the bench naming the fields north of Center School as Bevin Park as proposed in the deed donating the land and as requested by the Old Home Days Committee. The Old Home Days Committee raised \$2,800 for the bench and the small committee that was tasked with determining the final plans for naming the park has requested the Town to make this final contribution. Funds are available in the Town Council section of the budget to fund this payment.

Recommendation: Approve the donation and payment.

**9c Consideration of actions related to the Middle School Roof Replacement Contract** – Bids were received on Friday, June 16 for this project, which includes full removal and replacement of the roof at the Middle School including removal of leaking skylights and allowances for deck replacement and other potential repairs. The lowest bid was received from Armani Restoration, Inc. of Middletown in the recommended amount of \$1,798,500, which is below the budget estimate amount of just under \$2.3

million. The Middle School Roof Committee approved the contract, and the Superintendent has sent a notice to proceed to the contractor in order to move the project ahead so that it may be completed this summer. However, the resolution establishing the Committee requires the Council to approve the contract. As such, the Council is asked to confirm the actions of the Committee and the Superintendent and to approve award of the contract to Armani Restoration.

Recommendation: Approve a motion to confirm the actions of the Committee and the Superintendent and to approve award of a contract to Armani Restoration, Inc. of Middletown in the not to exceed amount of \$1,798,500 for the Middle School Roof Replacement Project.

**9d Consideration of a revised Job Description for the Park Maintainer II position** – The Council is asked to approve a revised Job Description for the Park Maintainer II position, which is the higher level regular park maintainer position. The main focus of the change is to eliminate a previous requirement for a CDL driver license in favor of certifications in Playground Safety Inspection and watercraft operation. While this position (as well as the Park Maintainer I position) does work for Public Works in the off season, it does not need a CDL for the work it performs. The revised requirements better meets the Town’s needs for the position.

Recommendation: Approve the revised Description.

**9e Consideration of a proposed phosphorous removal treatment for the lake** – The Council is asked to consider a recommendation from the Conservation Lake Commission to use a product called Metafloc in Lake Pocotopaug in the upcoming weeks. Metafloc is a product that binds with phosphorous in the water and causes it to settle to the bottom of the water where it cannot be used by algae and other undesirable organisms. This is another tool being used to prevent blue green algae from forming before becoming an issue on the lake, which would cause an herbicide treatment. Staff has communicated with representatives of DEEP, who indicate that the Town may undertake this treatment at this time without need for a permit provided a proper contractor is used. Everblue Lakes will be the applicator.

Recommendation: Approve the Metafloc application.

**9f Consideration of a monthly Town budget for July** – In light of the fact that a FY2024 budget has not been approved and in accordance with State Statute, the Council is asked to approve a basic budget for the month of July, which will allow Town operations to continue. The budget in the amount of \$3,068,925 has been developed using several strategies based on the current FY 2023 budget and previous spending during this month in previous years. Amounts for the proposed budget have been either increased or reduced from 1-twelfth of the fiscal year amount in consideration of known spending needs during this time period, including, for example, known debt payments or reductions in known staffing for whom pay is required. Notably, no funding is included for transfers to the Capital Improvement Fund. This approval of monthly budgets will continue until a budget is approved at which point the approved budget immediately controls back to the beginning of the fiscal year.

Recommendation: Approve the Monthly Budget for July in the amount of \$3,068,925.

**9f Consideration of pension plan updates** – The Council is asked to consider some administrative updates to the pension plan. As noted in Finance Director Jylkka’s memo, the amendments will update the mortality tables used in the calculations, will allow participants who take their benefits later than they are allowed to receive a revised amount and to allow the plan to keep funds for participants who cannot be located after they are able to collect benefits. The revisions are expected to be financially neutral or slightly beneficial to the plan.

Recommendation: Approve the Pension Plan revisions.

The remainder of the items are of a routine nature, in the sole purview of the Council or are announcements. Please contact me or the appropriate staff member with questions or concerns.

Town of East Hampton  
Town Council Special Meeting  
Tuesday, June 13, 2023  
Town Hall 2<sup>nd</sup> Floor Conference Room #201

**MINUTES**

**Present:** Chairman Mark Philhower, Vice Chairman Tim Feegel, Council Members Pete Brown, Brandon Goff, Eric Peterson, Kevin Reich and Alison Walck and Town Manager David Cox

**Call to Order & Pledge of Allegiance**

Chairman Philhower called the meeting to order at 6:00 p.m. in the Town Hall 2<sup>nd</sup> Floor Meeting Room #201.

**Executive Session**

**Strategy and Negotiation Regarding Collective Bargaining**

A motion was made by Ms. Walck, seconded by Mr. Goff, to enter Executive Session at 6:00 p.m. with Town Manager David Cox, Finance Director Jeff Jylkka and Attorney Nicholas Grello invited into the session. Voted (7-0)

Executive Session ended at 6:12 p.m.

**Adjournment**

A motion was made by Mr. Goff, seconded by Ms. Walck, to adjourn the meeting at 6:12 p.m. Voted (7-0)

Respectfully Submitted,

Cathy Sirois

Recording Clerk

Minutes transcribed from notes taken by Town Manager Cox

**Town of East Hampton  
Town Council Regular Meeting  
Tuesday, June 13, 2023  
Town Hall Council Chambers and Zoom**

**MINUTES**

**Present:** Chairman Mark Philhower, Vice Chairman Tim Feegel, Council Members Pete Brown, Brandon Goff, Eric Peterson, Kevin Reich and Alison Walck and Town Manager David Cox.

**Call to Order & Pledge of Allegiance**

Chairman Philhower called the meeting to order at 6:30 p.m. in the Town Hall Council Chambers and via Zoom.

**Adoption of Agenda**

A motion was made by Ms. Walck, seconded by Mr. Reich, to adopt the agenda as submitted. Voted (7-0).

**Approval of Minutes**

A motion was made by Ms. Walck, seconded by Mr. Reich, to approve the minutes of the Town Council Regular Meeting of May 23, 2023 as written. Voted (7-0)

**Public Hearings:**

**2023 CT Neighborhood Assistance Act Applications Received from Epoch Arts and Town of East Hampton**

The CT Neighborhood Assistance Act is a tax credit program designed to provide funding for municipal and tax-exempt organizations by providing a corporation business tax credit for businesses who make cash contributions to these entities.

David Cox, Town Manager, provided an overview of the Town of East Hampton application for lighting improvements at Memorial School in the amount of \$50,000.

Omar Namen, Epoch Arts, provided an overview of the Epoch Arts Application for the replacement of windows with a more energy efficient model in the amount of \$40,000.

There were no other public remarks.

A motion was made by Ms. Walck, seconded by Mr. Reich, to close the Public Hearing. Voted (7-0)

**Public Remarks**

Eric Rosenberg, 15 Bay Road and Chairman of the Commission on Aging, appreciates the Board of Finance recommending funding for the Ambulance. He is hopeful the Town Council can find funds to change the two Senior Center part time positions to one full time position.

**Presentations**

None

## **Bids & Contracts**

None

## **Resolutions/Ordinances/Policies/Proclamations**

### **Resolution Regarding Use of American Rescue Plan (ARPA) Funds for the Capital Improvement Plan**

The proposed resolution identifies the use of \$1,942,100 of ARPA funds for a variety of projects and purchases in the community in the Capital Improvement Plan as shown in Exhibit A of the resolution. The resolution and exhibit will be included with the minutes filed in the Town Clerk's Office.

A motion was made by Mr. Reich, seconded by Mr. Goff, to adopt the resolution to allocate \$1,942,100 from the American Rescue Plan Act funds for the FY2024 Capital Improvement Plan.

Voted (7-0)

### **Resolution Regarding Use of American Rescue Plan (ARPA) Funds for the Ambulance Association**

The proposed resolution is based on a recommendation from the Board of Finance to provide \$280,000 from ARPA funds to the East Hampton Ambulance Association to offset operational expenses related to providing ambulance services in the community.

A motion was made by Mr. Reich, seconded by Mr. Feegel, to adopt the resolution to allocate \$280,000 from the American Rescue Plan Act funds for the Ambulance Association. Voted (7-0)

### **Consideration of a Collection Development Policy and Borrowing Policy for the Public Library's Library of Things**

The Library Advisory Board has recommended policies related to the collection development and circulation of non-traditional library materials. Childrens Librarian Christine Cachuela provided an overview of the Collection Development and Borrowing Policies for the Library of Things.

A motion was made by Mr. Reich, seconded by Mr. Peterson, to approve the Collection Development Policy and Borrowing Policy for the Public Library's Library of Things. Voted (7-0)

## **Continued Business**

### **Sub-Committee Reports & Updates**

Mr. Reich reported that the Middle School Roof project has gone out to bid. Once bids are received on Friday the Committee will review and make a contractor selection.

The bench for Bevin Park will be ready by Old Home Days. The concrete pad has been poured.

The tennis court repair is still being worked on. There will be additional discussion with the Public Works Director and the engineer.

## **FY 2023-2024 General Government & Board of Education Budgets**

### **Discussion on 2023-2024 General Government & Board of Education Budgets**

The budgets were considered by the Board of Finance at a Special Meeting on June 6. The total recommended budget is \$53,987,781 which includes \$35,858,655 for Education and \$18,129,126 for General Government.

**Possible Action on 2023-2024 General Government & Board of Education Budgets**

A motion was made by Ms. Walck, seconded by Mr. Peterson, to approve the Fiscal Year 2024 General Government Budget in the amount of \$17,995,316 (original figure). Voted (7-0)

A motion was made by Ms. Walck, seconded by Mr. Feegel, to approve the Fiscal Year 2024 Board of Education budget in the amount of \$35,858,655 (Board of Finance figure). Voted (7-0)

**Set Town Meeting and Referendum Dates for the 2023-2024 Budgets**

A motion was made by Mr. Reich, seconded by Mr. Feegel, to direct that a Town Meeting be called for Tuesday, June 27, 2023 at 6:15pm in the Town Hall for the purpose of considering the 2023-2024 General Government and Board of Education budgets and to immediately be adjourned to a referendum vote on Tuesday, July 11, 2023 in accordance with Charter Section 4.1. Voted (7-0)

**Consideration of the FY 2023-2024 Public Water System Operating Budget & Water Rate Recommendation**

Scott Clayton, Public Utilities Administrator, provided an overview of the Water System Operating Budget & Water Rates. The budget will be \$241,730 which is an increase of 1.60% (\$3,806.00) over last year, the water billing rates will be \$40/EMU and the Commodity Charge will be \$12.00/1000 gallons, if approved.

A motion was made by Mr. Reich, seconded by Ms. Walck, to approve the water budget and rates as presented. Voted (7-0)

**New Business**

**Consideration and Action on the 2023 CT Neighborhood Assistance Act Applications from Epoch Arts and Town of East Hampton**

A motion was made by Mr. Peterson, seconded by Mr. Goff to approve the 2023 Neighborhood Assistance Act applications for Epoch Arts and the Town of East Hampton/Memorial School as presented. Voted (7-0)

**Consideration and Action on an RFQ for Lake Testing and Reporting**

Parks & Recreation Director Jeremy Hall reviewed the RFQ for the Lake Consultant/Limnologist.

A motion was made by Mr. Reich, seconded by Mr. Feegel, to approve the RFQ for the Lake Consultant/Limnologist. Voted (7-0)

**Consideration and Action Regarding Police Department Policies/General Orders**

**1) General Order 10.4 - Communications**

A motion was made by Ms. Walck, seconded by Mr. Feegel, to approve Police Department General Order 10.4 Communications. Voted (7-0)

**Consideration and Possible Action on Setting Temporary Mill Rate for personal Property/Real Estate**

Since the Town's budgets have not yet been adopted, the Council needs to set a temporary mill rate.

A motion was made by Mr. Reich, seconded by Ms. Walck, to establish a temporary mill rate of 34.66 until a final budget is approved. Voted (7-0)



**Town Manager Report**

Mr. Cox provided his written report for the Council members which will be included with the minutes filed in the Town Clerk's Office.

**Appointments**

None

**Tax Refunds**

A motion was made by Ms. Walck, seconded by Mr. Goff, to approve tax refunds in the amount of \$1,911.28. Voted (7-0).

**Public Remarks**

Sal Nucifora, Colchester Avenue and Board of Education member, commented on the insurance savings in the education budget and commended the Board of Finance and Town Council on a tough budget year.

Donald Scranton, Ambulance Chief, thanked the Town Council for supporting the Ambulance Association.

**Communications, Correspondence & Announcements**

**May 2023 Board and Commission Summary**

The Council members received the May 2023 Board and Commission Summary.

**CT Siting Council – Battery Energy Storage Project, 44 Skinner Street**

The Council received a letter regarding a battery energy storage project proposed at 44 Skinner Street. The letter will be included with the minutes filed in the Town Clerk's Office.

**Adjournment**

A motion was made by Mr. Reich, seconded by Mr. Goff, to adjourn the meeting at 7:07pm. Voted (7-0).

Respectfully Submitted,

Cathy Sirois  
Recording Clerk

Town of East Hampton  
Middlesex County, Connecticut

DRAFT – June 22, 2023

**Ordinance No. 2023.04**

**An Ordinance Amending Article V of Chapter 278 of the Code of the Town of East Hampton Regarding Stipend for Volunteer Fire and Ambulance Personnel and Civil Preparedness Director**

**WHEREAS**, the Code of the Town of East Hampton provides for the payment of a stipend to certain active volunteer members of the East Hampton Volunteer Fire Department and the East Hampton Volunteer Ambulance Association as well as the Town’s Civil Preparedness Director, and;

**WHEREAS**, said stipend is intended to recognize the benefits provided to the Town of East Hampton by the individuals who volunteer their time in service to their community even though they may receive other small monetary payments as incentive or thanks, which payments are far below the pay that would be received for a paid professional acting in the same capacity with the same skills, and;

**WHEREAS**, the Town Council desires to update the Code related to this stipend to address changes to the staffing models for provision of these services and to continue to recognize volunteer effort on behalf of and in service to the community.

**NOW, THEREFORE**, pursuant to Section 2.4 of the Town of East Hampton Charter, the Town Council of the Town of East Hampton does hereby ordain as follows:

Section 1: Section 275-14 of the Code of the Town of East Hampton regarding Eligibility is hereby repealed in its entirety and replaced to read as follows:

§ 278-14 Eligibility.

Members of the East Hampton Volunteer Fire Department, the East Hampton Ambulance Association and the Civil Preparedness Director shall be eligible for the stipend as granted in §278-13 provided the member meets all of the following conditions.

- A. The member has met for the year for which said stipend will be paid the requirements to be deemed an active volunteer of their respective organizations as outlined in approved bylaws.
- B. The total of any compensation or monetary incentive the member received from their respective organization is below the pay and remuneration thresholds established by the Fair Labor Standards Act to be classified as a volunteer.
- C. The member is not a per-diem or other similar type of employee.

Section 2: This ordinance is effective immediately upon its adoption and publication in accordance with Connecticut Statutes.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2023.

TOWN COUNCIL

ATTEST

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Mark A. Philhower, Chairperson

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Kelly Bilodeau, Town Clerk

## Chapter 278. Taxation

### Article V. Stipend for Volunteer Fire and Ambulance Personnel and Civil Preparedness Director

[Adopted by the Town Council 5-22-2001 (Ord. No. 1.11); amended in its entirety 7-23-2019 by Ord. No. 2019.02]

#### § 278-12. Purpose.

This article is adopted in recognition of the benefits provided to the Town of East Hampton by the dedicated service of the Town's volunteer fire and ambulance personnel and Civil Preparedness Director.

#### § 278-13. Stipend granted; amount.

The Town of East Hampton hereby authorizes an annual stipend for volunteer firefighter, paramedic, ambulance driver, EMT or the Civil Preparedness Director in an amount not to exceed \$1,250 before all applicable taxes.

#### § 278-14. Eligibility.

Members of the East Hampton Volunteer Fire Department, the East Hampton Ambulance Association and the Civil Preparedness Director shall be eligible when meeting the following criteria:

- A. Volunteer firefighter: member must be considered active in accordance with the bylaws of the East Hampton Volunteer Fire Department, Article 6, Section 6, Paragraph A, attached.<sup>[1]</sup>

[1] *Editor's Note: The bylaws of the East Hampton Volunteer Fire Department are on file in the Town offices.*

- B. Volunteer Ambulance Association member: member must meet the minimum responsibilities of full members, as outlined in Articles 1 and 2 of the East Hampton Ambulance Association bylaws, attached.<sup>[2]</sup>

[2] *Editor's Note: The East Hampton Ambulance Association bylaws are on file in the Town offices.*

- C. Volunteer Civil Preparedness Director: as appointed by and meeting minimum responsibilities, as assigned by the Town Manager.

#### § 278-15. Certification.

Annually on or before the end of the first week of January each year, the Chief of the East Hampton Volunteer Fire Department and the Administrative Officer of the East Hampton Ambulance Association shall submit to the Finance Director a list of members of their organizations who are eligible, as defined in § 278-14. This list shall contain names and addresses of each member who is eligible. The Town Manager shall provide the Finance Director, by January 1 of each year, with the name and address of the appointed Civil Preparedness Director.

#### § 278-16. (Reserved)

#### § 278-17. Retirement benefit.

A member who has served a minimum of 20 years, has reached the age of 55 and attends 1/4 of the company/department meetings (unless excused by a physician) shall be entitled to a stipend as outlined in § 278-13 as long as he/she continues to reside and own real or personal property in the Town of East Hampton. The Chief of the East Hampton Volunteer Fire Department and the Administrative Officer of the East Hampton Ambulance Association shall submit to the Finance Director, concurrently with the list required under § 278-15 of this article, a list of the names and addresses of retired members of their organizations who are eligible for this benefit.

#### § 278-18. Applicability; effective date.

This article shall be first applicable July 1, 2020, and shall be effective 21 days after publication.

# MANAGING VOLUNTEER FIREFIGHTERS FOR FLSA COMPLIANCE:



## A GUIDE FOR FIRE CHIEFS AND COMMUNITY LEADERS



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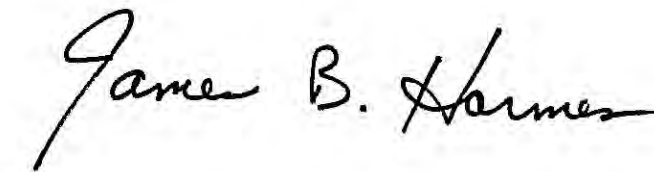
## Letter from the IAFC

Dear Colleagues:

For nearly two decades, fire chiefs have been confused by differing interpretations of the Fair Labor Standards Act (FLSA). To bring order to this issue, the IAFC sought for and gained from the Department of Labor (DOL) a series of letter rulings to clearly define the requirements that individuals must meet to qualify as a volunteer firefighter under FLSA regulations.

The IAFC has published this brochure as a guide for fire chiefs and community leaders to better manage volunteer firefighters for FLSA compliance. The IAFC believes this will be helpful for the leaders of America's fire service.

Sincerely,

A handwritten signature in black ink that reads "James B. Harnes". The signature is written in a cursive, flowing style.

Chief James B. Harnes

President (2006-2007)

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## Letter from the VCOS

For 10 years, the Volunteer and Combination Officers Section (VCOS) has been actively involved with our parent organization, the International Association of Fire Chiefs, in working with the U.S. Department of Labor to clear up a number of issues that have caused the American volunteer fire service concern. Over that time, a genuine need surfaced to obtain administrative changes and clarifications to the Fair Labor Standards Act (FLSA) of 1938 at the federal level because of conflicting regional and local interpretations and how these provisions affected the use of volunteers in local fire departments. Often, local administrators and legal counsel decided to allow or not allow certain groups of individuals to volunteer based upon community opinion or restrictive actions, constantly mindful of potential litigation.

The FLSA situations were complicated with the introduction of pay per call, stipends and other forms of reimbursement to individual volunteer firefighters. It became clear that the definition of “volunteer firefighter” 20 years ago is not the same as it is today. Times have changed, the demand on the volunteer has changed and—in a way—the definition of the new “volunteer firefighter” has changed as well.

The changes outlined in this document will allow you to better manage your departments and will improve your ability to provide quality service to your communities. With these changes comes the responsibility for fire chiefs to ensure that their departments are FLSA-compliant and are accurately accounting for volunteer reimbursement within the 20-percent bright line.

During the last 10 years, our board and legislative members handled many concerns about local volunteer restrictions and their impact on community fire protection. A number of those situations were emotionally difficult for the individuals forced to resign as volunteers because of the conflicting interpretations. For those individuals, this information could not come fast enough. I hope this effort will allow you to return as a viable and productive community volunteer.

This decade of hard work by VCOS and the IAFC is an example of the VCOS commitment to improving the national atmosphere for volunteers through federal legislation, interpretation and initiatives; educational opportunities for fire department managers who lead volunteer organizations; enhanced educational requirements for volunteers; and a renewed emphasis on the safety and survival of those who dedicate themselves to the well-being of others. We understand that local community protection depends on the experience, expertise and tenure of your emergency providers and know these changes will enhance your efforts to retain quality volunteers.

Chief Tim Wall, Chairman  
Volunteer and Combination Officers Section (VCOS) of the  
International Association of Fire Chiefs

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## Letter from the Author

### MANAGING VOLUNTEER FIREFIGHTERS FOR FLSA COMPLIANCE: A GUIDE FOR FIRE CHIEFS AND COMMUNITY LEADERS

By Garen E. Dodge, Esq. and Maria L. Mullarkey, Esq.

*Managing Volunteer Firefighters for FLSA Compliance: A Guide for Fire Chiefs and Community Leaders* is a joint publication of the International Association of Fire Chiefs (IAFC), and its Volunteer Chief Officers Section, and the law firm of Wiley Rein & Fielding LLP.

The International Association of Fire Chiefs, organized in 1873, is dedicated to the advancement of the fire service. The IAFC's mission statement is:

To provide career and volunteer chiefs, chief fire officers and managers of emergency service organizations throughout the international community with information, education, services and representation to enhance their professionalism and capabilities to protect citizens from the devastation of fire, environmental, natural and man-made emergencies.

This analysis is designed to provide accurate and authoritative information regarding compliance issues under the FLSA that are of concern to IAFC's members. It is distributed with the understanding that neither the authors, nor IAFC, is engaged in rendering legal or other professional advice, and that the topics discussed herein are subject to legislative, judicial, or regulatory change. If legal advice is required based on particularized facts, IAFC members should seek guidance from their jurisdiction or fire department's attorney. If you have any suggestions or comments regarding this analysis, please contact:

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# MANAGING VOLUNTEER FIREFIGHTERS FOR FLSA COMPLIANCE: A GUIDE FOR FIRE CHIEFS AND COMMUNITY LEADERS

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## INTRODUCTION

Recognizing the value of public volunteer efforts, Congress sought to define the requirements that an individual must meet to qualify as a *bona fide* volunteer in the 1985 amendments to the Fair Labor Standards Act (FLSA). Although Congress desired to promote volunteerism, it also incorporated safeguards to help prevent abuse of FLSA minimum wage and overtime requirements. Specifically, Section 3(e)(4)(A) of the FLSA provides that an individual cannot “volunteer” during off-hours to perform the same services he or she performs during regular employment for the same public agency.

The International Association of Fire Chiefs (IAFC) recognized - over a decade ago - that there was confusion across the land about the application of the FLSA rules as they apply to volunteer firefighters. Chief fire officers have struggled with the FLSA since the law’s application to public agencies in 1985, and some of the main points of contention have been in the area of volunteerism. The FLSA proved difficult to apply to the realities faced by public safety employers who use volunteer firefighters and law enforcement personnel to deliver services to their communities.

Fire departments have been given conflicting interpretations from different Department of Labor (DOL) administrators and field offices when applying the FLSA standards to volunteers. To make matters worse, fire chiefs often sought advice from their city or county attorney only to find that the advice was so conservative and risk averse as to make it difficult or impossible to retain the number of volunteers needed for service to that community. Simply put, because they did not wish to trigger a costly lawsuit over murky and inconsistent rules, many city and county attorneys said “no, chief, you can’t do that.”

To address this issue, we pleaded our case to Congress. In 1998, a subcommittee in the House of Representatives’ Labor Committee held a hearing to air the problems that existed with the Department of Labor rules and regulations that implement the FLSA regarding volunteer firefighters. After the hearing, the subcommittee, working closely with the IAFC, sought clarification on numerous interpretations dealing with issues such as the use of paid and compensatory leave, the “two-hatter” issue, and when fees or other payments to volunteers qualify as a “nominal fee.” This latter nominal fee question took considerable time to answer. What amount of fees can a jurisdiction provide a volunteer firefighter without endangering his or her volunteer status?

After three years of reviewing this specific question, DOL has just released a bright line test that states: generally an amount not exceeding 20 percent of the total compensation that the employer would pay to employ a full-time firefighter would be deemed a “nominal fee,” and therefore would not endanger the firefighter’s volunteer status. Although DOL did not clarify whether fire departments must use the compensation for a specified level of firefighter (for example, entry level or senior) when calculating fees based on the 20 percent rule, DOL stated that fire departments should make a good faith determination based on their own payroll information.

Needless to say, we are extremely pleased – first that we finally got the ruling we requested and that it is favorable for the volunteer fire service. To ensure that all fire chiefs who manage volunteer firefighters will be aware of these (and other) DOL rulings, the IAFC, working with the Volunteer and Combination Chief Officers Section (VCOS), published this manual for fire chiefs and community leaders that explain the new rulings in the context of managing a fire department. In an effort to ease some of the confusion in applying the FLSA volunteer exemption, this manual summarizes applicable DOL guidance on FLSA requirements for volunteer firefighters.

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## CHAPTER 1.

### THE FLSA VOLUNTEER EXEMPTION

Under the FLSA, public employers are obligated to pay employees at least the minimum wage and overtime compensation. The FLSA, however, exempts public employers from paying minimum wage and overtime to individuals who qualify as “volunteers” motivated to contribute services for civic, charitable or humanitarian reasons. An individual who performs services for a public agency qualifies as a volunteer, if:

- the individual receives no compensation or is paid **expenses, reasonable benefits, or a nominal fee** to perform the services for which the individual volunteered; and
- such services are **not the same type of services** which the individual is employed to perform for **the same public agency.**<sup>2</sup>

If an individual meets the above criteria for volunteer status, he or she will not be considered an employee covered by FLSA minimum wage and overtime provisions, and the public employer is not obligated to compensate the individual for hours of volunteer services performed.

A *bona fide* volunteer may perform, without compensation:

- Different work for the same agency
- Same or similar work for a separate and independent agency
- Different work for a separate and independent agency

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<sup>2</sup> 29 U.S.C. § 203(e)(4)(A) (2006).

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## CHAPTER 2.

### PAYMENTS TO VOLUNTEERS

In accordance with DOL regulations, public employers may pay volunteers expenses, reasonable benefits, a nominal fee, or any combination thereof, without jeopardizing their volunteer status.<sup>3</sup> Public employers must be careful, however, to not exceed these permissible payments to volunteers. If payments to volunteers rise to the level of “compensation” for services rendered, the individual will no longer qualify as a *bona fide* volunteer, but will be deemed an employee for purposes of FLSA minimum wage and overtime liability. Ultimately, DOL will evaluate “the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation” to determine whether the individual loses volunteer status by virtue of payments made by the public agency.<sup>4</sup>

### EXPENSES

Public employers can reimburse volunteers for approximate, out-of-pocket expenses incurred by volunteers incidental to providing services for the public agency,<sup>5</sup> which include the following:

- Meals
- Transportation
- Uniforms and Related Equipment
- Tuition and Other Costs Involved in Attending Classes Related to Volunteer Services
- Books, Supplies or Other Materials for Training

### REASONABLE BENEFITS

A public employer does not risk the status of volunteers by providing reasonable benefits to volunteers,<sup>6</sup> including:

- Liability Insurance
- Health Insurance
- Life Insurance
- Disability Insurance
- Workers’ Compensation
- Pension Plans
- Length of Service Awards
- Personal Property Tax Relief<sup>7</sup>

### NOMINAL FEE

Although public employers can pay a nominal fee to volunteers, the fee must not be a substitute for wages and must not be tied to productivity.<sup>8</sup> Public employers who compensate volunteers with more than a nominal fee likely will create an employment relationship, thereby destroying the volunteer status of the individuals. DOL has indicated that fire departments may consider the following factors when providing nominal fees to *bona fide* volunteers:

- Distance traveled
- Time and effort expended
- Whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods
- Whether the volunteer provides services as needed or throughout the year<sup>9</sup>

In addition, DOL provided the following additional guidance in various opinion letters:

- **Per Call Basis** – Although generally the amount of a nominal fee may not be tied to productivity and may not vary based on time spent on the activity, DOL’s regulations specify that the payment of a nominal amount on a per-call basis to volunteer firefighters is acceptable. In its most recent letter, DOL noted that “compensation ‘per call’ or other similar bases may be acceptable so long as they may fairly be characterized as tied to the volunteer’s sacrifice rather than productivity-based compensation.”<sup>10</sup>
- **Monthly or Annual Stipend** – DOL has stated that the payment of a nominal monthly or annual stipend to an individual who volunteers on a year-round basis is allowed.<sup>11</sup>
- **Hourly Rate** – DOL has determined that payment to volunteer firefighters on a per hour basis destroys *bona fide* volunteer status and creates an employment relationship. This type of payment is akin to hourly wages based on productivity.<sup>12</sup>

### THE 20 PERCENT RULE

In the August 7, 2006 opinion letter, DOL finally provided definitive clarification as to what amounts will qualify as a nominal fee. IAFC sought this opinion letter to elicit a bright-line test to assist fire departments in defining the line between what constitutes a nominal fee to volunteers and what amounts to compensation.

In its November 10, 2005 opinion letter, DOL stated that a public school employee could receive a nominal fee to volunteer as a coach or advisor for extracurricular activities so long as the fee does not exceed 20 percent of what the public school would otherwise pay to hire a full-time coach or advisor.<sup>13</sup>

Extending application of the 20 percent rule to volunteer firefighters, in the August 7, 2006 opinion letter, DOL explained that “generally, **an amount not exceeding 20 percent** of the total compensation that the employer would pay to a full-time firefighter for performing comparable services **would be deemed nominal.**”<sup>14</sup> Further, DOL indicated that – so long as the fee is 20 percent or less of total compensation for comparable services – DOL will be less likely to focus on whether the fee is paid on an annual, monthly or daily basis.

Fire departments can apply the 20 percent rule to evaluate whether a fee paid to a volunteer firefighters is a nominal amount based on market information, including:

- Compensation paid to a full-time firefighter on the fire department’s payroll
- Information from neighboring jurisdictions, the state or the nation (including data from DOL’s Bureau of Labor Statistics, [www.bls.gov](http://www.bls.gov))

DOL did not clarify whether fire departments must use the compensation for a specified level of firefighter (for example, entry level or advanced) when calculating fees based on the 20 percent rule. DOL explained that the information necessary to make this calculation generally is within the knowledge and control of fire departments, and thus, the actual determination should be made by fire departments in good faith based on “[a]ny full-time firefighter a particular fire department has on its payroll.” Although DOL’s guidance on this issue is unclear, it is possible that fire departments may vary the level of the firefighter used as the benchmark for the 20 percent rule to correspond to the level of the volunteer firefighter receiving the fee. For example, a fire department may use

## CHAPTER 2. *continued*

the salary paid to a full-time beginner firefighter as a benchmark to determine whether a fee paid to a volunteer firefighter for his first year of service is nominal.

Under the 20 percent rule, for example, if a volunteer firefighter staffs four shifts during a month, a nominal fee should not exceed 20 percent of what it would cost to employ a full-time firefighter to staff the equivalent of four shifts.

### EXAMPLES:

A county fire department pays \$50,000 to hire a full-time firefighter for one year. The fire department pays an annual stipend of \$9,500 to a volunteer firefighter to perform the same services. This payment would constitute a nominal fee under the 20 percent rule.

A county fire department pays \$50,000 to hire a full-time firefighter for one year. The fire department pays an annual stipend of \$15,000 and life insurance to a volunteer firefighter to perform the same services. This payment would not constitute a nominal fee under the 20 percent rule.

Responding to a series of hypotheticals posed by IAFC, DOL found that the following payments may qualify as nominal fees:

AMOUNT OF PAYMENT	REQUIREMENTS	ADDITIONAL PAYMENTS	AVERAGE WORKED (MINIMUM)
1) \$1,200 per year	Regardless of number of shifts or amount of time spent responding to calls	n/a	24 shifts and/or 60 hours responding to calls per year
2) \$100 per month	Regardless of number of shifts or amount of time spent responding to calls	n/a	4 shifts and/or 8 hours responding to calls per month
3) \$100 per month	Minimum of 2 shifts and/or 5 hours responding to calls	\$25 for each additional shift over 4 and/or each additional 2.5 hours responding to calls over 12 hours	n/a
4) \$25 per 4-hour block of time	Regardless of the amount of time spent at the station house or responding to calls	n/a	n/a
5) \$20 per shift	Regardless of the length of shift or amount of time spent responding to calls	n/a	6 hour shift and/or 2 hours responding to calls per shift
6) \$25	Minimum of 8 hours per shift and/or 2.5 hours responding to calls	\$15 per shift that exceeds 8 hours and/or 5 or more hours responding to calls	n/a
7) \$15,000 annual fee	n/a	n/a	3,000 hours waiting and responding to calls per year*
8) \$20 per shift	Regardless of the length of shift or amount of time spent responding to calls	Fee increases by \$1 per shift for each year with a minimum of 12 shifts**	n/a

\* Although DOL found that a \$15,000 annual payment may qualify as nominal under the 20 percent rule, DOL also observed that “it is unlikely that 3,000 hours of service (50+ hours per week) is ‘volunteering’ rather than employment.”<sup>15</sup> If a volunteer is compensated annually for a comparable, high level of hours, DOL likely will determine that a full-time employment relationship exists.

\*\* DOL reminded public employers that a nominal fee must not vary depending on the productivity of the volunteer or the amount of time spent on volunteer activities. Although it did not definitively answer whether a fire department can increase the yearly, monthly or per shift payment to volunteers for every year the volunteer staffs a requisite number of shifts, DOL noted that this may constitute impermissible “compensation via a seniority or productivity system based on services rendered.”<sup>16</sup>

Fire departments should use the 20 percent rule to determine if a payment to volunteer firefighters constitutes a nominal fee. Remember that the 20 percent rule does not apply to expenses and reasonable benefits. Even if a payment constitutes a nominal fee under the 20 percent rule, however, this payment must be considered in totality with other expenses or benefits received by volunteer firefighters to determine if the entire amount of payments precludes volunteer status under the “economic realities” test.

### EXAMPLE:

A volunteer firefighter receives an annual stipend of \$8,000, reimbursement for the cost of transportation, uniforms and training, and payments by the fire department for health and life insurance. The fire department should determine whether the \$8,000 stipend exceeds 20 percent of what it would cost to employ a full-time firefighter to perform the same services. The fire department does not have to evaluate whether the reimbursement of expenses or provision of insurance benefits are 20 percent of the amount of expenses and insurance received by full-time firefighters performing similar services.

### CONCLUSION: TOTAL PAYMENTS

**Step 1:** Evaluate whether each specific payment to volunteers qualify as either (1) expenses; (2) reasonable benefit; or (2) a nominal fee.

**Step 2:** The nominal fee cannot exceed the total compensation paid to a full-time firefighter for performing comparable services.

**Step 3:** Analyze the entire package of payments made to volunteers “in the context of the economic realities of the particular situation” to determine whether furnishing these payments results in loss of volunteer status.

<sup>3</sup> 29 C.F.R. § 553.104(a) (2006)., <sup>4</sup> Id. at § 553.106(f)., <sup>5</sup> Id. at § 553.106(b)-(c)., <sup>6</sup> Id. at § 553.106(d)., <sup>7</sup> DOL has found that provision of personal property tax relief in the amount of \$1,500 annually during the term of volunteer service constitutes a permissible reasonable benefit. DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006)., <sup>8</sup> 29 C.F.R. § 553.106(e) (2006)., <sup>9</sup> Id., <sup>10</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006)., <sup>11</sup> Id., <sup>12</sup> DOL, Wage and Hour Division Opinion Letter (July 7, 1999)., <sup>13</sup> DOL, Wage and Hour Division Opinion Letter (Nov. 10, 2005)., <sup>14</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006)., <sup>15</sup> Id., <sup>16</sup> Id.

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## CHAPTER 3.

### DO VOLUNTEER SERVICES CONSTITUTE THE “SAME TYPE OF SERVICES”?

The FLSA “does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency.”<sup>17</sup> DOL regulations define “same type of services” as “similar or identical services.”<sup>18</sup> Whether volunteer services constitute the same type of services is determined on a case-by-case basis, considering:

- The occupational classification of the employee’s paid position in comparison to his or her volunteer position in the *Dictionary of Occupational Titles* or on DOL’s O\*NET system, [www.doleta.gov/Programs/onet/](http://www.doleta.gov/Programs/onet/).
- Whether the volunteer services are closely related to the actual duties performed by and responsibilities assigned to the employee during regular employment<sup>19</sup>

#### CROSS-TRAINED FIREFIGHTER/EMT

In its most recent opinion letter, DOL did not provide a definitive answer in response to whether a firefighter cross-trained and licensed as an EMT/Paramedic can qualify as a *bona fide* volunteer EMT/Paramedic for the same agency.<sup>20</sup> In an August 19, 1999 opinion letter, however, DOL concluded that a city firefighter cannot volunteer as a firefighter/EMS provider for the same city.<sup>21</sup>

#### FIREFIGHTER/POLICE

In its most recent opinion letter, DOL confirmed that police and firefighters perform a different type of service, and thus, a police officer employed by a county police department can also volunteer as a firefighter for the same county’s fire and rescue department.<sup>22</sup> In a statement favorable to the chiefs, DOL indicated that “merely responding to the same emergencies, such as traffic accidents and fire calls, or acting as a medical first responder on occasion will typically not change the inherent differences in the two occupations.”<sup>23</sup>

#### FIRE MARSHALL/FIREFIGHTER

DOL concluded that a full-time paid Fire Marshall cannot be a volunteer firefighter with the city because the volunteer service is the “same type of service” for which he is paid by the same employer and is closely related to the actual duties of the Fire Marshall.<sup>24</sup>

#### MECHANIC/FIREFIGHTER

DOL determined that “serving as a mechanic and serving as a firefighter do not involve the same type of services, absent evidence to the contrary,” and thus, an individual employed as mechanic could serve as a volunteer firefighter for the same agency.<sup>25</sup>

#### DETENTION DEPUTY/LAW ENFORCEMENT DEPUTY

DOL decided that employees of a county sheriff’s office in the detention department could not volunteer off-duty in the law enforcement department because the work involves the “same type of services.”<sup>26</sup>

#### CIVILIAN COMMUNICATIONS SPECIALIST/FIREFIGHTER

DOL concluded that an individual employed as a civilian communications specialist with a city fire and rescue department may volunteer as a firefighter for the same agency. DOL stated that employees who engage in civilian support activities, such as dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, clerks and stenographers, do not perform the same type of services as firefighters.<sup>27</sup>

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<sup>17</sup> 29 C.F.R. § 553.102(a) (2006)., <sup>18</sup> Id. at § 553.103(a)., <sup>19</sup> Id., <sup>20</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006)., <sup>21</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 19, 1999)., <sup>22</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006)., <sup>23</sup> Id., <sup>24</sup> DOL, Wage and Hour Division Opinion Letter (Sept. 3, 1999)., <sup>25</sup> DOL, Wage and Hour Division Opinion Letter (Apr. 14, 2003). See Chapter 5 for discussion on leave and overtime issues for other governmental employees., <sup>26</sup> DOL, Wage and Hour Division Opinion Letter (Oct. 29, 2004)., <sup>27</sup> DOL, Wage and Hour Division Opinion Letter (Jul. 7, 1999).

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## CHAPTER 4.

### DO TWO ENTITIES CONSTITUTE THE “SAME PUBLIC AGENCY”?

An individual who is a paid employee of a public agency cannot also be an unpaid volunteer for the same agency while performing the same type of services that he is employed to perform. DOL determines whether two entities constitute the “same public agency” on a case-by-case basis by examining whether the two entities:<sup>28</sup>

- Have separate payroll and retirement systems
- Have the authority to sue and be sued in their own name
- Have separate hiring and other employment practices
- Are treated separately under State law
- Are treated separately by the Census Bureau
- Have separate budget and funding authorities
- Have independent authority to make employment decisions
- Have authority to hire and compensate personnel
- Have limited integration and day-to-day control of operations over each other

#### SEPARATE PUBLIC AGENCY

If analysis of these factors indicates that the public agencies are separate entities, then an employee of one agency can volunteer to provide the same or similar services as performed in their regular employment for the separate agency.

#### SAME PUBLIC AGENCY

If analysis of these factors indicates that the public agencies are not separate entities, then an employee of one agency cannot volunteer to provide the same or similar services as performed for in their regular employment for the other entity. Such an arrangement would create a joint employment situation.

#### MUTUAL AID AGREEMENTS

DOL regulations state that an agreement between two agencies for mutual aid does not change the otherwise volunteer character of services performed by employees of such agencies.<sup>29</sup> For example: An individual employed as a paid firefighter with County A may volunteer as a firefighter with County B, where County A and County B have a mutual aid agreement (even though the firefighter may be called upon to respond to a call in County A while volunteering with County B).

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<sup>28</sup> 29 C.F.R. § 553.102(b) (2006)., <sup>29</sup> Id. at § 553.105.



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## CHAPTER 5.

### USE OF PAID LEAVE AND COMPENSATORY LEAVE

#### IF A *BONA FIDE* VOLUNTEER FOR A SEPARATE AGENCY

If the employee is a *bona fide* volunteer for a separate public agency, the employing agency may provide paid personal leave or dock the employee's compensatory time during volunteer calls without jeopardizing the individual's volunteer status with the separate agency.<sup>30</sup> Further, the volunteer hours worked for the separate agency would not be compensable time worked for the employer and, thus, would not be counted by the employer when computing overtime.

For example, if a firefighter in County A is required to use paid personal leave or accrued compensatory time for his volunteer work as a firefighter with City B, a separate agency, his status as a *bona fide* volunteer with City B is not jeopardized. Further, the volunteer hours worked for City B would not be compensable time worked for County A.

A *bona fide* volunteer firefighter can also be paid wages by his "non firefighter" employer while serving as a volunteer firefighter for a separate public agency during normal work hours, as long as such pay does not come from the separate public agency receiving the volunteer services. If the employer pays wages for time volunteered during normal work hours, however, the volunteer hours would be compensable hours that must be counted by the employer for purposes of computing overtime.

#### IF A *BONA FIDE* VOLUNTEER FOR THE SAME AGENCY

If an employee is a *bona fide* volunteer for the same agency, the employee may substitute paid personal leave earned—which the employee may use as he sees fit—for time spent performing volunteer activities without jeopardizing his status as a *bona fide* volunteer.<sup>31</sup> Further, the time spent outside the employee's regular work day performing volunteer services would not be compensable time worked for the employer and would not be counted when computing overtime.<sup>32</sup>

For example, if a mechanic employed by County A fire department uses paid personal leave for his volunteer work as a firefighter with County A fire department, his status as a *bona fide* volunteer firefighter is not jeopardized. The time spent by the mechanic on volunteer fire calls outside the regular work day would not be compensable time worked for County A.

An employee who volunteers different services for the same public agency cannot be paid wages by the agency for the volunteer services, however, as this will prevent the employee from qualifying as a *bona fide* volunteer. For example, if County A pays a full-time mechanic wages for hours worked as a firefighter for the same county, the county employs the individual as both a full-time mechanic and a part-time firefighter. Therefore, the individual would not be allowed to volunteer additional hours as a firefighter because of FLSA's prohibition on volunteering for the same agency to perform the same type of services he is employed to perform.

#### IF NOT A *BONA FIDE* VOLUNTEER

If the employee is not a *bona fide* volunteer because he is performing the same type of services for the same public agency, the hours spent performing the same services for which he is employed are not "time off," but instead are compensable and should be counted when computing overtime.<sup>33</sup> In such case, the public employer may not dock the employee's compensatory time to cover the wages due.

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<sup>30</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006); DOL, Wage and Hour Division Opinion Letter (Apr. 14, 2003)., <sup>31</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006)., <sup>32</sup> DOL, Wage and Hour Division Opinion Letter (Apr. 14, 2003)., <sup>33</sup> Id.

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## CHAPTER 6.

### PAYMENT OF WAGES BY SEPARATE AGENCY

DOL indicated that a public employer can pay wages to an employee for volunteer hours with a separate agency.<sup>34</sup> For example, if a firefighter in County A is allowed to cease his usual duties during the workday to respond as a volunteer firefighter to City B's call, the firefighter can be paid for his normal work hours by County A without losing his volunteer status with City B. As explained in Chapter 5, the employee's use of paid personal leave or accrued compensatory time does not transform the volunteer hours into compensable time. If the public employer pays wages for time volunteered **during normal work hours**, however, the volunteer hours are considered compensable hours for that employer that must be counted for purposes of overtime compensation.<sup>35</sup> Time spent volunteering outside regular work hours is not compensable time.

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<sup>34</sup> DOL, Wage and Hour Division Opinion Letter (Aug. 7, 2006); DOL, Wage and Hour Division Opinion Letter (Apr. 14, 2003)., <sup>35</sup> Id.

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## CHAPTER 7.

### SPECIAL DETAIL EXCEPTION

Although not applicable to volunteers, the “special detail” exception applies to public fire protection and law enforcement employees who, at their own option, work special detail for a separate and independent employer performing related duties. If a public employee voluntarily agrees to work special detail “by a separate or independent employer in fire protection, law enforcement, or related activities,” the public agency can exclude these hours when calculating hours worked for purposes of overtime compensation.<sup>36</sup>

In an April 28, 2006 opinion letter, DOL responded to an inquiry by a city regarding its law enforcement officers who perform off-duty security detail at a municipal coliseum for a third-party. DOL concluded that because the public employees perform the off-duty work at their own option and because the city and third-party contractors are separate employers, the off-duty work hours should not be counted for the city’s overtime obligation, and the fact that the city pays workers’ compensation for the third-party work does not alter this conclusion.<sup>37</sup>

DOL considers similar factors to determine whether the employers are separate and independent as applied to determine whether a volunteer provides services for the same agency, including whether the agencies operate a separate payroll system, maintain a separate retirement system, have a separate budget and have the authority to sue and be sued in their own name.

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<sup>36</sup> 29 C.F.R. § 553.227 (2006), <sup>37</sup> DOL, Wage and Hour Division Opinion Letter (Apr. 28, 2006).

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## CHAPTER 8.

### WORKING WITH THE UNION TO ENSURE GOOD RELATIONS

If a union is present, it is important to:

- Review your state/local laws on volunteers if any
- Check the union contract to see if volunteers are covered
- Meet with union representative to discuss the use of volunteers
- Make sure volunteers are not provided more than 20% provided to career firefighters
- If a new approach is needed, see if union contract can be reopened on the issue of volunteers
- If contract cannot be reopened, propose changes when contract expires

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## CHAPTER 9.

### TAXATION OF PAYMENTS AND BENEFITS

Fire departments may have questions about the taxation of payments made to volunteer firefighters that are not addressed in the FLSA guidance, for example, whether compensation paid to volunteers is subject to FICA (Social Security and Medicare) withholding. The attached tax supplement provides a discussion of FICA taxation of volunteer firefighters and tax treatment of amounts applied to dependent care and medical accounts. Comprehensive treatment of tax issues are beyond the scope of this analysis. If you have tax questions, it is important to seek out the advice of qualified tax counsel.

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## CHAPTER 10.

### CHECKLIST FOR MANAGING VOLUNTEER FIREFIGHTERS

As a reminder:

- Does the collective bargaining agreement have restrictions on career firefighters from volunteering during off-duty hours?
- Does the volunteer firefighter perform the same type of services for another agency?
- Does the volunteer firefighter perform work for the same public agency?
- Does the volunteer firefighter receive any payments?
  - Does the payment qualify as expenses?
  - Does the payment qualify as a reasonable benefit?
  - Does the payment qualify as a nominal fee? Is it 20 percent or less of what a full-time firefighter would be paid to perform comparable services?

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## CHAPTER 11.

### CONCLUSION

- ❑ Volunteer firefighters must not be paid compensation, but can be paid expenses, reasonable benefits and a nominal fee that does not exceed 20 percent of what it would cost to otherwise provide the volunteer services rendered.
- ❑ Paid firefighters cannot volunteer the same services for the same public agency for which they are employed.
- ❑ Paid firefighters can volunteer the same services for a separate and independent public agency.
- ❑ Paid firefighters can be paid by their employer for personal time off or docked compensatory time for volunteer hours worked for a separate and independent public agency without jeopardizing volunteer status with the separate agency. The employer should not count these hours as compensable time.
- ❑ Paid firefighters can be paid wages for by their employer for volunteer hours worked during the regular workday for a separate and independent public agency without jeopardizing volunteer status with the separate agency. The employer should count these hours as compensable time.

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## CHAPTER 12.

### SOURCES OF ADDITIONAL INFORMATION

We hope this brochure is a helpful resource for managing volunteer firefighters in compliance with FLSA standards. If further questions arise as you assess your volunteer programs, the following resources may be of help to you.

**Department of Labor Web Site.** The Department of Labor's home page is located at: <http://www.dol.gov>. This web site includes a link to DOL's guidance information on the Fair Labor Standards Act, including the text of the statute and regulations.

**Department of Labor Wage and Hour Opinion Letters.** The Department of Labor's Wage and Hour opinion letters responding to FLSA issues can be accessed at: <http://www.dol.gov/esa/whd/opinion/opinion.htm>.

**Employment & Labor Legal Counsel.** If you are unsure of how the FLSA volunteer standards apply in your particular situation, you may want to contact legal counsel to assist in ensuring that your volunteer program meets the legal requirements discussed in this brochure. If you would like assistance, please contact Garen E. Dodge, Esq. at (202) 719-7388 or [gdodge@wrf.com](mailto:gdodge@wrf.com).



**THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED**  
(29 U.S.C. 201, *et seq.*)

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “Fair Labor Standards Act of 1938.”

**Finding and Declaration of Policy**

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. *The Congress further finds that the employment of persons in domestic service in households affects commerce.*

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.<sup>1</sup>

**Definitions**

SEC. 3. As used in this Act —

(a) “Person” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) “Commerce” means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.<sup>2</sup>

(c) “State” means any State of the United States or the District of Columbia or any Territory or possession of the United States.

<sup>1</sup> As amended by section 2 of the Fair Labor Standards Amendments of 1949.

<sup>2</sup> As amended by section 3(a) of the Fair Labor Standards Amendments of 1949.

(d) “Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee **and includes a public agency,<sup>3</sup> but does not include** any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e) (1) **Except as provided in paragraphs (2), (3), and (4), the term “employee” means** any individual employed by an employer.

(2) **In the case of an individual employed by a public agency, such term means —**

(A) **any individual employed by the Government of the United States —**

(i) **as a civilian in the military departments (as defined in section 102 of title 5, United States Code),**

(ii) **in any executive agency (as defined in section 105 of such title),**

(iii) **in any unit of the judicial branch of the Government which has positions in the competitive service,**

(iv) **in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,**

(v) **in the Library of Congress, or**

**(vi) the Government Printing Office;**

(B) **any individual employed by the United States Postal Service or the Postal Rate Commission; and**

(C) **any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual**

**(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and**

**(ii) who —**

**(I) holds a public elective office of that State, political subdivision, or agency,**

**(II) is selected by the holder of such an office to be a member of his personal staff,**

<sup>3</sup> Public agencies were specifically excluded from the Act’s coverage until the Fair Labor Standards Amendments of 1966, when Congress extended coverage to “employees of a State or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence \* \* \*.”

**(III) is appointed by such an office holder to serve on a policymaking level,**

**(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or**

**(V)<sup>4</sup> is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.**

**(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer’s immediate family.<sup>5</sup>**

**(4)<sup>6</sup> (A) The term “employee” does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if —**

**(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and**

**(ii) such services are not the same type of services which the individual is employed to perform for such public agency.**

**(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.**

**(5)<sup>7</sup> The term “employee” does not include individuals who volunteer their services solely**

<sup>4</sup> As added by section 5 of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

<sup>5</sup> Similar language was added to the Act by the Fair Labor Standards Amendments of 1966. Those amendments also excluded from the definition of employee “any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year.” These individuals are now included.

<sup>6</sup> As added by section 4(a) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

<sup>7</sup> As amended August 7, 1998, Pub. L. 105–221, § 2.

**for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.**

(f) “Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141(j)(g) of U.S.C. Title 12), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) “Employ” includes to suffer or permit to work.

(h) “Industry” means a trade, business, industry, **or other activity, or branch or group thereof**, in which individuals are gainfully employed.

(i) “Goods” means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) “Produced” means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.<sup>8</sup>

(k) “Sale” or “sell” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) “Oppressive child labor” means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation,<sup>9</sup> or (2) any employee between the ages of sixteen and

<sup>8</sup> As amended by section 3(b) of the Fair Labor Standards Amendments of 1949.

<sup>9</sup> As amended by section 3(c) of the Fair Labor Standards Amendments of 1949.

## Wage and Hour Division, Labor

## § 553.104

### § 553.102 Employment by the same public agency.

(a) Section 3(e)(4)(A)(ii) of the FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency.

(b) Whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

### § 553.103 "Same type of services" defined.

(a) The 1985 Amendments provide that employees may volunteer hours of service to their public employer or agency provided "such services are not the same type of services which the individual is employed to perform for such public agency." Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase "same type of services" means similar or identical services. In general, the Administrator will consider, but not as the only criteria, the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* in determining whether the volunteer activities constitute the "same type of services" as the employment activities. Equally important in such a determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

(b) An example of an individual performing services which constitute the "same type of services" is a nurse employed by a State hospital who proposes to volunteer to perform nursing services at a State-operated health clinic which does not qualify as a separate public agency as discussed in

§ 553.102. Similarly, a firefighter cannot volunteer as a firefighter for the same public agency.

(c) Examples of volunteer services which do not constitute the "same type of services" include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter; and an office employee of a city hospital or other health care institution who volunteers to spend time with a disabled or elderly person in the same institution during off duty hours as an act of charity.

### § 553.104 Private individuals who volunteer services to public agencies.

(a) Individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof, as discussed in § 553.106. There are no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies.

(b) Examples of services which might be performed on a volunteer basis when so motivated include helping out in a sheltered workshop or providing personal services to the sick or the elderly in hospitals or nursing homes; assisting in a school library or cafeteria; or driving a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer as firefighters or auxiliary police, or volunteer to perform such tasks as working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987]

## § 553.105

### § 553.105 Mutual aid agreements.

An agreement between two or more States, political subdivisions, or interstate governmental agencies for mutual aid does not change the otherwise volunteer character of services performed by employees of such agencies pursuant to said agreement. For example, where Town A and Town B have entered into a mutual aid agreement related to fire protection, a firefighter employed by Town A who also is a volunteer firefighter for Town B will not have his or her hours of volunteer service for Town B counted as part of his or her hours of employment with Town A. The mere fact that services volunteered to Town B may in some instances involve performance in Town A's geographic jurisdiction does not require that the volunteer's hours are to be counted as hours of employment with Town A.

### § 553.106 Payment of expenses, benefits, or fees.

(a) Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

(b) An individual who performs hours of service as a volunteer for a public agency may receive payment for expenses without being deemed an employee for purposes of the FLSA. A school guard does not become an employee because he or she receives a uniform allowance, or reimbursement for reasonable cleaning expenses or for wear and tear on personal clothing worn while performing hours of volunteer service. (A uniform allowance must be reasonably limited to relieving the volunteer of the cost of providing or maintaining a required uniform from personal resources.) Such individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.

(c) Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them

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to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of such individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

(d) Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plans or "length of service" awards, commonly or traditionally provided to volunteers of State and local government agencies, which meet the additional test in paragraph (f) of this section.

(e) Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and must not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal: The distance traveled and the time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

(f) Whether the furnishing of expenses, benefits, or fees would result in individuals' losing their status as volunteers under the FLSA can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.



# Appendix

## U.S. Department of Labor

Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210



Chief Robert A. DiPoli, Ret.  
President  
International Association of Fire Chiefs  
4025 Fair Ridge Drive  
Fairfax, Virginia 22033-2868

AUG 7 2006

Dear Chief DiPoli:

I am writing in reply to your Association's letter requesting guidance under the Fair Labor Standards Act (FLSA) on numerous hypothetical questions concerning "same type of services," "same public agency," and "nominal fee," as applied to individuals volunteering for, or employed by, a public agency.

The FLSA recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. In this spirit, in enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities are neither impeded nor discouraged. Congress, however, also wanted to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements in "volunteer" situations.

Section 3(e)(4)(A) of the FLSA and 29 C.F.R. §§ 553.101 and 553.103 (copies enclosed) indicate that an individual is a volunteer, not an employee of a public agency, when the individual meets the following criteria:

1. Performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. Although a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee to perform such services;
2. Offers services freely and without pressure or coercion, direct or implied, from an employer; and
3. Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

Please be assured that this Administration fully supports volunteerism and is committed to working with organizations like yours to ensure that citizens are able to volunteer freely their services for charitable and public purposes consistent with the law.

Your letter posits factual circumstances that test whether volunteer status is jeopardized. The first series of questions -- questions 1 through 9 -- concerns payments that a public agency may provide a volunteer. We will address these questions under Scenario 1, below. The second

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series of questions -- questions 11, 14 and 15 -- goes to the issue of providing the "same type of services" to the "same public agency."<sup>1</sup> We will address these questions under Scenario 2, below.

### Scenario 1

1. An individual serves as a volunteer firefighter for County A.
2. County A provides the volunteer with some monetary payment (or tax relief) calculated on a yearly, monthly, shift, or on-call basis.
3. The payment (or tax relief) varies based on factors such as the amount of time spent on the activities, length of service, number of calls, and number of shifts, but is not linked to expenses incurred by the volunteer.

Each question asks whether the particular payment negates volunteer status.

Section 3(e)(4)(A)(i) and the implementing regulations at 29 C.F.R. § 553.106 (copy enclosed) provide that a volunteer may only be paid expenses, reasonable benefits, or a nominal fee, or any combination thereof, without losing volunteer status. Examples of permissible expenses or benefit payments are described as a payment for expenses, such as dry cleaning; an allowance for a requirement, such as a uniform; reimbursement for an out-of-pocket expense, such as transportation; a payment to provide materials, such as supplies; or a payment for benefits, such as participation in group insurance plans. See 29 C.F.R. § 553.106(a)-(d).

Section 553.106(e) discusses what constitutes a nominal fee and the various factors to consider in determining whether a stipend is nominal. In the preamble to this provision of the regulation, the Department stated, "whether a specific amount is 'nominal' depends on the economic realities of the situation and that no guidelines on specific amounts applicable to all (or even most) possible situations can be provided." See 52 Fed. Reg. 2012, at 2021 (Jan. 16, 1987) (copy enclosed).

While the statute and the implementing regulations do not define what constitutes a "nominal fee," the regulations provide guidance for determining whether a fee is nominal and permissible. If a fee is not nominal, then the individual does not qualify as a volunteer and is considered an employee who is covered by the FLSA minimum wage and overtime provisions. The factors to examine in making a determination of whether an amount is nominal include, but are not limited to: (1) the distance traveled and the time or effort required of a volunteer; (2)

<sup>1</sup> In a conversation with our staff subsequent to your letter, you withdrew original questions 7, 8, 10, 12, and 13 and replaced them with two new questions. These new questions are reproduced here as new questions 7 and 8. There are no longer any questions 10, 12, or 13.

the availability -- limited or unlimited -- of a volunteer to provide services; and (3) the basis -- as needed or throughout the year -- on which a volunteer agrees to perform services. *See* 29 C.F.R. § 553.106(e). These factors focus upon whether the fee is actually more analogous to a payment for services or recompense for something performed and, hence, not nominal. Thus, to the extent that payments are tied to productivity (*e.g.*, payment of hourly wages for services rendered), are similar to “piece rates” or are comparable to “production bonuses,” there is a greater likelihood that such fees are not nominal. However, as noted in the preamble to section 553.106(e), almost 30 percent of all volunteer firefighters are paid a small fee for each fire call to which they respond, and the rule was not intended to invalidate that model. *See* 52 Fed. Reg. 2012, at 2021. Moreover, consistent with the discussion of factors to be considered (*e.g.*, distance traveled, time and effort expended, around-the-clock versus limited availability, throughout the year versus upon request), compensation “per call” or other similar bases may be acceptable so long as they may fairly be characterized as tied to the volunteer’s sacrifice rather than productivity-based compensation. Accordingly, nothing in the statutory language would directly preclude the payment of nominal per call or even per shift fees to volunteer firefighters as section 553.106(e) specifically provides that a nominal fee can be paid on a “per call” or similar basis for volunteer firefighters.

Please also see Wage and Hour Opinion Letter FLSA2005-51 (Nov. 10, 2005) (copy enclosed) that contains a recent discussion of the Department’s consideration of what payment constitutes a nominal fee for determining an individual’s volunteer status. That opinion letter expounds upon the “economic realities” test in the context of school systems and those volunteering by assisting with extra-curricular activities, such as coaching sports or sponsoring various clubs. Specifically, this letter states that when a public agency employee volunteers as a coach or extracurricular advisor, the Department will presume the fee paid is nominal as long as the fee does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time coach or extracurricular advisor for the same services. This 20 percent rule is derived from the FLSA and implementing regulations. *See* Wage and Hour Opinion Letter FLSA2005-51 (“The FLSA and the implementing regulations use a 20 percent test to assess whether something is insubstantial with regard to prohibited driving on public roadways by employees who are 17 years of age.”). A willingness to volunteer for 20 percent of the prevailing wage for the job is also a likely indication of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA. We believe this interpretation of “nominal fee” applies equally in the context of firefighters.

Finally, the regulations instruct that any nominal fees must be considered in the context of any other benefits or expenses paid and the economic reality of the particular situation. Indeed, section 553.106(f) sets forth the “economic realities” test, which specifically provides that the determination of whether the expenses, benefits or fees would preclude an individual from qualifying as a volunteer under the FLSA must be made by examining the total amount of payments in the context of the economic realities of a particular situation. As your letter is

silent on whether any other expenses and/or benefits are paid, the Department assumes there are no other benefits or expenses beyond the payments described in the questions.

The probative facts as we see them for each hypothetical question are set out below:

**Q.1** The volunteer is paid \$1,200 per year regardless of the number of shifts or amount of time spent responding to calls. On average the volunteer staffs a minimum of 24 shifts and/or spends a minimum of 60 hours responding to calls annually.

**Q.2** The volunteer is paid \$100.00 per month regardless of the number of shifts or amount of time spent responding to calls. On average the volunteer staffs a minimum of 4 shifts and/or spends a minimum of 8 hours responding to calls monthly.

**Q.3** The volunteer is paid \$100.00 per month so long as the volunteer staffs a minimum of 2 shifts and/or spends a minimum of 5 hours responding to calls during the month. Additional payments of \$25.00 are made for each additional shift over 4 during the month and/or for every 2.5 hours spent responding to calls exceeding 12 hours during the month.

**Q.4** The volunteer is paid \$25.00 (or \$30.00 or \$40.00) for each four-hour block of time regardless of the actual amount of time below four hours spent at the station house or responding to calls.

**Q.5** The volunteer is paid \$20.00 for each shift regardless of the length of the shift or the time spent responding to calls. On average, the volunteer works a 6 hour shift and/or spends 2 hours per shift responding to calls.

**Q.6** The volunteer is paid \$25.00 if the volunteer staffs a shift of at least 8 hours and/or spends 2.5 hours responding to calls. An additional \$15.00 per shift is paid if the shift exceeds 8 hours or responds to calls over 5 hours during a single shift.

**Q.7** An individual serves as a volunteer firefighter in Indiana. Indiana Code 36-8-12 defines “nominal” as an annual payment of not more than twenty thousand dollars (\$20,000). The volunteer is paid an annual fee of \$15,000. On average, the volunteer spends at least 3,000 hours per year waiting and responding to calls.<sup>2</sup>

**Q.8** The volunteer is paid a stipend of \$20.00 per shift regardless of the length of the shift or the amount of time spent responding to calls during the shift. For every consecutive year of volunteer service in which the volunteer has staffed not less than 12 shifts per year, the volunteer is granted an additional stipend of \$1.00 per shift regardless of the time spent

<sup>2</sup> In a conversation with our staff subsequent to your letter, you withdrew questions 7, 8, 10, 12, and 13 and replaced them with two new questions. These new questions are reproduced here as new questions 7 and 8.

responding to calls.

**Q.9** The volunteer is provided with \$1,500.00 personal property tax relief annually during the term of their volunteer service.

These questions, with the exception of question 9, specify payments to be made to the volunteer per shift, month, or year and the average number of shifts, calls, and/or hours worked by the volunteer. In some instances, additional payments are made if additional time above the required minimum is spent on shift or responding to calls. In other instances, payment increases depending on the number of years volunteered. Assuming there are no other payments or benefits provided and no other facts that bear on the question (out-of-pocket expenses, travel costs, uniform maintenance, etc.), these payments may qualify as nominal fees under § 553.106.

Generally, a key factor in determining if a payment is “substitute for compensation” or “tied to productivity” is “whether the amount of the fee varies as the particular individual spends more or less time engaged in the volunteer activities.” Wage and Hour Opinion Letter FLSA2005-51. If the amount varies, it may be indicative of a substitute for compensation or tied to productivity and therefore not nominal. *See id.*; *see also* 29 C.F.R. § 553.106(e). However, as noted above, there is a specific allowance for volunteer firefighters to be paid on a “per call” or similar basis consistent with certain factors denoting the relative sacrifice of the volunteer. *See* 29 C.F.R. § 553.106(e). Due to this specific allowance, and assuming there are no other facts showing that the payments in your hypothetical situations are a substitute for compensation or tied to productivity, it still must be determined if the payments are nominal amounts.

Applying the recent interpretation of “nominal fee” in Wage and Hour Opinion Letter FLSA2005-51, generally an amount not exceeding 20 percent of the total compensation that the employer would pay to employ a full-time firefighter for performing comparable services would be deemed nominal. Thus, in questions 1 through 6, a nominal fee could be 20 percent or less of the total compensation that County A would pay for the same services. Assuming the fee is determined to be nominal, it is less relevant whether it is paid on an annual, monthly or daily basis.<sup>3</sup> As was stated in Wage and Hour Opinion Letter FLSA2005-51, the market information necessary to complete this good faith determination is generally within your members’ knowledge and control. Any full-time firefighter a particular fire department has on its payroll would be a good benchmark for this calculation. Absent such information, a fire department or similar entity may look to information from neighboring jurisdictions, the state, or ultimately, the nation, including data from the Department of Labor, Bureau of Labor Statistics. Thus, for example, if a volunteer staffs three shifts during a month, a nominal fee should not exceed 20 percent of what it would cost to employ a full-time firefighter to staff a period to cover the

<sup>3</sup> The Department has withdrawn Wage and Hour Opinion Letters September 17, 1999, April 2, 1992, and July 15, 1988 to the extent they are inconsistent with the interpretation of nominal fee in this opinion.

equivalent of the three shifts.

Question 7 involves \$15,000 per year for volunteers who on average spend at least 3,000 hours waiting for or responding to calls. Assuming the payment does not vary depending on the productivity of the volunteer or whether the volunteer spends more or less time on volunteer activities, the payment of \$15,000 might qualify as “nominal” under the 20 percent rule if County A would otherwise need to pay \$75,000 or more to hire a full-time firefighter to perform the same services. However, it is unlikely that 3,000 hours of service (50+ hours per week) is “volunteering” rather than employment. Indeed, without knowing additional facts and circumstances about the economic realities of the locality, a payment of \$15,000 for 3,000 hours of volunteer services arguably constitutes compensation for a full-time job rather than a “nominal fee” for volunteering.

Similarly, Question 8 involves increased payment for every year the volunteer staffs a requisite number of shifts. Without additional facts, we are unable to say definitively whether this increased payment represents compensation via a seniority or productivity system based on services rendered, and is thus not permitted, or, applying the test described above, is a “nominal fee” for volunteerism.

Question 9, involving tax relief of \$1,500 on personal property taxes, would appear to constitute a permissible “reasonable benefit” and thus need not be evaluated as a “nominal fee.” Provision of such a benefit will not, in and of itself, preclude bona fide volunteer status.

### Scenario 2

You have also posed questions similar to those raised in your letter of September 16, 2002, which we responded to in April 2003, that concern whether the volunteer services are for the same public agency and/or are the same type of services the volunteer is employed by that public agency to provide. *See* Wage and Hour Opinion Letter FLSA2003-2 (Apr. 14, 2003) (copy enclosed). Questions 11, 14, and 15 all concern these issues. We assume for each Question that the person is providing volunteer services for civic, charitable or humanitarian purposes and without any expectation or receipt of compensation and the services are volunteered without any pressure or coercion from an employer. You posit the following facts:

1. The individual in question is employed by County A, a public agency.
2. The individual seeks to volunteer either for County A, a public agency, or a joint powers board funded by both City A and County A.

In order to determine whether a person is a bona fide volunteer under section 3(e) of the FLSA (copy enclosed), if the volunteer is employed by a public agency it is necessary to assess



whether the volunteer is employed by the same agency for whom the services are provided **and** the services provided are the same services the volunteer is employed to provide. As noted in Wage and Hour Opinion Letter FLSA2003-2, if an individual is not employed by the **same public agency** (what you call the “who is an employer” question), then it is not necessary to examine the nature of the services provided (what you call the “what are the same type of services” question). Similarly, if the individual does not perform the **same type of services** for the public agency, there is no need to examine the relationship of the agency receiving the individual’s volunteer services to the individual’s employer.

As stated in our prior opinion letter, whether two entities of a local government constitute the same public agency can only be determined on a case-by-case basis. Among the factors to be considered is whether the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce, treats the two agencies separately for statistical purposes. *See* 29 C.F.R. § 553.102 (copy enclosed). In addition to the Census of Governments, the attached Wage and Hour Opinion Letter FLSA2002-3 (June 7, 2002) provides a framework for making such a determination and identifies factors that are relevant to the determination. As indicated in Wage and Hour Opinion Letter FLSA2003-2, there are a number of relevant factors to consider, such as: whether the two agencies have separate payroll and retirement systems; whether they both have the authority to sue and be sued in their own names; whether they have separate hiring and other employment practices; and how they are treated under state law. *See also* Wage and Hour Opinion Letter FLSA2006-13 (Apr. 28, 2006) (City firefighters may volunteer to County Fire Protection District that has separately elected Board; separate funding sources; separate payroll, benefits and retirement systems; can levy taxes and exercise eminent domain; can sue and be sued; and is treated separately by the Census) (copy enclosed).

If those other factors demonstrate that the agencies should be treated as separate entities, or if the Census of Governments treats the agencies described in questions 11, 14 and 15 as separate agencies, then our opinion is that they are not the same employer and an employee of one could volunteer to provide services of any nature for the other public agency.

Even if the public agency for which the person seeks to volunteer is the volunteer’s employer, volunteer services may still be provided so long as the services are not the same type of services the volunteer is employed to provide. For instance, a firefighter may not volunteer as a firefighter for the same public agency. On the other hand, an employee of the city parks department may offer to volunteer as a firefighter, or a police officer may volunteer to referee in a basketball league sponsored by his employing city. *See* 29 C.F.R. § 553.103.

Much like the determination of “same public agency,” whether the service the volunteer seeks to provide is the “same type of services” the individual is employed to perform can only be determined after “consideration of all the facts and circumstances in a particular case[.]” *See* 29 C.F.R. § 553.103(a). The regulations define “same type of services” to mean similar or

identical services. *Id.* Among the facts considered is how the volunteered services and the services that the volunteer is employed to provide are classified by the three digit categories of occupations in the *Dictionary of Occupational Titles*. Further, in addition to the *Dictionary of Occupational Titles*, one must also consider whether the volunteer services are “closely related to the actual duties performed by or responsibilities assigned to the employee.” *Id.* An additional source of information about occupational categories is found in O\*NET, available at <http://www.doleta.gov/programs/onet/>. The O\*NET system, created and maintained by the Department of Labor’s Employment and Training Administration, is a unique, powerful source for continually updated information on skill requirements and occupational characteristics.

With these qualifications in mind, we will now address in turn each question under Scenario 2.

**Q.11** An individual is employed as a mechanic by the County A Parks Department. He also volunteers as a firefighter for the County Fire and Rescue Department, a joint powers board funded by County A and City A. He is granted paid leave while responding to calls as a volunteer.

**A.11** This scenario resembles that outlined in your September 16, 2002, letter which the Department answered in Wage and Hour Opinion Letter FLSA2003-2. As discussed more fully therein, the determination of whether the mechanic is a bona fide volunteer turns in part on whether the County A Parks Department and the County A Fire and Rescue Department are the same public agency. We refer you to the discussion of the factors to consider in making this determination as outlined in Wage and Hour Opinion Letter FLSA2003-2.

Assuming the County A Parks Department and the Fire and Rescue Department are separate agencies, the fact that the Parks Department allowed its employee to cease his usual duties to respond to fire calls and paid the employee for his normal work hours spent on such calls, would not make the mechanic an employee of the Fire and Rescue Department. However, such special leave would be compensable hours worked for the Parks Department and would have to be counted when computing total hours worked for the Parks Department for purposes of overtime. If the employee substitutes paid personal leave earned with the Parks Department -- which the employee may use as the employee sees fit, including for time spent as a volunteer firefighter -- for the time off spent in volunteer activities, then the individual’s status as a bona fide volunteer to the Fire and Rescue Department is not jeopardized and the hours would not be compensable hours worked for the Parks Department for overtime purposes.

Conversely, as explained in Wage and Hour Opinion Letter FLSA2003-2, if the County Parks Department and the Fire and Rescue Department are part of the same public agency, and the County grants special leave for the hours the employee works as a firefighter without requiring him to use his personal accrued leave (which would be considered compensable hours worked for the County as discussed above), then the County employs him as both a mechanic and as a

firefighter. In essence, because the County releases him from his normal mechanic duties and shift only if he spends the specified time performing alternative firefighting duties and pays him wages for the time worked, he is employed by the County as both a full-time mechanic and as a part-time firefighter. Therefore, such time would be compensable hours worked for the County Parks Department and would have to be counted when computing total hours worked for purposes of overtime. Moreover, he would not be able to serve additional hours as a “volunteer” firefighter for the County because of the statutory prohibition against an employee volunteering to his own agency to perform the same type of services he is employed to perform. However, even if the Park Department and Fire and Rescue Department are not separate agencies, if the employee substitutes paid personal leave earned – which the employee may use as the employee sees fit, including for time spent as a volunteer firefighter – for the time off spent in volunteer activities that are not the “same type of service,” then the individual’s status as a bona fide volunteer is not jeopardized and the hours would not be compensable hours worked for the Parks Department for overtime purposes.

**Q.14** Firefighter, cross-trained and licensed as an EMT/paramedic, is employed by County A Fire and Rescue Department. The Fire and Rescue Department is not licensed to nor does it provide advanced life support, although it does respond to medical emergencies, accidents, and fires as first responders. The County A Department of Emergency Medical Services is licensed and required to provide advanced life support services as first responders. Firefighter serves as a volunteer EMT/Paramedic for the County A Department of Emergency Medical Services.

**A.14** Similar to question 11, the determination of whether the firefighter, who is cross-trained and licensed as an EMT/Paramedic, is a bona fide volunteer turns in part on whether the County A Fire and Rescue Department and the County A Department of Emergency Medical Services are the same public agency. Again, we refer you to the discussion of this question in Wage and Hour Opinion Letter FLSA2003-2. Generally, “the government of a political subdivision, e.g., county, city, etc., with all of its departments and agencies, constitutes a single employer under the Act.” Field Operations Handbook § 10c11(a) (copy enclosed). Although somewhat limited, it appears likely that the regulations provide that “[p]ublic safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a *different capacity*.” 29 C.F.R. § 553.30(c)(3) (copy enclosed). This is based on the 1985 legislative history instructing the Department to interpret the phrase working in a different capacity “in the strictest sense” with regard to public safety employees. See House Report No. 99-391, October 24, 1985, p. 25; Wage and Hour Opinion Letters FLSA2004-26NA (Oct. 29, 2004) and FLSA2004-25NA (Oct. 22, 2004) (copies enclosed). Therefore, we have previously concluded that an individual employed as a fire marshal could not volunteer as a firefighter for the same employer (Wage and Hour Opinion Letter September 3, 1999) (copy enclosed), and that firefighter/EMS employees could not volunteer as tactical EMS medics for their employer’s police department SWAT team (see Wage and Hour Opinion Letter August 19, 1999) (copy enclosed).

Your letter provides no specific information regarding whether state law and the Census treat the County A Department of Emergency Medical Services as a separate public agency, including whether its payroll retirement and other personnel systems are separate, and whether it may sue and be sued in its own name. Additionally, you provide no evidence concerning the extent to which the County A Fire and Rescue Department exercises day-to-day control, if at all, over the volunteer services provided to the County A Department of Emergency Medical Services. Consequently, we are unable to determine if the entities should be considered the same public agency. If the agencies are determined to be separate public agencies under the FLSA, it is not necessary to determine if the individuals perform the same type of services.

However, in the event the agencies were not separate, while your scenario provides that there are some differences in the type of services provided in each role, there is insufficient information on the total scope of services in each role to make a “same type of services” determination, and, consequently, we are unable to provide a definite response to this question for that reason also.

**Q.15** Police Officer is employed by County A Bureau of Police, where he responds to medical emergencies, accidents, and fires as a first responder but provides no medical or life support. The Police Officer also volunteers for County A Fire and Rescue Department (a joint powers board of County A and City A) where he responds to medical emergencies, accidents and fires and provides medical and other life support.

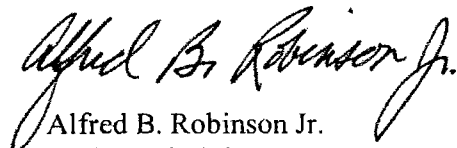
**A.15** Again, the determination of whether the police officer, who is a first responder, is a bona fide volunteer turns in part on whether the person is volunteering for the same public agency that employs the individual as a police officer and, if so, whether the volunteered services are the same as those the person is employed to provide. We refer you to the discussion of the factors to consider in making this determination as outlined in Wage and Hour Opinion Letter FLSA2003-2. Again, a “same type of services” determination can be made only after an examination of all the facts and circumstances of a particular case. We assume that, even though both agencies respond to the same types of emergencies, the Bureau of Police does not provide medical or life support services that the Fire and Rescue Department provides. It is our general position that the definition of “same type of services” typically allows for a determination that police and firefighters provide a different type of service, consistent with their different *Dictionary of Occupational Titles* categories. As explained in Wage and Hour Opinion Letter FLSA2003-2, merely responding to the same emergencies, such as traffic accidents and fire calls, or acting as a medical first responder on occasion will typically not change the inherent difference in the two occupations. Accordingly, while we believe, for the reasons cited, that the police officer described in your scenario probably may volunteer as a firefighter without incurring FLSA wage liability, without more information on the relationship of the agencies, we are constrained in providing a definitive answer on this question.

We are also enclosing a copy of Wage and Hour Opinion Letter July 7, 1999 that addresses issues very similar to those raised in this and your September 16, 2002 letter. This letter may provide further guidance to you and your members concerning the volunteer issue.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust you will find the above discussion and analysis responsive to your request.

Sincerely,

  
Alfred B. Robinson Jr.  
Acting Administrator

Enclosures:

FLSA section 3(e)  
29 C.F.R. §§ 553.30, 553.100-.106  
52 Fed. Reg. at 2018, 2021 (Jan. 16, 1987)  
Wage and Hour Opinion Letters FLSA2006-13 (Apr. 28, 2006); FLSA2005-51 (Nov. 10, 2005); FLSA2004-26NA (Oct. 29, 2004); FLSA2004-25NA (Oct. 22, 2004); FLSA2003-2 (Apr. 14, 2003); FLSA2002-3 (June 7, 2002); September 3, 1999; August 19, 1999; and July 7, 1999  
Field Operations Handbook § 10c11(a)



JUL - 7 1999

Dear :

I am pleased to respond to your request to the Department of Labor to explain how the Fair Labor Standards Act (FLSA) would apply in several hypothetical situations.

The FLSA contains only one specific provision regarding volunteers which prohibits an employee of a public agency from "volunteering" additional time to perform the same type of services which the individual is employed to perform for such public agency. This provision is found in the statutory definition of "employee," in section 3(e)(4) of the FLSA (29 U.S.C. Sec. 203(e)(4)). This provision was the result of carefully-constructed, bipartisan, consensus legislation enacted in the 1985 Amendments to the FLSA, which garnered the support of the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the National Conference of State Legislators, the AFL-CIO and the Fraternal Order of Police.

The FLSA recognizes the generosity and public benefits of volunteering, and does not pose obstacles to *bona fide* volunteer efforts for charitable and public purposes except in very limited circumstances. In this spirit, in enacting the 1985 FLSA Amendments, the Congress sought to ensure that true volunteer activities were neither impeded nor discouraged. Congress was equally clear, however, that it recognized and wanted to minimize the very real potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements, which has not diminished since Congress first debated this issue. To this end, Congress narrowly constrained the circumstances in which individuals may volunteer services to a public agency by which they are employed: (1) the individual may receive no compensation, or is paid only expenses, reasonable benefits or a nominal fee, and (2) the volunteer services may not be the same services as those which the individual is employed to perform for his or her employer.

These narrow constraints offer public sector employees a vast array of opportunities to serve their communities as volunteers. A county sheriff, for example, may volunteer in a search and rescue capacity for surrounding jurisdictions or for neighboring cities or counties. A fire fighter may volunteer his or her services to a church, hospital, civic or

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charitable organization in any capacity, or to any other public agency or even – in some circumstances – to the fire department. In situations where the Department has found certain volunteer activities to be compensable work activities, the duties being performed were essentially the same as or directly related to the employees' official duties and were being performed for the same employer in direct violation of the FLSA. For example, emergency medical technicians (EMTs) employed by a county may not volunteer in their off-duty hours as EMTs for the same county's rescue squad without compensation. Professional fire fighters are not permitted to perform volunteer fire fighting duties without pay for the same city or county which employs them.

This is not to say, however, that every volunteer activity, however remotely related to an employee's official duties, falls into the category of compensable work activity. For example, a police officer who volunteers as a referee for city-league basketball games or who helps out in clean-up after a flood or hurricane, or who takes a child to a ball game in his or her off-duty time or who serves as a trip chaperone for school activities is performing an activity outside of the constraints of the law. The narrow limitation of the FLSA on public employees volunteering additional hours of service to their employer in the same capacity as they are employed to do is a wise and appropriate policy to protect against the real potential for abuse, which is not present in the examples just discussed, and should be retained.

Any determination of volunteer status (as opposed to "hours worked") depends on the specific facts of the situation. Many of the scenarios presented in your letter did not contain sufficient detail to render an opinion as to the status of the individual. In such instances, in order to provide a full response, we have made certain additional factual assumptions as reflected in our responses in the enclosure.

The responses provided in the enclosure are based exclusively on the facts and circumstances described in your request. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

If you have further questions or need additional information in this matter, please do not hesitate to contact me.

Sincerely,

  
John R. Fraser  
Deputy Administrator

Enclosure

Enclosure to the response to the Subcommittee on Workforce Protections, Committee on Education and the Workforce

Q1. An individual is employed by the City A Parks Department in a non-fire fighting position. The individual also serves as a volunteer fire fighter with the City A Volunteer Fire Department. Is the individual a *bona fide* volunteer?

A1. An individual employed by a City Parks department in a non-fire fighting position who volunteers to the same City's Volunteer Fire Department as a fire fighter may qualify as a *bona fide* volunteer. The volunteer activities are not in the same capacity as the individual's employment. The individual may only receive payment for expenses, reasonable benefits, a nominal fee, or any combination without jeopardizing his or her status as a volunteer.

Q2. An individual is employed as a professional paid fire fighter with the City A Fire and Rescue Department, a combination department which utilizes both professional paid and professional volunteer fire fighters. The individual also serves as volunteer fire fighter with the City A Fire and Rescue Department. Is the individual a *bona fide* volunteer?

A2. An individual employed as a paid professional fire fighter with a City Fire and Rescue Department may not volunteer his or her services as a fire fighter to the City Fire and Rescue Department. Pursuant to §203(e)(4)(A), public sector employers may not allow their employees to volunteer to them, without appropriate compensation, additional time to do the same work for which they are employed.

Q3. An individual is employed as a professional paid fire fighter of Fire District No. 1, in County A. Fire District No. 1 has a mutual aid agreement with Fire District No. 2, in County B. The individual also serves as a volunteer fire fighter with Fire District No. 2. Is the individual a *bona fide* volunteer?

A3. A professional paid fire fighter employed by Fire District No. 1 in County A may volunteer as a fire fighter to Fire District No. 2 in County B, a separate employer or public agency. The existence of a mutual aid agreement between the Fire Districts would not change the volunteer nature of the service.

Q4. An individual is a professional paid fire fighter with the County A Fire and Rescue Department. County A staffs the apparatus at fifteen separate, independently chartered fire and rescue departments with professional paid fire fighters. The separate, independently chartered fire and rescue departments are not "public agencies" under the FLSA. The separate, independently chartered fire and rescue departments each have their own *bona fide* volunteers who staff additional apparatus, and supplement the professional paid staff on the main apparatus. The individual also serves as a volunteer fire fighter with one of the separate, independently chartered fire and rescue departments. Is the individual a *bona fide* volunteer?

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A4. This question, as well as questions 5 and 13, raise the same general issue of whether a professional public agency fire fighter may volunteer his or her time to perform the same fire fighter/EMT services for a private, non-profit fire corporation or rescue squad that serves the same geographic area. In a recent decision in Benshoff v. City of Virginia Beach, 1999 WL 371592 (4th Cir. 1999), the court addressed facts similar to those presented in question 13. The court ruled, under the facts of that particular case, that City fire fighters who were cross trained as EMTs were not employees of the City entitled to compensation when they voluntarily performed additional hours as EMTs within the City's jurisdiction for non-profit, separately incorporated rescue squads.

The court recognized, however, that the analysis of whether an individual is an employee or a volunteer must be made on a case-by-case basis, due to the very fact dependent nature of each situation. In cases where there is sufficient integration of operations and control of the operations of the non-profit fire corporation or rescue squad by the public agency, so that a joint employment relationship exists, the court acknowledged that the fire fighters would be performing the same services for their public agency employer as they are hired to perform. In such a situation, the fire fighter/EMT activities would not be recognized as *bona fide* volunteer activities under the FLSA.

The Benshoff decision was issued on June 8, 1999, and we are still analyzing the court's opinion. In addition, the decision may still be subject to a request for further review by the Supreme Court. Thus, we are still evaluating the circumstances in which professional public agency fire fighters may volunteer their services to a non-profit fire corporation serving the same jurisdiction, where there is a significant level of integration of operations and control of the operations of the non-profit by the public agency.

Q5. An individual is a professional paid fire fighter with the County A Fire and Rescue Department. The County A Fire and Rescue Department operates 20 stations, 10 owned by County A and 10 owned by independently incorporated volunteer fire and rescue departments. County A contributes funds to all 10 independently incorporated volunteer fire and rescue departments, and professional paid County A fire fighters staff apparatus at all 20 stations. The 10 independently incorporated volunteer fire and rescue departments own the buildings and the apparatus at their stations. The independently incorporated volunteer fire and rescue departments each have their own *bona fide* volunteers who staff additional apparatus, and supplement the professional paid staff on the main apparatus. The individual also serves as a volunteer fire fighter with one of the independently incorporated volunteer fire and rescue departments. Is the individual a *bona fide* volunteer?

A5. See A4 above.

Q6. An individual is employed as a deputy sheriff with the County A Sheriff's Department. The County A Fire and Rescue Department, a combination department, is a joint powers board which is funded by both City A and County A. As a result, County A

and the joint powers board share the same tax base. The individual also serves as a volunteer fire fighter with the County A Fire and Rescue Department. Is the individual a *bona fide* volunteer?

A6. Employees may volunteer hours of service to their public employer or agency provided such services are not the same type of services which the individual is employed to perform for such public agency. A police officer, whose job does not involve fire fighting training or skills, may volunteer as a fire fighter to fight fires for the same public employer. Similarly, a fire fighter whose duties do not include law enforcement functions may volunteer as a police reservist to his or her same public agency employer.

Q7. An individual is employed as a professional paid fire fighter with the County A Fire and Rescue Department. The County A Fire and Rescue Department, a combination department, is a joint powers board which is funded by both City A and County A. As a result, County A and the joint powers board share the same tax base. The individual also serves as a volunteer deputy sheriff on the County A Sheriff's Department Search and Rescue Team. Is the individual a *bona fide* volunteer?

A7. See A6 above.

Q8. An individual is employed as a professional paid fire fighter, cross-trained for fire fighting and emergency medical services, with the County A Fire and Rescue Department. The County A Fire and Rescue Department, a combination department, is a joint powers board which is funded by both City A and County A. As a result, County A and the joint powers board share the same tax base. The individual also serves as a volunteer emergency medical technician with the City A Volunteer Ambulance Squad. Is the individual a *bona fide* volunteer?

A8. A paid professional fire fighter, who is cross-trained for fire fighting and emergency medical services, is employed by a County Fire and Rescue Department. The individual wishes to volunteer as an emergency medical technician (EMT) with a City Fire and Rescue Squad. The County's Fire and Rescue Department is a joint powers board which is funded by both the City and County. As a result, the County and the joint powers board share the same tax base. EMT services performed for the City Fire and Rescue Squad by the County's fire fighter/emergency medical services employee would be permissible volunteer activities, provided that the County Fire and Rescue Department and the City Fire and Rescue Squad are separate public agencies (assuming that the joint powers board serves merely a financial function and does not coordinate or control the activities of either the County Fire and Rescue Department or the City Fire and Rescue Squad).

Q9. An individual is employed as a mechanic by the County A Parks Department. The County A Fire and Rescue Department, a combination department, is a joint powers board which is funded by both City A and County A. As a result, County A and the joint powers board share the same tax base. The individual also serves as a volunteer fire fighter with the County A Fire and Rescue Department. The individual is granted paid



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leave from his job in order to respond as a volunteer fire fighter. However, the individual is not paid for services as a volunteer fire fighter with the County A Fire and Rescue Department at any time. Is the individual a *bona fide* volunteer?

A9. An individual employed as a mechanic by the County Parks Department wishes to serve as a volunteer fire fighter with the County Fire and Rescue Department. The individual receives no compensation from the County Fire and Rescue Department but is granted leave from his job with the County Parks Department to volunteer as a fire fighter. Assuming that the granting of leave by the County Parks Department means the employee is able to use his or her personal leave or time off, in such a situation the individual would be considered a *bona fide* volunteer because his volunteer service is in a different capacity than his normal job, and he is not paid for his volunteer service.

Q10. An individual is employed as a junior high school teacher at County A Junior High School. The County A Fire and Rescue Department, a combination department, is a joint powers board which is funded by both City A and County A. As a result, County A and the joint powers board share the same tax base. The individual also serves as a volunteer fire fighter with the County A Fire and Rescue Department. In addition, the individual serves as volunteer coordinator of the County A Fire and Rescue Department's Cadet Program, which is made up of student volunteers from County A High School. Is the individual a *bona fide* volunteer?

A10. A junior high school teacher employed by the County serves as a volunteer fire fighter with the County Fire and Rescue Department. In addition, the junior high school teacher serves as volunteer coordinator of the County Fire and Rescue Department's Cadet Program, which is made up of student volunteers from the County high school. It appears that the junior high school teacher is volunteering in a capacity different than that in which he is employed, which would be permissible under the FLSA.

Q11. An individual is employed as a professional paid fire fighter for the City A Fire Department. City A and County A are both supported by County A's tax base, and County A tax revenues fund the City A Fire Department, even though City A is incorporated independently of County A. The individual also serves as a volunteer fire fighter with the Wildcat Volunteer Fire and Rescue Department, a County A-supported independent all-volunteer fire department located in County A but outside City A. Is the individual a *bona fide* volunteer?

A11. A paid professional fire fighter employed by the City Fire Department seeks to serve as a volunteer fire fighter to a Volunteer Fire and Rescue Department, which is an independent, all volunteer department supported by the County. The City and County are both supported by County's tax base, and County tax revenues fund the City Fire Department even though the City is incorporated independently of the County. Assuming that the entities are in fact separate and independent employers and that there is no integrated command and/or control between the entities, a City fire fighter may serve as a volunteer fire fighter to a County Fire and Rescue Department or to an independent Fire and Rescue Department operating outside the City.

Q12. An individual is employed as a police officer with the County A Bureau of Police. The County A Bureau of Police and the County A Bureau of Fire and Rescue, a combination department, are both part of the County A Public Safety Department. Police officers respond to fires, accidents, and medical emergencies as first responders, but do not perform basic or advanced life support. Volunteer fire fighters respond to accidents, crime scenes, and police actions, but have no law enforcement role. The individual also serves as a volunteer fire fighter with the County A Bureau of Fire and Rescue. Is the individual a *bona fide* volunteer?

A12. A police officer employed by the County Bureau of Police wishes to volunteer to the County Bureau of Fire and Rescue as a fire fighter. Both the County Bureau of Police and County Bureau of Fire and Rescue are part of the County Public Safety Department. Due to the shared responsibilities of the County Bureau of Police and the County Bureau of Fire and Rescue, it appears that the police officer would be performing the same type of services to his or her employer, which is contrary to Section 203(e)(4)(A) of the statute.

Q13. An individual is employed as a professional paid fire fighter-paramedic with the City A Fire and Rescue Department. In addition to the Fire and Rescue Department, City A maintains a Department of Emergency Medical Services which interacts with the City A Fire and Rescue Department and the 10 private rescue squads that serve City A residents. City A does not maintain a license to provide advanced life support, but each of the 10 private rescue squads do. City A fire fighters are not required to provide advanced life support while serving as a City A fire fighter, but may if they are also a paramedic with one of the 10 private rescue squads. Both City A fire fighters and private rescue squad personnel are often dispatched to medical emergencies, accidents, and fires. The activities of the 10 private rescue squads are coordinated by the City A Department of Emergency Medical Services, but the 10 private rescue squads are not governed or controlled by City A. Each private rescue squad has its own elected board, and City A maintains no control over those boards. The individual also serves as a volunteer paramedic with one of the 10 private rescue squads. Is the individual a *bona fide* volunteer?

A13. See A4 above.

Q14. An individual is employed as a professional paid paramedic with the County A Emergency Medical Service. City A is within County A. The City A Volunteer Rescue Squad provides first response, but not advanced life support, on emergency calls until an ambulance from the County A Emergency Medical Service arrives. The City A Volunteer Rescue Squad is supported by City A. City A is a city government for statistical purposes in the census of governments. The County A Emergency Medical Service is supported by County A. County A is a county government for statistical purposes in the census of governments. The individual is also a volunteer first responder for the City A Volunteer Rescue Squad. Is the individual a *bona fide* volunteer?

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A14. An individual employed as a professional paid paramedic with the County Emergency Medical Service wishes to serve as a volunteer first responder for a City Volunteer Rescue Squad. The City is a city government listed in the census of governments, is within the County, which is a county government in the census of governments. If, as we have assumed the Volunteer Rescue Squad is a public agency (i.e., an agency of the City government), the City and County are separate public agencies and the individual may volunteer without compensation in these circumstances.

Q15. An individual is employed as a professional paid fire fighter with the Independent Fire and Rescue Department. State law established the County A Fire Protection Authority, and empowered it to provide fire protection to all areas within County A. City A is within County A. The County A Fire Protection Authority may cause the establishment of fire and rescue departments and ensure their operating levels, but may not abolish fire and rescue departments. City A designated the Independent Fire and Rescue Department, a nonprofit organization, as its fire department. City A and the County A Fire Protection Authority determine the compensation to be paid to the Independent Fire and Rescue Department. The Independent Fire and Rescue Department owns five fire stations and all of its apparatus and equipment, and has entered into contracts with City A and County A to provide fire and rescue services. The individual also serves as a volunteer fire fighter for the Wildcat Volunteer Fire and Rescue Department, a County A-supported independent all-volunteer fire department in County A. Is the individual a *bona fide* volunteer?

A15. The City, within the County, has designated a non-profit Independent Fire and Rescue Department as its fire department. Both the County and City determine the compensation to be paid to Independent Fire and Rescue Department. The Independent Fire and Rescue Department has entered into contracts with the County and City to provide fire and rescue services. Another Volunteer Fire and Rescue Department is an independent all-volunteer fire department located in and supported by the County. The question posed is whether a professional paid fire fighter employed by Independent Fire and Rescue Department may volunteer as a fire fighter to the Volunteer Fire and Rescue Department in the County. Assuming that the Independent Fire and Rescue Department and the Volunteer Fire and Rescue Department in the County are separate and independent employers with minimal integration of command and control (and that the professional fire fighters are not all, in fact, employed by the Authority), the individual would be a *bona fide* volunteer when performing fire fighting activities for the Volunteer Fire and Rescue Department in the County.

Q16. An individual is employed as a professional paid fire fighter with the County A Fire and Rescue Department. The County A Fire and Rescue Department maintains a Swiftwater Rescue Team, which is staffed completely by volunteers and is led by a professional paid fire fighter with the rank of Captain. The individual also serves as a volunteer on the County A Fire and Rescue Department Swiftwater Rescue Team. Is the individual a *bona fide* volunteer?

A16. An individual employed as a professional paid fire fighter with the County Fire and Rescue Department wishes to serve as a volunteer to the County's Fire and Rescue Department Swiftwater Rescue Team. Because, it appears that the employee would be performing for his or her same employer the same services which he or she is employed to perform, the employee would have to be paid appropriate additional compensation when performing services for the Swiftwater Rescue Team.

Q17. An individual is employed as a civilian communications specialist with the City A Fire and Rescue Department, a combination department. The individual also serves as a volunteer fire fighter with the City A Fire and Rescue Department. Is the individual a *bona fide* volunteer?

A17. An individual employed as a civilian communications specialist with a City Fire and Rescue Department may volunteer as a fire fighter to the City Fire and Rescue Department. As defined in the Regulations, 29 CFR §553.210(c), fire protection activities do not include the so-called "civilian" employees of a fire department who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, clerks, stenographers, etc. Therefore, the fire fighting activities are not the same type of services which the individual is employed to perform.

Q18. An individual serves as a volunteer fire fighter for the County A Fire and Rescue Department. The County A Fire and Rescue Department pays its volunteer fire fighters \$7.50 for the first hour of service and \$5.00 for all subsequent hours. Is the individual a *bona fide* volunteer?

A18. A County Fire and Rescue Department pays its volunteers \$7.50 for the first hour of service and \$5.00 for all subsequent hours. The payments are compensation for services, rather than payment for expenses, benefits or fees. Therefore, an individual receiving such payments in exchange for performing fire and rescue services would be an employee entitled to appropriate compensation.

Q19. An individual serves as a volunteer fire fighter for the County A Fire and Rescue Department. County A Fire and Rescue Department volunteer fire fighters are granted benefits by the Department and the County. Is the individual a *bona fide* volunteer if granted:

- a. A monthly "pension plan" based upon a \$10.00 per year credit for each year of credited service?
- b. Life insurance?
- c. Disability insurance?
- d. Tax relief with respect to county vehicle licenses?
- e. Tax relief with respect to personal property taxes?
- f. A monthly payment of \$100, regardless of the number of calls received?
- g. No reimbursement for waiting time but \$5.00 per hour for each hour spent responding to a call?



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- h. \$5.00 per hour for each hour on shift at a fire station, regardless of the number of calls received?

A19. Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, without losing their status as volunteers (see 29 CFR §553.106). Whether such payments would result in individuals losing their status as volunteers can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of each particular situation.

Based on the information provided, we believe that, standing alone, payment into a monthly “pension plan” based on a \$10.00 per year credit for each year of credited service, life insurance and disability insurance are within the scope of allowable payments for expenses, benefits or fees. Such payments would not affect the otherwise *bona fide* status of a volunteer. To the extent the tax relief with respect to county vehicle licenses is limited to the licensing fees such payment would not affect the otherwise *bona fide* status of a volunteer. There is not enough information to determine the impact of tax relief with respect to personal property taxes.

Without more facts, we are unable to render an opinion with respect to a monthly payment of \$100.00, regardless of the number of calls received, because we have no information on the typical number of hours involved. We are also unable to render an opinion on the payment of \$5.00 for each hour spent responding to a call with no reimbursement for waiting time or a payment of \$5.00 per hour for each hour on shift at the station, regardless of the number of calls received, because we do not know the total time involved in the activity for which the payments are made.

When evaluating any particular set of facts, we must first determine whether a payment to an individual for services rendered is actually compensation, which is prohibited by the FLSA, or whether it is a payment of expenses, reasonable benefits, or a nominal fee (or a combination thereof), which is allowed by the FLSA without the individual losing his or her status as a volunteer. We evaluate expenses, benefits and fees both individually and collectively in the context of the total amount of payments made in each particular situation. Payments for expenses must reasonably approximate actual or out-of-pocket expenses incurred by an individual as an incident to providing the hours of volunteer services – for example, payment for the cost of meals and transportation expenses, uniform cleaning or equipment, or tuition to attend classes intended to teach the individual to perform the volunteer services efficiently. Payment of reasonable benefits might include group insurance plans (such as health, life, disability, workers’ compensation, or liability) or pension or retirement/investment funds or “length of service” awards traditionally provided to volunteers of State and local government agencies. A fee would not be considered nominal if it is, in fact, a substitute for compensation, or tied to productivity (e.g., payment of hourly wages for services rendered). This would not prevent, however, payment of a nominal amount on a per call or per assignment basis, for example, to volunteer fire fighters. Among the factors we examine to determine whether any given amount is nominal include the distance traveled and time and effort expended by the volunteer, whether the volunteer has agreed to be

available only during certain periods of time or around the clock, and whether he or she provides the services as needed or throughout the year. An individual who provides volunteer services periodically on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

Q20. An individual was employed as a non-career fire fighter with the County A Fire and Rescue Department. The County A Fire and Rescue Department employed both career and non-career fire fighters. Career fire fighters staffed most shifts. Non-career fire fighters staffed shifts during the evenings, and on weekend days. The County A Fire and Rescue Department compensated non-career fire fighters at a rate of \$8.00 per hour. The County A Fire and Rescue Department then eliminated the non-career fire fighter position, and instead associated volunteer fire fighters who it paid \$20.00 per shift. The individual became a volunteer fire fighter. Is the individual a *bona fide* volunteer?

A20. We are unable to determine from the limited information provided regarding the number of hours involved whether the payments would disqualify the individual from being considered a *bona fide* volunteer based on the criteria discussed in A19 above.

Q21. An individual holds no regular employment. The individual also serves as a volunteer fire fighter with the County A Fire and Rescue Department, a combination department. The County A Fire and Rescue Department compensates its volunteer fire fighters on a pay on-call basis, and pays the volunteer fire fighters for a minimum of four hours per shift at a level based on the volunteer’s training and years of service. Is the individual a *bona fide* volunteer?

A21. We are unable to determine from the limited information provided regarding the amount of payment and the number of hours involved whether the payments would disqualify the individual from being considered a *bona fide* volunteer based on the criteria discussed in A19 above.

Q22. An individual is a full-time college student, and holds no employment. The individual also serves as a volunteer fire fighter with the County A Fire and Rescue Department, a combination department. The County A Fire and Rescue Department compensates its volunteer fire fighters on a pay on-call basis, and pays the volunteer fire fighters for a minimum of four hours per shift at a level based on the volunteer’s training and years of service. Is the individual a *bona fide* volunteer?

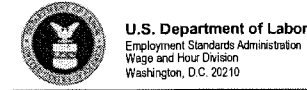
A22. As in A20 and A21, we are unable to determine from the limited information provided whether the payments would disqualify the individual from being considered a *bona fide* volunteer based on the criteria discussed in A19 above.

Q23. An individual serves as a volunteer fire fighter for the County A Fire and Rescue Department, a combination department. The individual serves without promise, expectation, or receipt of compensation. However, the individual is not motivated by civic, charitable, or humanitarian reasons, but rather serves as a volunteer in an effort to

## Appendix

acquire employment contacts, gain experience, or obtain school credit. Is that individual a *bona fide* volunteer?

**A23.** An individual serving as a volunteer to the County Fire and Rescue Department does so for the purpose of acquiring employment contacts, gaining experience or obtaining school credit. Assuming the individual is not otherwise employed by the public agency in the same capacity or volunteering because it is necessary in order to obtain gainful employment with the public agency, the individual would be considered a *bona fide* volunteer.



November 10, 2005

FLSA2005-51

Dear *Name\**,

This is in response to your letter of September 23, 2004 written on behalf of your client school district. You request guidance as to whether certain stipends the school district provides to non-teaching, nonexempt school employees who volunteer as coaches or advisors for the school's sports teams and clubs constitute "nominal fees" as described in 29 C.F.R. § 553.106(e) and (f).

You state that all such employees are nonexempt staff, such as secretaries or custodians. They volunteer for roles as coach, assistant coach, club advisor, or staff for athletic events. You further state that based on their specific duties as school district employees such employees' volunteer services are different from the services for which the school employs them.

Your letter mentions a specific example of a nonexempt school custodian who has coached the Varsity Track team for a number of years. The school provides the individual with a stipend of \$3,675 for a season of volunteer coaching. You indicate the custodian is not required to coach any team as a condition of employment, and that the stipend, which the school provides regardless of the performance of the team or number of hours the coach spends in team-related activities, is not intended or provided as a substitute for wages. Nor is the stipend based on the amount of time spent on coaching or the productivity of the team. For example, there is no extra payment for participation in play-offs, regional or state championships, or tournaments. In addition, the school does not base the stipend on the length of the season or the number of meets the team attends. You also state that the custodian spends his own money to provide certain extra benefits to the students, e.g., hamburgers, pizza, ice cream, an end of season party, plaques or trophies, and commemorative booklets. This practice is common among coaches. You state that the coaches provide these "extras" due to their love of coaching and because it enriches the experience for the students, and that the school does not separately reimburse the coaches for these expenses.

The Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. The Department of Labor is committed to ensuring that citizens are able to freely volunteer their services for charitable and public purposes within the legal constraints established by Congress.

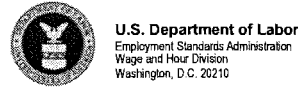
As you may be aware, in enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities were neither impeded nor discouraged. Congress was explicit in its 1985 Amendments that a "volunteer" may receive "no compensation," but may be paid "expenses, reasonable benefits, or a nominal fee." 29 U.S.C. § 203(e)(4)(A); *see also* 29 C.F.R. § 553.106(a) ("Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers."); 29 C.F.R. § 553.106(e) ("Individuals do not lose their volunteer status if they receive a nominal fee from a public agency."). Neither the FLSA nor the Senate Committee Report to the 1985 Amendments further defines the term "nominal fee." Rather, the Committee Report directed the Department to issue regulations providing guidance in this area. Employees of a public agency are permitted to provide volunteer services in certain circumstances, and the FLSA regulations governing this issue are found at 29 C.F.R. §§ 553.100-.106 (copy enclosed).

Under the Department's regulations, the term "employee" does not include individuals who volunteer for a public agency if the volunteer:

1. Performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services



# Appendix



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

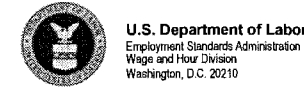
rendered. Although a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee to perform such services;

2. Offers services freely and without pressure or coercion, direct or implied, from an employer; and
3. Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

See 29 C.F.R. §§ 553.101, 553.106. Your inquiry assumes a full-time, nonexempt school employee who agrees to volunteer, without pressure or coercion from the school, as a sports coach for a season and that there is a humanitarian nature to the volunteer service. The specific question you ask is whether this type of arrangement constitutes a permissible “nominal fee.”

There are regulations that address the nominal fee issue which are relevant in the high school coaching context. Specifically, “[a] nominal fee is not a substitute for compensation and must not be tied to productivity.” 29 C.F.R. § 553.106(e). In determining whether a fee constitutes “a substitute for compensation” or whether it is “tied to productivity,” the Department looks at the “economic realities of the particular situation.” 29 C.F.R. § 553.106(f). A key factor in the context of school coaching or advising a club is whether the amount of the fee *varies* as the particular individual spends more or less time engaged in the volunteer activities, or *varies* depending upon the success or failure of a particular team or school activity. For example, if the fee does not vary based upon the win-loss record of a team, or the degree of student involvement in a particular club, or other similar factors relevant to the quality or quantity of the team, club, or activity, the Department generally would not find that the fee was a “substitute for compensation” or “tied to productivity.” See 29 C.F.R. § 553.106(e). The regulations also list several factors the Department will examine in determining whether a given amount is nominal. Specifically, the Department looks at “the distance traveled and the time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed or throughout the year.” *Id.* With respect to the factors listed in 29 C.F.R. § 553.106(e), your letter states your view that such factors are more relevant to a volunteer firefighter situation than a school coach’s situation. The Department agrees that, historically, the factors enumerated in § 553.106(e) were intended to provide guidance in the context of whether firefighters were paid a nominal fee and qualify as *bona fide* volunteers. However, in the context of school coaching or club sponsorship, the “substitute for compensation” and “tied to productivity” standards are still generally relevant. As the attached opinion letter states, “These factors focus upon whether the fee is actually analogous to a payment for services or recompense for something performed and, hence, is not nominal.” See July 14, 2004 Opinion Letter (enclosed).

In evaluating the nominal fee issue in the case of the school coach, we recognize that a coach might travel significant distances for away games, which may occur at the volunteer’s expense. Any such unreimbursed expenses will increase the amount of the stipend that may qualify as nominal. In addition, a coach’s expected time commitment often will depend on the sport he or she coaches, as the length of the season can vary greatly depending upon the sport. The time commitment also can vary depending upon other factors, such as whether the sport is varsity or junior varsity. The stipends established for different sports may vary based upon such broad variations in the coaches’ time commitments and still qualify as nominal. However, the length of the season also could vary significantly depending on whether the team makes the play-offs and how far the team advances in the play-offs. If a school paid a coach more because his team made the play-offs, the Department would likely view such a payment as a “substitute for compensation” or a payment “tied to productivity.” As indicated in the July 14, 2004 letter, the regulations are focused on preventing payment for performance, which is inconsistent with the spirit of volunteerism contemplated by the FLSA.



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

The definition of “nominal fee” includes an economic realities test. In making a determination whether the \$3,675 stipend at issue here constitutes a “nominal fee,” the Department believes the analysis of the “economic realities” as described in 29 C.F.R. § 553.106(f), should include a comparison between the volunteer stipend and what it would otherwise cost the school district to compensate someone to perform those services. The FLSA and the implementing regulations use a 20 percent test to assess whether something is insubstantial with regard to prohibited driving on public roadways by employees who are 17 years of age. Congress defined “occasional and incidental” activities to be less than 20 percent of an employee’s hours worked in a workweek in that capacity. See 29 U.S.C. § 213(c)(6)(G). In the case of volunteer coaching, the Department believes that 20 percent of what the district would otherwise pay to hire a coach or advisor for the same services is appropriate in dividing between a permissible nominal fee and an impermissible payment. Such a threshold assumes that the coaches are freely volunteering their services and the school district simply provides a lump-sum payment or series of payments without regard to wins or losses or hours worked as discussed above.<sup>1</sup> Moreover, a willingness to volunteer for an activity for 20 percent of the prevailing wage for the job is a likely indicium of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA. See 29 U.S.C. § 203(e)(4)(A). Therefore, when a public agency employee volunteers as a coach or extracurricular advisor, the Department will presume the fee paid is nominal as long as the fee does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time coach or extracurricular advisor for the same services.

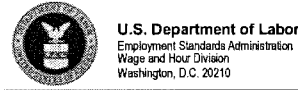
With regard to your specific school district, the Department is unable to answer whether the fee of \$3,675 is nominal due to the limited information provided concerning what the school district would otherwise pay to hire a full-time coach or advisor for the same services. However, the market information necessary to complete this good faith determination is generally within your client school district’s knowledge and control. Thus, any coaches the school district has on its payroll would be a good benchmark for this calculation. Absent such information, your client may look to information from neighboring jurisdictions, the state, or ultimately, the nation including data from the Department of Labor, Bureau of Labor Statistics. So long as your calculations are based on an approximation of the prevailing wages of a coach in your district and the fee amount does not exceed 20 percent of that coach’s wages for the same services, the Department would find that such a fee would be nominal within the meaning of 29 C.F.R. § 553.106.<sup>2</sup>

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

<sup>1</sup> In the case of public school employees, a 20 percent level also appears reasonable given that various states have endorsed significant lump sum amounts of compensation as “nominal” for state public agency volunteers; and we believe current coaching stipends of 20 percent would likely not reach such amounts. See Ind. Code § 36-8-12-2 (2005) (“Nominal compensation” means annual compensation of not more than twenty thousand dollars (\$20,000).); see also Minn. Stat. § 144E.001, Subd. 15 (2005) (nominal fee for volunteer ambulance attendant may be up to \$6,000 annually).

<sup>2</sup> We are withdrawing the opinion letter dated July 11, 1995 as it relates to “nominal fee.” The Department does not believe this letter fully took into account the “economic realities” of the particular situation of coaches and extracurricular sponsors as discussed in this letter including the humanitarian nature of the volunteer effort, the lack of pay for performance, and the fact that school districts often do not track or control their coaches’ hours. The Department is also withdrawing opinion letters dated July 15, 1988, April 2, 1992, and September 17, 1999 to the extent they are inconsistent with the interpretation of nominal fee in this opinion.

# Appendix



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust you will find the above discussion and analysis responsive to your request.

Sincerely,

Alfred B. Robinson, Jr.  
Deputy Administrator

Enclosures: 29 C.F.R. §§ 553.100-106  
July 14, 2004 Opinion Letter

\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).

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Wage and Hour Division  
United States Department of Labor

Opinion Letter  
Fair Labor Standards Act (FLSA)  
August 19, 1999

\*\*\*

This is in response to your letters concerning the application of the Fair Labor Standards Act (FLSA) to the employment of certain city employees. We regret the delay in responding.

The issues presented in your three letters are similar. Therefore, we will consolidate our response to these issues. Specifically, you request an interpretation on the following:

1. Whether City firefighters may be paid to work as firefighters and/or emergency medical service (EMS) providers for organizations within the Borough (which is like a county) on their off-duty time without the City incurring the expense of overtime for the time spent working for these other departments. The organizations in the Borough range from private fire and/or EMS departments, Borough financed fire and/or EMS departments and the State Division of Forestry. The City participates in a mutual aid agreement with the State Division of Forestry. One other department to be considered is the University of \*\*\* Fire Department, with which the City also has a mutual aid agreement.

2. Whether City firefighters may work during their off-duty time as Tactical EMS medics for the City Police Bureau without the City Fire Bureau incurring the expense of overtime. This time would be spent in training for SWAT team activities and performing during SWAT team emergencies.

3. Whether City firefighters may volunteer as firefighters and/or EMS providers with organizations within the Borough without the City incurring the expense of overtime for the time spent with these departments. The organizations to consider range from private corporation fire and/or EMS departments to Borough financed fire and/or EMS departments. The City does have mutual aid agreements for both fire and/or EMS with these departments.

In responding to your questions, it may be helpful to review some principles unique to public sector employment. The regulations promulgating the FLSA to public sector employees are 29 CFR Part 553 (copy enclosed).

Section 7(k) of the FLSA provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). Under this provision, an employer may establish a work period of 7- to 28- consecutive days for the purpose of paying overtime compensation to employees employed in fire protection or law enforcement activities. The maximum hours standard for fire protection employees ranges from 53 hours worked in a 7-day work period to 212 hours worked in a 28-day work period.

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Section 7(o) of the FLSA provides that "employees of a public agency which is a State, a political subdivision of a state, or an interstate agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime is required by this section."

Section 7(p)(1) of the Fair Labor Standards Act (FLSA) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for the purposes of overtime compensation. Section 7(p)(1) applies to such outside employment provided (1) the special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent. Whether two employers are, in fact separate and independent can only be determined on a case-by-case basis. See §553.227 of Regulations, 29 CFR Part 553.

Section 7(p)(2) of the FLSA provides that State and local government employees may, solely at their own option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, and the hours worked in the different jobs need not be combined for the purpose of determining overtime liability under the FLSA. See §553.30 of Regulations, 29 CFR Part 553.

Under the FLSA, individuals may not volunteer services to private sector for profit employers. On the other hand, in the vast majority of circumstances, individuals can volunteer services to public sector employers. When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community with but one exception - public sector employers may not allow their employees to volunteer, without compensation, additional time to do the same work for which they are employed.

As indicated in §553.101 an individual who performs hours of service for a public agency for civic, charitable or humanitarian reasons without promise, expectation or receipt of compensation for services rendered is considered to be a volunteer. At the same time, in enacting §3(e)(4), Congress was concerned about the potential for abuse of minimum wage or overtime requirements through coercion or undue pressure upon employees to "volunteer" their services. See Senate Report No. 99-159, October 17, 1985, page 14, 2 U.S. Cong. News, page 662 ("the Committee wishes to prevent any manipulation or abuse of minimum wage requirements through coercion or undue pressure upon employees to "volunteer" D').

The last principle we wish to point out is that of "mutual aid agreements." The regulations at 29 CFR §553.105 provide that an agreement between two or more States, political subdivisions, or interstate governmental agencies for mutual aid does not change the otherwise volunteer character of services performed by employees pursuant to such agreement. For example, where Town A and Town B have entered into a mutual aid agreement related to

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fire protection, a firefighter employed by Town A who is also a volunteer firefighter for Town B will not have his or her hours of volunteer service for Town B counted as part of his or her hours of employment with Town A. The mere fact that services volunteered to Town B may in some instances involve performance in Town A's geographic jurisdiction does not require that the volunteer's hours are to be counted as hours of employment with Town A.

Assuming that the City is a separate and independent employer from the other entities (privately financed departments; Borough financed departments; State Division of Forestry; and \*\*\* Fire Department), it is our opinion that the hours worked for those other entities by City firefighters do not have to be combined with the hours worked by the firefighters for the City for purposes of FLSA overtime compensation. The employment of City firefighters by separate and independent employers comes within §7(p)(1) of the FLSA.

Based on the information contained in your letters, §7(p)(2) does not apply in the instance of City firefighters working for the City police department as tactical EMS medics for the SWAT team. In this instance, the work performed for the same public employer (the City) is not in a different capacity. The legislative history, contained in the Committee Report at page 25 makes this clear, "The Committee expects the Secretary of Labor in promulgating regulations to interpret 'different capacity' in the strictest sense so as to prohibit instances where a public safety employee might be encouraged to take on any kind of security or safety function within the same local government." (Emphasis added.) Therefore, it is our opinion that the hours worked by City firefighters for the City police department as tactical EMS medics for the SWAT team must be included in determining overtime hours worked and the corresponding overtime pay (or compensatory time) due.

In response to your third issue, whether the City firefighters may volunteer as firefighters and/or EMS providers to private corporation fire and/or EMS departments without the City including such time for overtime purposes is dependent on the nature of the relationship between the City and the private fire and/or EMS departments.

In a recent decision in Benshoff v. City of Virginia Beach, 1999 WL 371592 (4th Cir. 1999), the court addressed such a situation. The court ruled, under the facts of that particular case, that City firefighters who were cross trained as EMTs were not employees of the City entitled to compensation when they voluntarily performed additional hours as EMTs within the City's jurisdiction for non-profit, separately incorporated rescue squads.

The court recognized, however, that the analysis of whether an individual is an employee or a volunteer must be made on a case-by-case basis, due to the very fact dependent nature of each situation. In cases where there is sufficient integration of operations and control of the operations of the non-profit fire corporation or rescue squad by the public agency, so that a joint employment relationship exists, the court acknowledged that the firefighters would be performing the same services for their public agency employer as they are hired to perform. In such a situation, the fire fighter/EMT activities would not be recognized as bona fide volunteer activities under the FLSA.

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This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

Sincerely,

Daniel F. Sweeney

Office of Enforcement Policy Fair Labor Standards Team

Enclosure

1999 WL 1788145 (DOL WAGE-HOUR)

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1999 WL 1788151 (DOL WAGE-HOUR)

Page 1

Wage and Hour Division  
United States Department of Labor

Opinion Letter  
Fair Labor Standards Act (FLSA)  
September 3, 1999

\*\*\*

This is in response to your letter of July 14, 1999 concerning the issue of employees volunteering to perform work for the same public agency by which they are employed. You also request the Department comment on the legality of a City employee, who also volunteers for the City, being covered under two pension plans.

The Wage and Hour Division of the Department of Labor administers and enforces the Fair Labor Standards Act (FLSA) which is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage, \$5.15 per hour, effective September 1, 1997, for all hours worked. Overtime pay of not less than one and one-half times the regular rate of pay is required for all hours worked over 40 in a workweek. The major provisions of the law are outlined in the enclosed "Handy Reference Guide to the Fair Labor Standards Act."

You indicate that the full-time paid Fire Marshall is also a volunteer fireman with the City, responding as a volunteer in the same City provided vehicle as when he is in pay status. Although the FLSA as amended in 1985 does permit employees to volunteer their services to public agencies and their communities, there is one exception. Public sector employers may not allow their employees to volunteer, without compensation, to perform the "same type of services" for which they are paid. It appears from your letter that the volunteer service in question is the "same type of service" pursuant to the Department's regulations at 29 CFR 553.103 (copy enclosed); is closely related to the actual paid duties of the Fire Marshall; and, as such, would be compensable, i.e., the time spent by the Fire Marshall in the performance of the volunteer fireman duties should be treated as any other hours worked and paid accordingly.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

With regard to your request concerning criteria used as qualifications in two different pension plans for the same employer, we are forwarding your request to the Department of Labor's Pension and Welfare Benefits Administration (PWBA) which enforces the Employment Retirement Income Security Act and the Consolidated Omnibus Budget Reconciliation Act.

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PWBA will respond directly to you on this issue.

We trust that the above information is responsive to your inquiry. If we can be of further assistance please do not hesitate to contact us.

Sincerely,

Daniel F. Sweeney

Office of Enforcement Policy Fair Labor Standards Team

Enclosures

1999 WL 1788151 (DOL WAGE-HOUR)

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U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

April 14, 2003

FLSA2003-2

Dear **Name\***,

I am writing in reply to your letter of September 16, 2002, to Assistant Secretary of Labor Christopher Spear. You request a letter ruling on numerous hypothetical questions divided into three issue areas and offer several suggestions for action by the Department, all relating to the application of the Fair Labor Standard Act (FLSA), particularly Section 3(e)(4)(a), to volunteer fire fighters.

As you know Section 3(e)(4)(a) of the FLSA states that the "term 'employee' does not include any individual who volunteers to perform services for a public agency" if the individual receives no compensation or is paid a nominal fee, expenses or reasonable benefits, and if "such services are not the same type of services which the individual is employed to perform for such public agency."

The FLSA recognizes the generosity and public benefits of volunteering, and does not pose obstacles to bona fide volunteer efforts for charitable and public purposes except in very limited circumstances. In this spirit, in enacting the 1985 FLSA Amendments, the Congress sought to ensure that true volunteer activities were neither impeded nor discouraged. Congress, however, also wanted to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements in "volunteer" situations. To this end, Congress narrowly constrained the circumstances in which individuals may volunteer services to a public agency by which they are employed: (1) the individual may receive no compensation, or is paid only expenses, reasonable benefits or a nominal fee, and (2) the volunteer services may not be the same services as those which the individual is employed to perform for his or her employer. These narrow constraints offer public sector employees a vast array of opportunities to serve their communities as volunteers.

Please be assured that this Administration fully supports volunteerism and is committed to work with organizations like yours to ensure that citizens are able to freely volunteer their services for charitable and public purposes.

We will restate your scenarios, hypothetical questions, and suggestions, followed by our responses.

ISSUE ONE -- Circumstances in which public agency employees may volunteer their services for a public agency fire department serving the same jurisdiction.

#### SCENARIO ONE

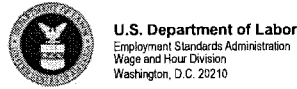
- Individual is a mechanic employed by County A Parks Department.
- The individual also serves as a volunteer fire fighter with the County A Fire and Rescue Department (FRD).
- The FRD, a combination department, is a joint powers board which is funded by both City A and County A.
- County A and the FRD are listed separately by the Census Bureau.
- County A provides the majority of funding to the FRD and also appoints and removes Board members.
- The individual is allowed to respond to fire calls during his work hours with the Parks Department.
- The individual is not required to take personal leave in order to be paid for his volunteer fire fighting time.

*Working to Improve the Lives of America's Workers*

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# Appendix



U.S. Department of Labor  
Employment Standards Administration  
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Washington, D.C. 20210

- The Parks Department gives the individual paid leave for the time spent as a volunteer fire fighter.

Q.1 Are County A and the FRD the same public employer?

A.1 Whether two entities of a local government constitute the same public agency can only be determined on a case-by-case basis. The attached letter dated June 7, 2002 provides a framework for making such a determination and identifies factors that are relevant to the determination. Your letter does not provide information relevant to a number of the factors set forth in that letter, such as: whether the two agencies have separate payroll and retirement systems; whether they both have the authority to sue and be sued in their own names; whether they have separate hiring and other employment practices; and how they are treated under state law. Moreover, the information you have provided offers little information on the level of integration of County A and FRD operations and control of the FRD operations by County A.

Therefore, we are unable to provide a definitive response with regard to whether these agencies are two separate agencies or not. If those other factors also show that the agencies should be treated as separate entities, as they are by the Census of Governments, then we would agree that they are not the same employer and an employee of one could volunteer for the other.

Q.2 Is the individual's status as a bona fide volunteer jeopardized because he receives paid leave from the Parks Department for his time responding to fire calls?

A.2 Assuming that the County Parks Department and the FRD are separate agencies, the fact that the Parks Department allowed its employee to cease his usual duties to respond to fire calls and paid the employee for his normal work hours spent on such calls would not make the mechanic an employee of the FRD. However, such time would be compensable hours worked for the Parks Department and would have to be counted when computing total hours worked for purposes of overtime.

If the time off involves the employee's use of paid personal leave earned with the Parks Department, which the individual may use as he or she sees fit -- including for time spent as a volunteer fire fighter -- the individual's status as a bona fide volunteer to the FRD is not jeopardized and the hours would not be compensable hours worked for the Parks Department.

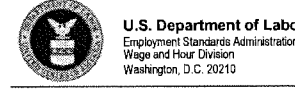
Assuming that the County Parks Department and the FRD are part of the same public agency, if the County pays the employee wages for the hours he works as a firefighter, then the County employs him as both a mechanic and as a firefighter. In essence, he is employed by the County as both a full-time mechanic and as a part-time firefighter. Therefore, he would not be able to serve additional hours as a volunteer firefighter for the County, because of the statutory prohibition against an employee volunteering to his own agency to perform the same type of services he is employed to perform.

Q.3 Is the employee performing the same or similar services?

A.3 Although you do not describe the services provided as a mechanic or a fire fighter, these two occupations clearly are categorized under different 3-digit codes in the Dictionary of Occupational Titles. Consequently we believe that serving as a mechanic and serving as a firefighter do not involve the same type of services, absent evidence to the contrary.

Q.4 Is this the type of situation that the FLSA was truly intended to protect employees from?

A.4 In enacting the 1985 FLSA Amendments Congress sought to ensure that true volunteer activities were neither impeded nor discouraged by the FLSA. Congress was equally clear, however, that it recognized and wanted to minimize the very real potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements.



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Q.5 Is the County liable for overtime earned during the fire calls answered outside the employee's regular working day?

A.5 If the employee is a bona fide volunteer, either because he is volunteering to a separate public agency or is not performing the same or similar services (see discussion above), the time spent on fire calls outside the employee's regular Parks Department working day will not be compensable time under the FLSA, and thus would lead to no FLSA required overtime.

Q.6 (first paragraph on page 4 of your letter) May the County automatically charge the time spent responding to a fire call against the employee's compensatory, vacation or other leave time?

A.6 A public sector employer may at any time require an employee to take time off from work and to use compensatory time in payment for the leave. Christensen v. Harris County, 529 U.S. 576 (2000). Thus, if the hours spent responding to a fire call are bona fide volunteer hours for which no compensation is due, the employer may charge or dock the employee's compensatory time and thereby pay the person for the time taken off.

We note, however, that compensatory time off is a form of payment for overtime hours previously worked for which cash wages were not paid. Therefore, if the hours spent responding to a fire call are actually compensable hours worked, such as if the employee also is employed as a firefighter, then those hours are not time off. In that situation, the agency may not dock an employee's compensatory time bank to cover the wages due for the new hours worked. Attempting to use compensatory time in that manner would effectively be double counting -- using the same compensatory time to pay for the original hours worked and to pay for the new hours.

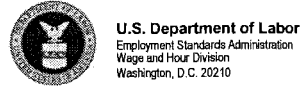
The FLSA does not regulate the use of paid vacation or other leave provided by an employer.

ISSUE TWO -- Definition of the same public agency and the same type of services.

## SCENARIO TWO

- The County A Fire Department is a joint powers board created pursuant to state law as a separate agency from the agencies which form it.
- The joint powers board is treated as a "special district government" in the Census of Governments.
- City B, County A and Town C appoint the joint powers board members, review annual budgets and provide funding.
- The joint powers board has no separate taxing authority.
- County A has two law enforcement agencies within 5,000 square miles, the Police and County Sheriff's Departments, which are sub-governments of the City and County respectively.
- The county has one hospital which is a separate government agency supported by its own tax district.
- The hospital runs the ambulance service that is staffed with full time and volunteer EMTs.
- There are no other law enforcement, fire departments or medical services within the county.
- The County Sheriff's Office and the County Fire Department are two different departments with two different governing bodies and are operating two different payrolls.

# Appendix



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Q.1 May city police or county deputies volunteer as fire fighters without the City or County being responsible to pay overtime for those volunteer hours?

A.1 Your letter accurately restates DOL regulations 29 CFR Part 553.101, which define a public agency volunteer as an individual who:

1. Performs hours of service for a public agency for civic, charitable or humanitarian reasons without promise, expectation or receipt of compensation for services rendered [Part 553.101(a)];
2. Offers services freely and without pressure or coercion, direct or implied, from an employer [Part 553.101(c)]; and
3. Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer [Part 553.101(d)].

Your letter does not provide information covering the first two criteria listed above but rather focuses on the third criteria. Consequently we will assume that criteria one and two above are met and will focus this response on the third criteria.

It is not necessary to analyze one aspect of the third criteria [Part 553.101(d)] if the other is met. If the individual is obviously not employed by the same public agency, (what you call the "who is an employer" question) then there is no need to examine the nature of the services provided (what you call the "what are the same type of services" question). Similarly, if the individual obviously does not perform the same type of services for the respective agencies, there is no need to examine the relationship of the agencies receiving the individual's services. In the interest of being responsive, however, we will analyze both aspects of the third criteria for your scenario, starting with the same public agency aspect.

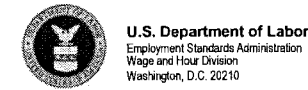
You indicate that the facts in your County Fire Department (a joint powers board) scenario are similar to those found in a July 1, 1993 DOL letter ruling.

The July 1, 1993 letter found that a county vocational school system and the county were not considered separate and independent employers for purposes of Section 7(p)(1) of the FLSA. Section 7(p)(1) provides a "special detail" exception for fire protection and law enforcement employees of public agencies. This opinion was based in part on the indication that the "Census of Governments classifies county vocational schools as dependent agencies of the county government and they are not counted as separate governments". Moreover, the 1993 letter involved only a single county, not three separate public agencies that jointly fund and appoint members to the board of a fourth entity.

We disagree with your belief that the facts in your scenario are similar to those in the July 1, 1993 letter, as you indicate that the "joint powers board is treated as a separate 'special district government' by the Census Bureau". This is clearly opposite to the "dependent" classification of the school system discussed in July 1, 1993 letter.

Absent the existence of information indicating significant integration of the operations of the County Fire Department and the County Sheriffs Department/City Police Department it appears that these agencies are not the same public agency for purposes of determining bona fide volunteer status under the FLSA. This opinion is based on your indication that the:

- Census of Government treats the County Fire Department as a separate agency from the agencies that form it;
- County Sheriff's Office and the County Fire Department are two different departments with two different governing bodies and two different payrolls (we assume the same is differences exist between the City Police Department and the County Fire Department); and



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- County Fire Department is created pursuant to a state law as a separate agency from the agencies that form it.

Your discussion of the second aspect of the third criteria, same type of services [Part 553.101(d)], explains some of the difficulties inherent in providing police and fire support in small or rural communities where small pools of trained emergency personnel must routinely perform multiple tasks. You indicate that emergency personnel often wear a number of different "hats", so that there is no "bright line" of services between the agencies.

As you are aware, a same type of services determination can only be made after an examination of all the facts and circumstances of a particular case. We believe, however, that the definition of same type of services typically allows for a determination that police and firefighters on the whole provide a different type of services, consistent with their different Dictionary of Occupational Titles categories. Responding to the same emergencies as the other, such as traffic accidents and fire calls, or acting as a medical first responder on occasion will typically not change the inherent difference in the two occupations.

We believe, for the reasons cited above, that the city police or county deputies described in your scenario may volunteer as fire fighters without incurring FLSA wage liability for their volunteer time.

Q.2 May paid firefighters with emergency medical technician certifications volunteer for the county ambulance service without being paid overtime by the fire department?

A.2 Your discussion related to this question cites extensively from two opinion letters dated April 20, 1993. These letters, written without a detailed analysis of the facts, concluded that career fire fighters who volunteer their services to private non-profit corporations that serve the same jurisdiction are volunteering for their employing public agency and must be compensated.

We withdrew these letters, and their conclusion that the provision of the same type of services in the same community precludes bona fide volunteer status, in a November 27, 2001 opinion letter (copy enclosed). This letter was written in light of the findings in the decision you cited, Benshoff v. City of Virginia Beach, 180 F.3d 136 (4<sup>th</sup> Cir. 1999).

You indicate that the county ambulance service is operated by the hospital, which is a separate public agency supported by its own tax district. However, your letter provides no specific information regarding whether state law and the Census treat the hospital as a separate public agency, whether its payroll, retirement and other personnel systems are separate, and whether it may sue and be sued in its own name. Additionally, you provide no evidence concerning the extent to which the county fire department exercises day-to-day control over the volunteer services provided to the county ambulance service. Consequently we are unable to determine if the entities are the same public agency. If the entities are determined to be separate public agencies under the FLSA, it is not necessary to determine if the individuals perform the same type of services.

Your scenario also provides insufficient information to make a same type of services determination. Consequently we are unable to provide a response to this question.

ISSUE THREE: The potential for otherwise bona fide volunteers to be employees because they receive some sort of remuneration for their services.

Q.1 Do unemployed volunteers or volunteers who are currently in college full time become employees of the department?

A.1 Your question focuses on Krause v. Cherry Hill Fire District 13, 969 F. Supp. 270 (D.N.J. 1997), in which the District Court found that the fire district could not eliminate part time employees (called non-career firefighters) and return them to volunteer status to avoid the minimum wage provisions of the FLSA, while still continuing to pay them significant hourly compensation.



# Appendix



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This decision found that the fire district initially paid non-career fire fighters \$8.00 per hour for "duty crew" shifts and \$5.05 per hour for "sleep-in" shifts, then reduced the compensation for "sleep-in" shifts to \$20.00 per eight hour shift. The Krause court found, and we agree, that non-career fire fighters expected and received hourly compensation in an amount greater than a nominal fee allowed by the regulations (29 CFR Part 553.106) and it was "clear that the plaintiffs were not volunteers."

The lack of other employment or the status as a full time college student does not affect the determination of whether an individual is a bona fide volunteer. The evaluation of the employment status vs. volunteer status of all individuals in the public sector, including the unemployed and college students, is done by the application of the factors found in Section 203(e)(4) of the FLSA and Regulations Part 553.101, as discussed in the beginning of A.1, Issue Two above.

You suggest that the Department take two actions:

- An interpretation of 29 U.S.C. Section 203 (e)(4)(a) should be done through a regulatory interpretation from DOL; and
- Provide a definition of "same type of services".

We believe that the current regulation, 29 CFR Part 553, Subpart B provides the interpretation and definition.

I hope the above has been responsive to your request. We stand ready to work with you at any time to support the wonderful spirit of volunteerism that sustains this country.

Sincerely,

Tammy D. McCutchen  
Administrator

Enclosures

*Note: \* The actual name(s) was removed to preserve privacy.*



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

October 29, 2004

FLSA2004-26NA

Dear **Name\***,

This is in response to your letter concerning the application of Section 3(e)(4)(A) of the Fair Labor Standards Act (FLSA) to certain employees of the **Name\*** County Sheriff's Office.

You write that the **Name\*** County Sheriff's Office is divided into three primary departments: Administration, Detention, and Law Enforcement. Individuals employed as deputies in the Detention Division have recently asked if they could also volunteer in the Law Enforcement Division during their off-duty hours. You enclose copies of the job descriptions of both positions.

You contend that the job duties of the two positions differ greatly, that the positions require different sets of skill and knowledge, that the jobs are performed under different environmental conditions, and that expectations of the previous experience and background of candidates for the two positions are different. Based on the descriptions you have provided, Detention Deputies primarily provide security at the jail facilities while Deputy Sheriffs perform more diverse duties as they work toward providing security for residents of the county.

As you know, Section 3(e) of the FLSA and 29 CFR 553.103(a) provide that individuals performing volunteer services for units of State and local governments will not be regarded as "employees" under the FLSA when (a) their services are offered freely and without pressure or coercion, direct or implied, from an employer and (b) the individual is otherwise not employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer. The phrase "same type of services" means similar or identical services.

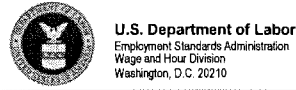
As your letter indicates, a determination of whether the services that volunteers seek to provide are the "same type of services" they are employed to perform requires "...consideration of all the facts and circumstances in a particular case..." See 29 CFR 553.103(a). Among the facts the regulation states will be considered is how the volunteered services and the services for which the volunteer is employed to provide are classified by the three digit categories of occupations in the Dictionary of Occupational Titles (DOT), published by the Employment and Training Administration (ETA). The DOT was recently superseded by the O\*NET system, also published by ETA. Of equal weight to the DOT/O\*NET is whether the volunteer services are "closely related to the actual duties performed or responsibilities assigned to the employee." Id.

As mentioned above, you indicate that the job duties for both the Detention Deputies and Deputy Sheriffs differ greatly. Detention Deputies are primarily responsible for security and patrolling of the jail facilities. Generally, Detention Deputies' job duties require them to be involved in one or more of the following areas: Security; Housing; Management Operations; Inmate Property; Mail and Money; Transportation; Visitation; Administration; Attorney Booth; Bookings; Disciplinary Review Board; Farm Supervisor; Food Service; Intoxilizer Maintenance; Judicial Complex; Dual Certified; Trustee Supervisor; and the Weekend Program. Also, they must search inmates and property, and prevent escapes. Detention Deputies direct evacuations of the facility, subdue disorderly inmates and monitor the inmates' behavior. In addition, they must assist with book-in procedures and verifying inmate identities.

On the other hand, Deputy Sheriffs are responsible for all aspects of detecting crimes against persons and property, and arresting criminal suspects. This includes interviewing witnesses and searching for evidence. In patrolling certain areas, Deputy Sheriffs are required to frisk and pat down individuals who are being searched, pursue vehicles, respond to rescue calls, bomb threats and civil unrest. Deputy Sheriffs are also responsible for serving arrest warrants and subpoenas. Other activities include traffic control and parking enforcement.

While the specific duties of the two positions in question may be different in the particular daily tasks performed, the overall similarity and commonality of the jobs as variations of law enforcement outweigh

# Appendix



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these differences between them. The fact that the Sheriff's Office finds Detention Deputies qualified to act in the role of Reserve Deputies only reinforces the fact of the two jobs' similarity. In both instances, the Detention Deputies and Reserve Deputies are performing basic law enforcement functions. The Wage and Hour Division has taken the position, for example, that law enforcement duties such as transferring or taking custody of prisoners, and booking, fingerprinting, restraining, etc., with respect to suspects or prisoners are the same type of services whether performed by police officers, detectives, bailiffs, jailers, deputies, etc. See opinion letters dated September 26, 1991; February 18, 1992; March 18, 1992; and April 21, 1995 (enclosed).

Further, the O\*NET description of duties performed by correctional officers and jailers (33-3012.00) and sheriffs and deputy sheriffs are similar and, in fact, are in the same job family, and are treated as related occupations. Moreover, the regulations provide that public safety employees taking on any kind of security or safety function for the same local government are never considered to be employed in a different capacity. 29 CFR 553.30(c)(3). This is based on the 1985 legislative history instructing the Department to interpret the phrase working in a "different capacity" in the "strictest sense" with regard to public safety employees. House Report No. 99-331, October 24, 1985, page 25. Thus, based on Section 3(e)(4)(A) and the information you have provided, the responsibilities of the jobs are sufficiently similar that the **Name\*** County Sheriff's Office may not accept the volunteer services of the Detention Deputies as Reserve Deputies.

The Detention Deputies are allowed to volunteer in other capacities for the county government, such as assisting the coach of a high school baseball team, for example. The Wage and Hour Division would not question their volunteer status in such unrelated occupations so long as the other requirements of Section 3(e)(4)(A) are met. Also, the Division will not question the volunteer status of an individual who is not employed in any capacity by a public agency but who wishes to volunteer his or her services to a public agency.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above information is responsive to your inquiry.

Sincerely,

Barbara R. Relford  
Fair Labor Standards Team  
Office of Enforcement Policy

Enclosures

## § 553.225

consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the duty cycle or pay period or with a particular day of the week or hour of the day. Once the beginning and ending time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within the period. The beginning and ending of the work period may be changed, provided that the change is intended to be permanent and is not designed to evade the overtime compensation requirements of the Act.

(b) An employer may have one work period applicable to all employees, or different work periods for different employees or groups of employees.

### § 553.225 Early relief.

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under section 7(k) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

### § 553.226 Training time.

(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be non-compensable:

(1) Attendance outside of regular working hours at specialized or follow-up training, which is required by law

## 29 CFR Ch. V (7-1-06 Edition)

for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

### § 553.227 Outside employment.

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) The special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employers are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department

\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).

Wage and Hour Division, Labor

§ 553.230

may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire protection and law enforcement employees under section 7(p)(1) are exceptions to the usual rules on joint employment set forth in part 791 of this title.

(g) Where an employee is directed by the public agency to perform work for a second employer, section 7(p)(1) does not apply. Thus, assignments of police officers outside of their normal work hours to perform crowd control at a parade, where the assignments are not solely at the option of the officers, would not qualify as special details subject to this exception. This would be true even if the parade organizers reimburse the public agency for providing such services.

(h) Section 7(p)(1) does not prevent a public agency from prohibiting or restricting outside employment by its employees.

OVERTIME COMPENSATION RULES

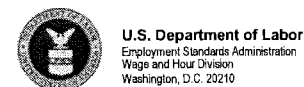
§ 553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k).

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

(b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

Work period (days)	Maximum hours standards	
	Fire protection	Law enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49



April 28, 2006

FLSA2006-13

Dear Name\*:

This is in response to your letter inquiring whether police officers who work special details for a third party entity servicing a city-owned coliseum qualify for the Fair Labor Standards Act (FLSA) section 7(p)(1) partial overtime exemption. It is our opinion that the special detail qualifies under section 7(p)(1).

The City owns a municipal coliseum that hosts various activities throughout the year including basketball games, concerts, and monster truck shows. Currently, the City uses off-duty sheriff deputies, who are employed by the County, to provide security for these events. The City would like to enter into a service contract with a private sector, for-profit employer located in another city that provides entertainment services with expertise in crowd management, event staffing, and security for large spectator events at public facilities. The third party contractor may employ off-duty City police officers for some of the security for the events, as well as officers who are not employed by the City. You have requested an opinion regarding whether and how the employment relationships would be affected if the City decides to provide workers' compensation insurance for the officers while the third party at the coliseum employs the officers. The City currently provides workers' compensation for officers who work for a third party entity on non-city property and are injured in the course of their law enforcement duties for the third party.

FLSA section 7(p)(1) (copy enclosed) provides that if a public employee engaged in law enforcement activities voluntarily

agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

- (A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,
- (B) facilitates the employment of such employees by a separate and independent employer, or
- (C) otherwise affects the condition of employment of such employees by a separate and independent employer.

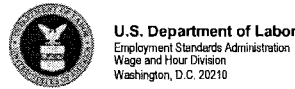
Under 29 C.F.R. § 553.227(e) (copy enclosed), "a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation." We assume for purposes of this inquiry that the officers are employed by the third party contractor solely at their option and are not coerced into such employment by the City.

The question then remains whether the City and the third party are separate and independent of each other. The Department's regulations provide a list of actions the City may take regarding the third party employment without affecting this determination, including maintaining a roster of officers who wish to perform the special duty, selecting the officers for such detail, negotiating the officer's pay, and retaining a fee for administrative duties. 29 C.F.R. § 553.227(d). These principles are exceptions to the usual rules on joint employment set forth in 29 C.F.R. Part 791. 29 C.F.R. § 553.227(f). See WH Opinion Letter August 27, 1990 (copy enclosed).

The City and the private third party contractor are separate legal entities. Furthermore, their dealings with each other involving the officers are within the type of activity specifically allowed by FLSA section 7(p)(1) and 29 C.F.R. § 553.227. Based on a review of the information provided, we believe that the City and the



# Appendix



third party contractor are separate and independent employers under § 7(p)(1). Therefore, the special detail employment of City police officers by the third party contractor need not be combined with the hours worked by the police officers for the City in determining entitlement to overtime compensation.

The fact that the City would provide the officers workers' compensation during third party employment does not alter this outcome. *See* WH Opinion Letter May 28, 1998 (copy enclosed). Here, the City is self-insured, and its decision to extend workers' compensation coverage to its off-duty officers does not undermine the separate status of the City and the private third party employer with regard to these services. Therefore, the City may provide workers' compensation for the officers while they are providing security for a third party without losing the section 7(p)(1) partial overtime exemption.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Acting Administrator

Enclosures:  
FLSA § 7(p)(1)  
29 C.F.R. § 553.227  
WH Opinion Letters August 27, 1990 and May 28, 1998

**Note: \* The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)**



## FICA and Volunteer Firefighters

Many local government entities rely on the services of individuals, such as firefighters and emergency workers, to perform services for little or no regular compensation. Workers who perform these services are subject to the same rules regarding social security and Medicare (FICA) coverage as other workers. If they receive some form of compensation, including expense allowances tax abatements, or noncash property, these withholding rules apply. It does not matter whether the workers are called "volunteers" or whether they are defined as employees by the entity's administrative policy. It is irrelevant whether they receive a regular salary.

## General Exception for State and Local Government Employees

Under Internal Revenue Code section 3121(a), all wages that are paid for "employment" are subject to FICA, unless an exception applies.

There is an exception from the definition of "employment" for state and local government workers under section 3121(b)(7). However, after July 1, 1991, this exception applies only if the state or local government employee is a member of a qualifying state retirement system. In addition, employees hired after March 31, 1986, are subject to the Medicare portion of the tax, regardless of coverage in a retirement plan.

A qualifying plan must meet certain requirements to provide a benefit approximately equivalent to that provided under social security. The requirements are discussed in detail in Regulation 31.3121(b). The remuneration received for services by volunteers, if it is subject to FICA, is taken into account in determining the employee's social security benefits. There are special rules for determining whether a part-time employee (including a "volunteer") is covered by a public retirement system. The accrued benefits under the plan must be 100 percent nonforfeitable to meet the test. See [Publication 963](#) for more information.

## Exception for Emergency Workers

There are special rules under section 3121(b) that except emergency workers from social security coverage. This exception applies only in when the workers are hired to respond, on a temporary basis, to an unforeseen, unusual situation to perform services related to that emergency (forest fire, flood, earthquake, flood, etc.). Firefighters or emergency workers who serve or are available on a continuing or regular basis do not meet this test.

## Reimbursements

If a volunteer receives only reimbursement or allowance for expenses, these payments will be excludable only if they meet the accountable plan rules, discussed in [Circular E](#). If the tests are not met, then the allowances are treated as wages, and subject to the withholding rules discussed above. If the only consideration a volunteer receives is expense reimbursement under an accountable plan, and the expenses are properly accounted for, there are no wages and therefore no withholding for income, social security or Medicare tax is required.





[www.iafc.org](http://www.iafc.org)

International Association of Fire Chiefs  
Volunteer and Combination Officers Section  
4025 Fair Ridge Drive, Suite 300  
Fairfax, VA 22033  
703/273-0911

Chapter 278. Taxation  
 Article IX. Business Incentive Program  
 Proposed Ordinance Revision by Economic Development Commission

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In the enclosed document, revisions to the ordinance are marked as follows:

- **Underline** – new wording added
- **Strikeout** – wording removed

*Table 1 - List of Proposed Revisions to Chapter 278, Article IX. Business Incentive Program*

<b>Section</b>	<b>Section Title</b>	<b>Proposed Revision</b>
§ 278-32	Purpose	Add comma in Section D
§ 278-33	Program implementation by Town	No change
§ 278-34	Duties of Economic Development Commission	Section A: Rename program the “ETAP” (East Hampton Tax Abatement Program). Added “construction”.
§ 278-35	General Requirements	Section B: Reword “scoring” to “evaluation”.
§ 278-36	Application procedure	Created Sections A, B, & C. Section A. Added “ETAP” (East Hampton Tax Abatement Program). Added annual EDC application form evaluation process. Section B. Added EDC process. Section C. Revise reference to new §278-45. Expanded process steps for clarification.
§ 278-37	Assessment of property subject to agreement	No change
§ 278-38	Application scoring guidelines	Reword “scoring” to “evaluation”. Added annual EDC evaluation criteria process.
§ 278-39	Evaluation criteria categories	Reword “scoring” to “evaluation”. Revised to include a list of application evaluation criteria.
§ 278-40	Tax incentive tiers and implementation	Rename section to “Tax abatement tiers and implementation”. Section A: Remove scoring points. Section B: Remove cap on tax abatement incentives. Section F: Remove construction commencement requirement. Section G: (New) Addition of Town Manager responsibilities for management of ETAP.
§ 278-41	Default by owner or lessee; recapture of abated taxes	No change
§ 278-42	Recapture terms	No change
§ 278-43	Assignment of agreement	No change
§ 278-44	Amendments to applicable statutes	No change
§ 278-44.1	Proposed agreement	Renamed to § 278-45 Add verbiage to refer to East Hampton Tax Abatement Program (“ETAP”). Revise Section 2 to remote construction commencement requirement. Remove Section 3.

## Chapter 278. Taxation

### Article IX. Business Incentive Program

#### § 278-32. Purpose.

The purpose of the Business Incentive Program is, in accord with the Town's Plan of Conservation and Development (POCD), to attract new businesses to the Town, promote the expansion of existing businesses (including home-based businesses relocating into commercial, industrial, and design development zones), and to encourage the rehabilitation and reuse of vacant commercial and industrial buildings. It is the intent of the Town:

- A. to assist in the creation of jobs for local residents;
- B. to create long-term tax base growth through the appropriate replacement, reconstruction, expansion or remodeling of existing business facilities;
- C. to encourage the construction of new commercial and industrial facilities in accord with the Future Land Use Plan found in the Town's POCD; and
- D. to encourage substantial investment in new machinery, equipment, and other personal property subject to taxation within the Town.

#### § 278-33. Program implementation by Town.

Subject to Connecticut General Statutes (CGS) Sec. 12-65b and Sec. 12-65h the Town of East Hampton (the Town) shall, by affirmative vote of its legislative body, enter into a written agreement with any party owning or proposing to acquire an interest in real property, or an interest in real property upon which is located or proposed to be located: Office use; retail use; manufacturing use; warehouse, storage or distribution use; structured multilevel parking use necessary in connection with a mass transit system; information technology; recreation facilities; transportation facilities; or mixed-use development as defined in subdivision (72) of CGS Sec. 12-81, fixing the assessment of the real property and all improvements to be constructed thereon which is the subject of the agreement in accordance with the provisions of §278-40 of this Ordinance.

#### § 278-34. Duties of the Economic Development Commission

- A. The East Hampton Economic Development Commission (EDC or "the Commission") shall provide any property owner or lessee with general information concerning the ~~Business Incentive Program~~ East Hampton Tax Abatement Program (the "Program" or "ETAP"), prepare and supply interested parties with an Application to participate in the Program and any other information that may be reasonably requested by an interested party. An "interested party" is one who owns or proposes to acquire an interest in real



## Article IX. Business Incentive Program

Proposed Ordinance Revision by Economic Development Commission

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property as defined in CGS Sec. 12-65b and who is considering **construction**, replacement, reconstruction, expansion, or remodeling of existing business facilities located or to be located in East Hampton.

- B. The EDC may perform research about any party applying to participate in the Program and may request of any such party any relevant information that in the opinion of the EDC bears upon consideration of the application. The EDC shall obtain from the Tax Assessor an evaluation of the impact of any proposed abatement of taxes on the applicable Grand List and an estimate of the impact on future Grand Lists.

## § 278-35. General Requirements

- A. Applications properly filed with the Town will be considered for the Program, provided:

- a. Applicant must possess a good environmental practices history and be able to demonstrate adequate financial strength to finance the proposed capital improvements and expansions to the real property and machinery and equipment purchases that would be the subject of the agreement.
  - b. The proposed use is located in an appropriate zone as defined by East Hampton's Zoning Regulations.
  - c. The proposed use receives approvals, licenses, and permits of the East Hampton Planning and Zoning Commission and of other East Hampton, State of Connecticut and federal agencies, boards, commissions, and officials having jurisdiction with respect to the project, as required.
  - d. No real estate property tax or other tax or fee or municipal charge due East Hampton by the Applicant, the businesses, or any other business organization or entity owned or controlled by the Applicant is unpaid at the time the Application is submitted or at any time thereafter.
  - e. If the Applicant is relocating its business to East Hampton, the applicant should provide a five-year history of tax assessments and payments to the municipality or municipalities and/or other political subdivisions in which its business was operated.
  - f. The project must have a clear economic benefit to East Hampton, as described by the Applicant on the application.
- B. Notwithstanding the results of any **scoring evaluation** under §278-39, if the project does not constitute a net benefit to the Town – economically, civically, or in quality of life – the Economic Development Commission may decline to refer the application to the Council for consideration.

## § 278-36. Application procedure.

### **A. Submission**

## Article IX. Business Incentive Program

## Proposed Ordinance Revision by Economic Development Commission

- a. All tax ~~incentive~~ abatement requests shall be made in writing on a form referred to as ~~Business Incentive Program~~ ETAP Application (“the Application”) published and provided by the EDC and approved by the Town Council (“Council”).
- b. The application and all accompanying documentation shall be submitted ~~in duplicate at~~ to the Office of the Clerk.
- c. Upon receipt by the Clerk, one copy of the Application and materials shall be provided to the EDC for preliminary review.
- d. ~~and~~ The Clerk should provide notice to the Council that an Application has been submitted. “Receipt by the Clerk” means signifies that an ETAP Application (including required signatures from listed public officials) and all accompanying documentation required in accordance with all applicable provisions of this Ordinance is has been submitted.

The ETAP application form shall be evaluated annually by the Economic Development Commission to ensure consistency with the POCD and this ordinance.

#### B. Application Evaluation by EDC

The EDC will evaluate all ETAP Application submissions according to the guidelines in this ordinance.

The EDC shall strive for expediency in processing and evaluating the ETAP Application submission. The EDC may request to meet with the Applicant or appropriate delegate. The Town Council may request an accelerated evaluation process of a specific ETAP Application if the situation warrants.

The EDC shall prepare an ETAP Application Evaluation in response to the ETAP Application submission. When completed, the EDC shall notify the Town Council that the ETAP Application Evaluation is ready to be brought before the Council for consideration. This shall occur only if the EDC has approved the application. The EDC is the authority for non-acceptance of a business into the ETAP.

~~The following timeframes for action are not mandatory, but the EDC and the Council should strive to meet them: From date of receipt by the Clerk of the Application the EDC shall have 45 days to review the Application, request additional information and meet with the Applicant and/or the Applicant’s representative. Provided the Applicant has submitted all of the information required in by the Application, by the Ordinance, and by the EDC, the EDC will within 30 days thereafter report its findings to the Council.~~

#### C. Application Evaluation by Town Council

The Council will place the ~~report~~ ETAP Application Evaluation on the agenda of the next ~~regularly scheduled~~ available Council meeting for discussion and action. The EDC will present the ETAP Application Evaluation at the scheduled Council meeting.

If the Council approves the EDC's recommendation for acceptance of a business into the ETAP, the Town Manager and the Applicant shall enter into a written agreement (consistent with the proposed agreement in ~~§278.44-1~~ §278.45).

### § 278-37. Assessment of property subject to agreement.

The East Hampton Assessor shall, in the Assessor's sole discretion, determine the assessment of the real property or the personal property and any and all improvements constructed or to be constructed on or in the real property which is the subject of the agreement.

### § 278-38. Application ~~scoring~~ evaluation guidelines.

The purpose of this ordinance is to encourage economic growth in the Town that is in accord with the POCD in effect at the time of the given application. The POCD reflects the strongest expression of the Town's intentions for its future development, character, and quality of life. Accordingly, there is room for flexibility in evaluation of an application ~~scoring~~ under criteria listed in §278-39 of this Ordinance.

Evaluation criteria defined in §278-39 shall be evaluated annually by the Economic Development Commission to ensure consistency with the POCD and this ordinance.

When ~~scoring~~ evaluating a new application for approval for the ETAP program, the members of the EDC should strive for consistency and transparency. Like applications should receive like treatment. It is appropriate – even essential – for the EDC to consult the scoring of previously granted applications when scoring a new application. Consistency between like applications must be balanced, however, with the goals of the POCD in effect at the time. Where no similar application has been submitted, care should be taken to score the new application relative to the goals of the POCD and relative to the merits of any previous application.

Only the EDC shall approve or deny an application for consideration by the Council. ~~and its~~ The decision of the EDC is not appealable. When approving or denying an application, the EDC should issue a written statement showing the ~~scoring~~ evaluation and explaining its reasoning. Projects recommended to the Council must evince a clear net benefit to the Town. It is recognized that evaluation of an application under this ordinance requires a blend of quantitative and qualitative reasoning; the Commission shall strive to make ~~that~~ its reasoning and methodology plain and clear.

### § 278-39. ~~Scoring~~ Evaluation criteria categories.

ETAP Application Evaluation criteria shall include, but not be limited to:

- Good Standing with the Town
- Location
- Use/Business Purpose
- Brownfield Revitalization

- Vacant Property
- Blighted Property
- Jobs Created
- Cost of Town Services
- Design Compliance
- Sustainability
- Investment Amount

§ 278-40. Tax abatement ~~incentive~~ tiers and implementation.

A. Depending upon the number of points an Application receives, it may be denied or, subject to a vote by the Council, provided with one of tiers of tax abatement as follows:

~~Points ————— Benefit  
 Fewer than 24 ————— Denied  
 25-44 points: ————— Third tier benefit: 70% of fixed assessment abated for two years, or 50% of fixed assessment abated for four years.  
 45-69 points: ————— Second tier benefit: 70% of fixed assessment abated for three years, or 50% of fixed assessment abated for five years.  
 More than 70 points: ————— Highest benefit: 100% of fixed assessment abated for years 1-3, 70% of fixed assessment abated for years 4-5, 50% of fixed assessment abated for year 6.~~

<b>Evaluation of Economic Benefit</b>	<b>Basic ETAP Benefit</b>
<u>Minimal Economic Benefit to the Town</u>	<u>No tax abatement benefit</u>
<u>Low Economic Benefit to the Town</u>	Year 1-2: 70% of fixed assessment abated; OR Year 1-5: 50% of fixed assessment abated
<u>Average Economic Benefit to the Town</u>	Year 1-3: 70% of fixed assessment abated; OR Year 1-5: 50% of fixed assessment abated

<u>High Economic Benefit to the Town</u>	Year 1-3: 100% of fixed assessment abated Year 4-5: 70% of fixed assessment abated Year 6: 50% of fixed assessment abated
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- B. The Town may abate real estate property taxes based on increased real property tax assessments up to but not more than the percentages shown above.
- C. The fixed assessment period shall commence the first fiscal year for which a tax list is prepared on the October 1 immediately following the issuance of a Certificate of Occupancy by the appropriate building official for construction of the buildings or manufacturing facilities or other structures and all improvements in or on the real property which is the subject of the agreement. Notwithstanding anything written in this Ordinance, the Town may, in its sole discretion, offer to enter into an agreement with the Applicant for the abatement of taxes of a lesser percentage and/or fewer years.
- D. On a case by case basis, the Town may provide other incentives in addition to the incentives provided by CGS Sec. 12-65b and Sec. 12-65h or in lieu thereof as follows: (1) waiver of building permit fees; (2) waiver of filing fees with land use agencies; or, (3) provision of in-kind services such as construction of access roads, or road widening, construction of storm drains and culverts, sidewalks, or curbing, extension of water and/or sewer lines or other public improvements.
- E. Machinery and equipment defined in subdivision (72) of CGS Sec. 12-81 and intended to qualify for tax relief pursuant to Sec. 12-65h shall have for federal income tax purposes a depreciable useful life of five or seven years.
- F. ~~Construction shall commence within six months of, and not prior to, approval by the Town and shall be completed no later than 24 months from the date of approval by the Town.~~ Company shall obtain a Certificate of Occupancy not later than twenty-four (24) months from the date of the signed ETAP Form of Agreement. The times for commencement and completion of the construction are mandatory except Applicant's performance relative to acquisition of the Certificate of Occupancy may be excused when the Applicant is prevented from performing by causes beyond the Applicant's control, including natural disasters or other calamities or a local, state or national declared state of emergency. Application must be made within one year of receiving building permits.
- G. The Town Manager shall provide annual written updates in January to the Council and the EDC on entities the Town has agreements with under the Business Incentive Program that are presently in effect or ended within the last year. The annual updates should include, but need not be limited to:



1. A recap of the number of years and percentage of fixed assessment abated that the Town and entity are under agreement for
2. When the fixed assessment abated started and when the tax abatement will, or did, cease under the agreement for the entity
3. Any additional incentives provided by the Town to an entity as listed under §278-40.
4. Any notable achievements, recognitions or contributions that constitute a net benefit to the Town – economically, civically, or in quality of life
5. If any benchmarks or requirements established by the agreement or under §278-35, §278-40, and §278-41 have failed to be met. If yes, the annual update will include what benchmarks or requirements were failed to be met. Also, what subsequent actions were taken by the Town regarding an applicant defaulting on the agreement or requirements of the ordinance

### § 278-41. Default by owner or lessee; recapture of abated taxes.

- A. Abatement of taxes under this ordinance constitutes a municipal subsidy to the successful applicant. In the event that the Applicant fails to meet negotiated benchmarks or other requirements as described herein, they shall, by the terms of the Agreement, be required to repay all abated amounts, consistent with CGS 12-146as of the date of default.
- B. In addition to the specific timing benchmarks noted in §278-40, the Town is encouraged to establish relevant benchmarks to be met by a successful Applicant related to the nature of the business or the project. At a minimum they must include the following triggers.
  - 1) In the event the owner or lessee of the real property:
    - a. At any time fails pay real estate and/or personal property taxes when due and payable;
    - b. Fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement;
    - c. Within 10 years of the date of the Agreement applicant becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee, in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days or makes an assignment for the benefit of creditors or if the property or lease is taken under and writ of execution or becomes the subject of foreclosure proceedings;
    - d. Abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in §278-42 of this Ordinance; or,
    - e. Fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of the agreement such event shall constitute a material default of the agreement and the Town may terminate the agreement on the giving of written notice whereupon:

## Article IX. Business Incentive Program

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- the right of the owner and/or lessee under the terms of the agreement shall cease and come to an end; and
  - the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.
- 2) In the event of failure to pay a tax when due and if such delinquency continues for six months and one day, the Town shall terminate the agreement whereupon (i) the right of the owner and/or lessee to receive the tax abatement and any other considerations granted under the terms of the agreement shall be terminated; and (ii) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

### § 278-42. Recapture terms.

It is of no benefit to East Hampton to drive an Applicant in default into further economic straits by virtue of an onerous repayment plan. Terms for the recapture of abated taxes as described in §278-42 should be calculated to ensure the recapture of the highest possible percentage of public funds, taking into account the fiscal reality of the Applicant, the circumstances of the default, and the state of the project.

### § 278-43. Assignment of agreement.

The agreement between the town and the Applicant shall not be assigned by the Applicant to any person(s) or business organization or entity or estate or trust without the express consent of both the Council and the EDC which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of real property or a transfer of ownership of the business or substantially all of the assets of the business which is the subject of the agreement to a person or business organization or entity that is not owned or controlled by the Applicant, shall not constitute a valid assignment of the agreement or vest any rights under the agreement in the grantee of the real property or transferee of the business or of the assets of the business or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee including but not limited to any remaining tax abatements under the terms of the agreement. A “controlled entity” means a business which is eighty or more percent owned by the grantor or transferor.

### § 278-44. Amendments to applicable statutes.



## Article IX. Business Incentive Program

## Proposed Ordinance Revision by Economic Development Commission

WHEREAS, in consideration of the above, the Town is willing to provide tax relief to Company pursuant to the East Hampton Business Incentive Program Ordinance as a Tier \_\_\_\_ tax abatement for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of the Certificate of Occupancy for the Facility (the “Abatement Term”); and

NOW, THEREFORE, in consideration of the foregoing, the parties hereby covenant and agree that:

1. Cost of Improvements: The costs for the improvements shall equal or exceed \$ \_\_\_\_\_ in construction costs. Company will install and properly account to the Town for all taxable personal property assets added to or installed in the Facility.

2. Certificate of Occupancy: Company ~~will commence construction within six (6) months, and not prior, to this Agreement and complete construction and~~ shall obtain a Certificate of Occupancy not later than twenty-four (24) months from the date of this Agreement. Company shall actively operate or cause said Facility to operate as \_\_\_\_\_ at the Real Property for not less than the Abatement Term from the date of the Certificate of Occupancy.

~~3. Employment: Company shall use its best efforts to employ or cause to be employed at least \_\_\_\_ full-time and \_\_\_\_ part-time employees at said Facility throughout the Abatement Term.~~

4. Reduction of Assessment: Commencing with the issuance of a Certificate of Occupancy, the Real Property tax assessment shall be established on the Grand List for the period following the issuance of the Certificate of Occupancy, and the Town shall grant to Company a \_\_\_\_% reduction in its Real Property assessment such that the net effect of the reduced assessment reduces the tax liability for the Real Property in the amount of \$ \_\_\_\_\_ over the \_\_\_\_\_ year period according to a schedule attached hereto as Exhibit A, including the above-described Improvements and the construction of the Facility (the “Abatement”).

5. Abatement Period: The Abatement Term shall be for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of a Certificate of Occupancy for the Facility; provided, however, that if such assessment is changed by any future Town revaluation, the tax payments due under the new assessed value of the Real Property shall be adjusted for the remainder of the Abatement Term in accordance with the terms of the Abatement set forth in Paragraph 4 above.

6. Tax Payment: Company shall maintain all tax obligations owed by it to the Town current and in good standing during the Abatement Term.

7. Certification of Value of Site Improvements: Company shall be required to provide proof via affidavit of an appropriate officer within one year after the commencement of operations at the Facility as to a) the actual value of the site improvements and that said improvements are substantially in conformance with the provisions hereof as to the scope of construction; b) the cost of construction (a minimum of \$ \_\_\_\_\_ .00) and c) the number and type (full-time or part-time) of employees employed at such Facility.



8. Ongoing Employment Obligations: Notwithstanding anything herein contained to the contrary, Company and the Town acknowledge and agree that, while Company shall make every good faith effort to maintain and employ at least \_\_\_\_ full-time and \_\_\_\_ part-time employees during the Operating Term, economic circumstances, financial considerations, and employee transience may make it impossible to maintain precisely the level of employment described herein. Accordingly, Company and the Town acknowledge that variations in the numbers of employees will occur and may continue for unspecified periods of time during the Operating Term of this Agreement. Company will, upon request, disclose to Town its employment statistics no more than once per year. Subject to the above requirement of good faith and Company's cooperation in disclosing all efforts made to comply with the employment parameters stated herein, such variations shall not otherwise constitute a default of this Agreement provided the Facility is operating in accordance with applicable law and Company is in compliance with the terms of this Agreement in all other respects.

9. Default: The following events shall constitute and event of default: Company at any time fails pay real estate and/or personal property taxes when due and payable, or; Company fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement, or; Company, within 10 years of the date of the Agreement, becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days, or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days, or; Company makes an assignment for the benefit of creditors, or; Company property or lease is taken under a writ of execution or becomes the subject of foreclosure proceedings, or; Company abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in this Ordinance, or; Company fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of this Agreement. In such event of default, the Town shall provide notice to the Company of such event of default, and the Company shall have thirty (30) days from such notice within which to cure such default. In the event Company fails to cure the default with thirty (30) days of such notice, then this Agreement shall be null and void and the Company shall reimburse the Town for all tax relief provided to Company, retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to the provisions of Conn. Gen. Stat. §12-146, or other applicable statute, plus all prior waived fees, if any, plus all actual costs to the Town in providing in-kind considerations to the Company, and the Town shall be under no obligation to grant further tax relief hereunder.

10. Legal Action to Enforce the Terms: In the event that the Town must resort to legal action to enforce the terms of this Agreement, any amount determined by a Court of competent jurisdiction to be due from Company shall be subject to interest at the rate of eighteen percent (18%) per annum. Such interest shall accrue from the postmark date for the notice of default described in Paragraph 9. In addition, the Town shall be entitled to recover from Company all costs of collection, including reasonable attorney's fees, incurred in enforcing this Agreement.

## Article IX. Business Incentive Program

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11. No Further Abatement: Company acknowledges and agrees that the Abatement offered pursuant to this Agreement is not binding upon the Town, and shall not continue, beyond the \_\_\_\_\_ year Abatement Term agreed to herein.

12. No Admission as to Values: Company and the Town acknowledge and agree that the values placed upon the Real Property, the Facility, and/or the Improvements as a result of the Abatement shall not now or at any other time be construed as an admission by any party or as evidence of any kind as to the true fair market value of the Real Property, the Facility, and/or the Improvements.

13. Notices: All notices hereunder are to be sent by the Town to Company at the following address or to such other address as requested by the Company or its successors or assigns: \_\_\_\_\_, East Hampton, CT 06424  
Attention: \_\_\_\_\_. All such notices shall be sent via certified mail, return receipt requested, or overnight mail service. Notices are deemed effective upon delivery. Any refusal to accept such delivery shall still constitute the delivery of proper notice.

14. Assignment: Company may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written authorization of the Town Council and Economic Development Commission which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of the Real Property or a transfer of ownership of the Company business or substantially all of the assets of the Company to a person or business organization or entity that is not a “controlled entity” which is owned or controlled by the Company, shall not constitute a valid assignment of the Agreement or vest any rights under the Agreement in the grantee of the Real Property or transferee of the Company or the assets of the Company or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee including but not limited to any remaining tax abatements under the terms of the Agreement. A “controlled entity” means a business which is eighty or more percent owned by the Company as grantor or transferor.

15. Release of Liability: Company and/or its successors or assigns releases the Town and its agents, servants and employees from any and all liability, of whatever nature, legal or equitable, which may have arisen or which may arise in connection with this Agreement, including the implementation hereof.

16. Indemnification: Company and/or its successors or assigns shall defend and indemnify the Town and any of its agents, servants and employees against any action, claim or suit of any nature whatsoever, arising from the Town’s being a party to this Agreement and/or any undertaking of its obligations hereunder.

17. Execution: This Agreement has been executed by the parties’ respective agents, duly authorized and acting in his or her official capacity.

18. Amendment: This Agreement may be amended only by mutual consent of the parties, and any amendments to this Agreement shall be in writing and shall be duly executed and dated by the respective parties.

19. Complete Agreement: This Agreement represents the entire and complete understanding and agreement of the parties, and any and all prior written or oral agreements not otherwise contained in this Agreement shall be and are hereby null and void and of no force or effect.

20. Choice of Law and Venue: In the event that litigation or other dispute resolution process arises, all litigation and dispute resolution shall take place in the State of Connecticut, Judicial District of Middlesex, and the Agreement shall be construed in accordance with Connecticut law, without regard to its conflict of law provisions.

21. Notice of Tax Abatement: Upon the execution of this Agreement, a copy of this Agreement or a proper "Notice of Tax Abatement Agreement" shall be filed upon the land records of the Town with respect to the Real Property.

22. Special Conditions: In addition to all other terms and conditions of this Agreement, the Town's obligations under this Agreement are conditioned on the following ("the Conditions"):

(a) Project Financing: Company demonstrates to the reasonable satisfaction of the East Hampton Finance Director that it has private financing and state and federal grants in place in an amount sufficient to undertake and complete the project;

(b) Property Maintenance: Company demonstrates that it has maintenance contracts in place to keep the property maintained during the period of construction;

(c) Non-Transferable: As set forth in Paragraph 14 herein, Company acknowledges and affirms that this tax abatement is non-transferable and any transfer of the tax abatement to a non-related entity shall be an event of default; and

(d) \_\_\_\_\_ [other specific terms]

In the event that the Company fails to satisfy the Conditions set forth in this Special Conditions paragraph, this Agreement shall be null and void and the Real Property as improved shall be assessed in accordance with the Connecticut General Statutes without regard to the terms and conditions of this Agreement.

SIGNATURES FOLLOW

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first written above.

Witnessed By:

Company:

\_\_\_\_\_ By: \_\_\_\_\_

Its CEO, Duly Authorized

\_\_\_\_\_  
Witnessed By:

Town of East Hampton:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its Town Manager, Duly Authorized

\_\_\_\_\_

Application for ETAP: East Hampton Tax Abatement Program

**East Hampton Business Tax Abatement Program (“ETAP”)**

Tax abatements based on real property assessments are granted to new and existing business investment in the Town of East Hampton, based upon alignment with the Town of East Hampton’s Plan of Conservation & Development. Consideration is given, but not limited to, Location; Use/Business Purpose; Brownfield Revitalization; Use of a Vacant or Blighted Property; Jobs Created; Cost of Town Services; Design Compliance; Sustainability; Amount Invested.

**ETAP Tax Abatement Application Process**

The East Hampton Economic Development Commission will process your application. The East Hampton Town Council holds final authority for approval of the tax abatement for your business.

1. Complete this application.
2. Submit the application to the East Hampton Town Clerk’s office. Your application will be given to the East Hampton Economic Development Commission (EDC).
3. The EDC will review your application and make a recommendation on tax abatement for your business to the East Hampton Town Council.
4. After the Town Council approves your application, an agreement to execute the tax abatement will be signed by the business owner (or delegate) and the Town Manager. This agreement must also be approved by the Town Council.

**Application**

1. Please provide the following information:

Name of Business	
Contact Name	
Contact Phone Number	
Contact Email Address	
Estimated Start & End Dates for Construction/Renovation	
Location of Business in East Hampton	

2. Please provide a short description of your business.



Application for ETAP: East Hampton Tax Abatement Program

3. ETAP Criteria. Please fill out the following table by checking the box next to each criterion that applies to your business.

Please check the box if it applies to your business:	Tax Incentive Criterion Category	Tax Incentive Criterion
	Good Standing	Are there any unpaid taxes, fees, or municipal charges owed to East Hampton by the applicant, the businesses, or any other business organization or entity owned or controlled by the applicant?
	Location	Your business is in a Commercial, Industrial, or Design Development Zone such as the TIF District
	Location	Village Center
	Location	Cobalt Center
	Use/Business Purpose	Your business provides additional adult recreation opportunities to the Town
	Use/Business Purpose	Healthcare & medical services
	Use/Business Purpose	Informational Technology services & retail
	Use/Business Purpose	Office use
	Use/Business Purpose	Mixed-use with less than 20% residential
	Use/Business Purpose	Greater than 50% Retail business
	Use/Business Purpose	Dining
	Use/Business Purpose	Industrial, manufacturing, storage, warehouse, or distribution business
	Use/Business Purpose	Greater than 50% Service business
	Use/Business Purpose	Increases Tourism to the Town
	Use/Business Purpose	Increases the Beautification of the Town
	Use/Business Purpose	Your business would attract additional businesses to the Town
	Use/Business Purpose	Your business would support growth for existing businesses in Town
	Use/Business Purpose	Your business provides services for Senior Citizens in Town
	Use/Business Purpose	Your business provides services for families in Town
	Use/Business Purpose	Your business provides services for youth in Town
	Use/Business Purpose	EDC Discretionary
	Brownfield Revitalization	Your business commits to remediate and use a Brownfield property
	Vacant Property	Your business commits to occupy a building that's been unoccupied for >12 months as of the date of the application
	Blighted Property	Your business commits to occupy a property designated by the Town as blighted
	Jobs Created	1-5 Full Time Equivalent positions
	Jobs Created	5-10 Full Time Equivalent positions
	Jobs Created	>10 Full Time Equivalent positions
	Cost of Town Services	The town will not accrue any additional cost of services as result of your business

Application for ETAP: East Hampton Tax Abatement Program

	Design Compliance	Design of the building or renovation complies with Town regulations
	Sustainability	Business supplies 20% of its own energy requirements
	Sustainability	Business will feed energy back into the grid
	Sustainability	Business meets LEED Gold Standard or equivalent
	Sustainability	Business requires public transportation node
	Sustainability	Business supplies a recharge station for electric vehicles
	Sustainability	Business installs or uses water-saving fixtures
	Sustainability	Business supports a healthy Lake Pocotopaug watershed per 9-point plan
	Sustainability	Business supports or contributes to the reduction of cost for a Town public water system
	Amount Invested	Minimum \$3M in construction/renovations
	Amount Invested	Minimum \$1M in construction/renovations
	Amount Invested	Min. \$800k in construction/renovations
	Amount Invested	Min. \$500k in construction/renovations
	Amount Invested	Min. \$250k in construction/renovations
	Amount Invested	Min. \$100k in construction/renovations

4. Is there anything the applicant would like to add to offer additional information to the East Hampton Economic Development Commission & Town Council? (Please feel free to include attachments; website references; marketing materials; financial viability information; etc.)

---

For Town Use Only:

The Town Manager and Planning & Zoning Official attest that the applicant fulfills the requirements & conditions for eligibility to be considered for participation in East Hampton's Tax Abatement Program (ETAP), provided by the East Hampton Town Council & Economic Development Commission.

X \_\_\_\_\_ Date: \_\_\_\_\_  
 East Hampton Town Manager

X \_\_\_\_\_ Date: \_\_\_\_\_  
 East Hampton Planning & Zoning Official

April 2023 Revision - Draft

This form is to be used to conduct basic application scoring for an application to the ETAP (East Hampton Tax Abatement Program), as defined in East Hampton Chapter 278 (Taxation), Article IX. Business Incentive Program.

Upon the discretion of the Economic Development Commission and/or the Town Council, additional or revised tax abatement incentives may be awarded to a new or existing business investing in the Town.

Scoring Points	Economic Benefit	Basic ETAP Benefit
24 points or less	Minimal Economic Benefit to the Town	No tax abatement benefit
25-44 points	Low Economic Benefit to the Town	Year 1-2: 70% of fixed assessment abated; OR Year 1-5: 50% of fixed assessment abated
45-69 points	Average Economic Benefit to the Town	Year 1-3: 70% of fixed assessment abated; OR Year 1-5: 50% of fixed assessment abated
70 points or more	High Economic Benefit to the Town	Year 1-3: 100% of fixed assessment abated Year 4-5: 70% of fixed assessment abated Year 6: 50% of fixed assessment abated

<b>Tax Incentive Criterion Category</b>	<b>Tax Incentive Criterion</b>	<b>Applicable Award Points</b>	<b>Awarded Points</b>	<b>Total:</b>
Good Standing	Are there any unpaid taxes, fees, or municipal charges owed to East Hampton by the applicant, the businesses, or any other business organization or entity owned or controlled by the applicant?	Min eligibility requirement		0
Location	Your business is in a Commercial, Industrial, or Design Development Zone such as the TIF District	Min eligibility requirement		
Location	Village Center	10		
Location	Cobalt Center	7		
Use/Business Purpose	Your business provides additional adult recreation opportunities to the Town	5		
Use/Business Purpose	Healthcare & medical services	3		
Use/Business Purpose	Informational Technology services & retail	3		
Use/Business Purpose	Office use	4		
Use/Business Purpose	Mixed-use with less than 20% residential	5		
Use/Business Purpose	Greater than 50% Retail business	5		
Use/Business Purpose	Dining	5		
Use/Business Purpose	Industrial, manufacturing, storage, warehouse, or distribution business	5		
Use/Business Purpose	Greater than 50% Service business	3		
Use/Business Purpose	Increases Tourism to the Town	5		
Use/Business Purpose	Increases the Beautification of the Town	3		
Use/Business Purpose	Your business would attract additional businesses to the Town	5		
Use/Business Purpose	Your business would support growth for existing businesses in Town	4		
Use/Business Purpose	Your business provides services for Senior Citizens in Town	2		
Use/Business Purpose	Your business provides services for families in Town	2		
Use/Business Purpose	EDC Discretionary (up to 5 points)	0		
Brownfield Revitalization	Your business commits to remediate and use a Brownfield property	10		
Vacant Property	Your business commits to occupy a building that's been unoccupied for >12 months as of the date of the application	5		
Blighted Property	Your business commits to occupy a property designated by the Town as blighted	5		
Jobs Created	1-5 Full Time Equivalent positions	5		
Jobs Created	5-10 Full Time Equivalent positions	7		
Jobs Created	>10 Full Time Equivalent positions	10		
Cost of Town Services	The town will not accrue any additional cost of services as result of your business	5		
Design Compliance	Design of the building or renovation complies with Town regulations	10		
Sustainability	Business supplies 20% of its own energy requirements	2		
Sustainability	Business will feed energy back into the grid	2		
Sustainability	Business meets LEED Gold Standard or equivalent	2		
Sustainability	Business requires public transportation node	2		
Sustainability	Business supplies a recharge station for electric vehicles	2		
Sustainability	Business installs or uses water-saving fixtures	2		
Sustainability	Business supports a healthy Lake Pocotopaug watershed per 9-point plan	5		
Sustainability	Business supports or contributes to the reduction of cost for a town public water system	7		
Amount Invested	Minimum \$3M in construction/renovations	15		
Amount Invested	Minimum \$1M in construction/renovations	14		
Amount Invested	Min. \$800k in construction/renovations	13		
Amount Invested	Min. \$500k in construction/renovations	12		
Amount Invested	Min. \$250k in construction/renovations	11		
Amount Invested	Min \$100k in construction/renovations	10		
Amount Invested	Min. \$50k in construction/renovations	9		
Amount Invested	Min. \$25k in construction/renovations	8		
Amount Invested	Min. \$10k in construction/renovations	7		



*Town of East Hampton, CT  
Friday, February 18, 2022*

## Chapter 278. Taxation

### Article IX. Business Incentive Program

[Adopted by the Town Council 10-8-2013; amended in its entirety 9-25-2018]

#### § 278-32. Purpose.

The purpose of the Business Incentive Program is, in accord with the Town's Plan of Conservation and Development (POCD), to attract new businesses to the Town, promote the expansion of existing businesses (including home-based businesses relocating into commercial, industrial, and design development zones), and to encourage the rehabilitation and reuse of vacant commercial and industrial buildings. It is the intent of the Town:

- A. To assist in the creation of jobs for local residents;
- B. To create long-term tax base growth through the appropriate replacement, reconstruction, expansion or remodeling of existing business facilities;
- C. To encourage the construction of new commercial and industrial facilities in accord with the Future Land Use Plan found in the Town's POCD; and
- D. To encourage substantial investment in new machinery, equipment and other personal property subject to taxation within the Town.

#### § 278-33. Program implementation by Town.

Subject to C.G.S. §§ 12-65b and 12-65h, the Town of East Hampton (the "Town") shall, by affirmative vote of its legislative body, enter into a written agreement with any party owning or proposing to acquire an interest in real property, or an interest in real property upon which is located or proposed to be located: an office use; retail use; manufacturing use; warehouse, storage or distribution use; structured multilevel parking use necessary in connection with a mass transit system; information technology; recreation facilities; transportation facilities; or mixed-use development, as defined in Subdivision (72) of C.G.S. § 12-81, fixing the assessment of the real property and all improvements to be constructed thereon, which is the subject of the agreement in accordance with the provisions of § **278-40** of this article.

#### § 278-34. Duties of Economic Development Commission.

- A. The East Hampton Economic Development Commission ("EDC" or the "Commission") shall provide any property owner or lessee with general information concerning the Business Incentive Program (the "program") and prepare and supply interested parties with an application to participate in the program and any other information that may be reasonably requested by an interested party. An "interested party" is one who owns or proposes to acquire an interest in real property as defined in C.G.S. § 12-65b and who is considering replacement, reconstruction, expansion, or remodeling of existing business facilities located or to be located in East Hampton.

- B. The EDC may perform research about any party applying to participate in the program and may request of any such party any relevant information that, in the opinion of the EDC, bears upon consideration of the application. The EDC shall obtain from the Tax Assessor an evaluation of the impact of any proposed abatement of taxes on the applicable Grand List and an estimate of the impact on future Grand Lists.

## § 278-35. General requirements.

- A. Applications properly filed with the Town will be considered for the program, provided:
- (1) The applicant must possess a good environmental practices history and be able to demonstrate adequate financial strength to finance the proposed capital improvements and expansions to the real property and machinery and equipment purchases that would be the subject of the agreement.
  - (2) The proposed use is located in an appropriate zone as defined by East Hampton's Zoning Regulations.
  - (3) The proposed use receives approvals, licenses, and permits of the East Hampton Planning and Zoning Commission and of other East Hampton, State of Connecticut and federal agencies, boards, commissions, and officials having jurisdiction with respect to the project, as required.
  - (4) No real estate property tax or other tax or fee or municipal charge due East Hampton by the applicant, the businesses, or any other business organization or entity owned or controlled by the applicant is unpaid at the time the application is submitted or at any time thereafter.
  - (5) If the applicant is relocating its business to East Hampton, the applicant should provide a five-year history of tax assessments and payments to the municipality or municipalities and/or other political subdivisions in which its business was operated.
  - (6) The project must have a clear economic benefit to East Hampton, as described by the applicant on the application.
- B. Notwithstanding the results of any scoring under § **278-39**, if the project does not constitute a net benefit to the Town - economically, civically, or in quality of life - the Economic Development Commission may decline to refer the application to the Council for consideration.

## § 278-36. Application procedure.

- A. All tax incentive requests shall be made in writing on a form referred to as the "Business Incentive Program Application" ("the application"), published and provided by the EDC and approved by the Town Council ("Council"). The application and all accompanying documentation shall be submitted in duplicate at the office of the Clerk. Upon receipt by the Clerk, one copy of the application and materials shall be provided to the EDC for preliminary review, and the Clerk should provide notice to the Council that an application has been submitted. "Receipt by the Clerk" means an application and all accompanying documentation required in accordance with all applicable provisions of this article is submitted.
- B. The following time frames for action are not mandatory, but the EDC and the Council should strive to meet them: From the date of receipt by the Clerk of the application, the EDC shall have 45 days to review the application, request additional information and meet with the applicant and/or the applicant's representative. Provided the applicant has submitted all of the information required in the application, by this article, and by the EDC, the EDC will, within 30 days thereafter, report its findings to the Council. The Council will place the report on the agenda of the next regularly scheduled Council meeting for discussion and action. If the Council approves the report, the Town

Manager and the applicant shall enter into a written agreement (consistent with the proposed agreement in § 278-44.1.)

## § 278-37. Assessment of property subject to agreement.

The East Hampton Assessor shall, in the Assessor's sole discretion, determine the assessment of the real property or the personal property and any and all improvements constructed or to be constructed on or in the real property which is the subject of the agreement.

## § 278-38. Application scoring guidelines.

- A. The purpose of this article is to encourage economic growth in the Town that is in accord with the POCD in effect at the time of the given application. The POCD reflects the strongest expression of the Town's intentions for its future development, character, and quality of life. Accordingly, there is room for flexibility in scoring under criteria listed in § 278-39 of this article.
- B. When scoring a new application, the members of the EDC should strive for consistency and transparency. Like applications should receive like treatment. It is appropriate - even essential - for the EDC to consult the scoring of previously granted applications when scoring a new application. Consistency between like applications must be balanced, however, with the goals of the POCD in effect at the time. Where no similar application has been submitted, care should be taken to score the new application relative to the goals of the POCD and relative to the merits of any previous application.
- C. Only the EDC shall approve or deny an application for consideration by the Council, and its decision is not appealable. When approving or denying an application, the EDC should issue a written statement showing the scoring and explaining its reasoning. Projects recommended to the Council must evince a clear net benefit to the Town. It is recognized that evaluation of an application under this article requires a blend of quantitative and qualitative reasoning; the Commission shall strive to make that reasoning plain.

## § 278-39. Scoring criteria categories.

- A. Location; corporation; TIF District.
  - (1) Location. Only projects within those areas zoned "Commercial," "Industrial," or "Design Development" according to the Zoning Map for the Town of East Hampton (see POCD) are eligible for consideration under this article. Points under this section may be awarded for properties located in the following priority areas:
    - (a) Village Center: Properties located in the Village Center District as defined by the Zoning Map for the Town of East Hampton are eligible for a maximum of 10 points.
    - (b) Cobalt Center: Properties located on Route 66 between its junction with Old Depot Hill Road and its junction with Old Middletown Road are eligible for a maximum of seven points.
  - (2) Corporation: any company, firm, business, or concern operating as a single legal entity.
  - (3) TIF District: as defined by the Town's Tax Increment Financing (TIF) District Plan.

### **Maximum points: 10**

- B. Use. In accord with the needs identified by the POCD and as appropriate to the site and location in Town, the following uses may qualify for points: transient housing (hotels/motels), rental housing, workforce housing, light industrial/light manufacturing, health care and medical services,

high-technology businesses, retail, and dining. Projects for these uses may be awarded five points. At the EDC's discretion, "high-needs" uses under these categories may be awarded up to 10 points.

**Maximum points: 10**

C. Brownfields.

- (1) East Hampton contains a number of sites designated as "brownfields" by the USEPA. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off green spaces and working lands — all of which are goals of East Hampton's POCD.
- (2) Any application that proposes to remediate and commit to reuse a brownfield as designated by the EPA or the State of Connecticut is eligible for 10 points.
- (3) Depending upon the project, financing and other factors, the Town may also seek to partner with the applicant for federal grant funding or supply other in-kind considerations.

**Maximum points: 10**

D. Use of a vacant property. The applicant may be awarded five points if proposing to occupy a building which has been unoccupied for a period greater than 12 months at the time the applicant signed a lease or closed on the property. If, in the opinion of the EDC, the property can be considered "blighted," 10 points may be awarded.

**Maximum points: 10**

E. Number of jobs created. Points may be awarded based upon the number of nonseasonal full-time-equivalent positions (FTEs) the business will generate:

<b>FTEs</b>	<b>Points</b>
1-5	5
5-10	7
More than 10	10

**Maximum points: 10**

F. Cost of services to the Town.

- (1) A project or use proposed by an applicant may require the Town to assume an extraordinary cost beyond normal maintenance and upkeep. For example: a chemical manufacturer may require the Town to retrain and potentially re-equip its fire protection services. If the Commission determines such is the case, no points may be awarded under this category.
- (2) If no such cost exists, five points may be awarded.
- (3) The Commission may ask the applicant to pay for a fiscal impact analysis, to be conducted by a consultant approved by the Commission.
- (4) The applicant may be given the opportunity to show that the Commission's determination of the cost to the Town is in error; however, the Commission makes the final determination.

**Maximum points: 5**

G. Design of the building or renovation. The Commission may award 10 points when the applicant can show that the design of the structure is in compliance with current Town Building Design

Guidelines for its zone.

**Maximum points: 10**

H. Sustainable building.

(1) The Commission may award two points for each of the following and up to 10 points total:

- (a) If the investment will result in the business generating at least 20% of its own energy requirements.
- (b) If the investment will result in the business feeding energy back into the grid.
- (c) If the project meets at minimum LEED Gold standard or equivalent. (As of this writing, LEED is the dominant evaluation system in the United States market and the one favored for use by the GSA.)
- (d) If the project requires a public transportation node such as a bus stop.
- (e) If the project supplies a recharge station for electric vehicles.
- (f) Water-saving fixtures throughout.

(2) "Sustainability" characteristics and measures are constantly evolving, and the Commission may update this list periodically as it sees fit.

**Maximum points: 10**

I. Amount invested.

<b>Points</b>	<b>Investment</b>
15	\$3M or larger investment in construction or renovations
14	\$1M or larger investment in construction or renovations
13	\$800k or larger investment in construction or renovations
12	\$500k or larger investment in construction or renovations
11	A business new to that parcel investing over \$300k or a business existing on that parcel investing at least \$250k in construction or renovations
10	A business new to that parcel investing over \$200k or a business existing on that parcel investing at least \$100,000 in construction or renovations

**Maximum points: 15**

**Total Available Points: 90**

## § 278-40. Tax incentive tiers and implementation.

A. Depending upon the number of points an application receives, it may be denied or, subject to a vote by the Council, provided with one of tiers of tax abatement as follows:

<b>Points</b>	<b>Benefit</b>
Fewer than 24	Denied
25-44	Third-tier benefit: 70% of fixed assessment abated for 2 years, or 50% of fixed assessment abated for 4 years



- | <b>Points</b> | <b>Benefit</b>  |
|---------------|---|
| 45-69         | Second tier benefit: 70% of fixed assessment abated for 3 years, or 50% of fixed assessment abated for 5 years  |
| More than 70  | Highest benefit: 100% of fixed assessment abated for Years 1-3, 70% of fixed assessment abated for Years 4-5, 50% of fixed assessment abated for Year 6 |
- B. The Town may abate real estate property taxes based on increased real property tax assessments up to but not more than the percentages shown above.
- C. The fixed assessment period shall commence the first fiscal year for which a tax list is prepared on the October 1 immediately following the issuance of a certificate of occupancy by the appropriate building official for construction of the buildings or manufacturing facilities or other structures and all improvements in or on the real property which is the subject of the agreement. Notwithstanding anything written in this article, the Town may, in its sole discretion, offer to enter into an agreement with the applicant for the abatement of taxes of a lesser percentage and/or fewer years.
- D. On a case-by-case basis, the Town may provide other incentives in addition to the incentives provided by C.G.S. §§ 12-65b and 12-65h or in lieu thereof as follows:
- (1) Waiver of building permit fees;
  - (2) Waiver of filing fees with land use agencies; or
  - (3) Provision of in-kind services such as construction of access roads, or road widening, construction of storm drains and culverts, sidewalks, or curbing, extension of water and/or sewer lines or other public improvements.
- E. Machinery and equipment defined in Subdivision (72) of C.G.S. § 12-81 and intended to qualify for tax relief pursuant to C.G.S. § 12-65h shall have, for federal income tax purposes, a depreciable useful life of five or seven years.
- F. Construction shall commence within six months of, and not prior to, approval by the Town and shall be completed no later than 24 months from the date of approval by the Town. The times for commencement and completion of the construction are mandatory, except the applicant's performance may be excused when the applicant is prevented from performing by causes beyond the applicant's control, including natural disasters or other calamities or a local, state or national declared state of emergency.

## § 278-41. Default by owner or lessee; recapture of abated taxes.

- A. Abatement of taxes under this article constitutes a municipal subsidy to the successful applicant. In the event that the applicant fails to meet negotiated benchmarks or other requirements as described herein, they shall, by the terms of the agreement, be required to repay all abated amounts, consistent with C.G.S. § 12-146 as of the date of default.
- B. In addition to the specific timing benchmarks noted in § **278-40**, the Town is encouraged to establish relevant benchmarks to be met by a successful applicant related to the nature of the business or the project. At a minimum, they must include the following triggers:
- (1) In the event the owner or lessee of the real property: (a) at any time fails to pay real estate and/or personal property taxes when due and payable; (b) fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement; (c) within 10 years of the date of the agreement, the applicant becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee, in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days or makes an assignment for the benefit of creditors or if the

property or lease is taken under a writ of execution or becomes the subject of foreclosure proceedings; (d) abandons at any time the real property or, in the case of the lessee, purports to assign its lease without the express consent of the Town as set forth in § 278-42 of this article; or (e) fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of the agreement; such event shall constitute a material default of the agreement, and the Town may terminate the agreement on the giving of written notice whereupon:

- (a) The right of the owner and/or lessee under the terms of the agreement shall cease and come to an end; and
  - (b) The property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to the provisions of C.G.S. § 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.
- (2) In the event of failure to pay a tax when due and if such delinquency continues for six months and one day, the Town shall terminate the agreement whereupon (i) the right of the owner and/or lessee to receive the tax abatement and any other considerations granted under the terms of the agreement shall be terminated; and (ii) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of C.G.S. § 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

## § 278-42. Recapture terms.

It is of no benefit to East Hampton to drive an applicant in default into further economic straits by virtue of an onerous repayment plan. Terms for the recapture of abated taxes as described in § 178-41 should be calculated to ensure the recapture of the highest possible percentage of public funds, taking into account the fiscal reality of the applicant, the circumstances of the default, and the state of the project.

## § 278-43. Assignment of agreement.

The agreement between the Town and the applicant shall not be assigned by the applicant to any person(s) or business organization or entity or estate or trust without the express consent of both the Council and the EDC, which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of real property or a transfer of ownership of the business or substantially all of the assets of the business which is the subject of the agreement to a person or business organization or entity that is not owned or controlled by the applicant shall not constitute a valid assignment of the agreement or vest any rights under the agreement in the grantee of the real property or transferee of the business or of the assets of the business or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee, including, but not limited to, any remaining tax abatements under the terms of the agreement. A "controlled entity" means a business which is 80% or more owned by the grantor or transferor.

## § 278-44. Amendments to applicable statutes.

All references in this article to C.G.S. § 12-65b or 12-65h or 12-81 or any other section of C.G.S. made herein shall include all amendments to such statutes enacted and signed into law subsequent to the effective date of this article.

## § 278-44.1. Proposed agreement.

FORM OF AGREEMENT  
TOWN OF EAST HAMPTON  
AGREEMENT REGARDING REAL  
PROPERTY TAX ASSESSMENT

\_\_\_\_\_  
EAST HAMPTON, CONNECTICUT

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_ by and between the TOWN OF EAST HAMPTON, a municipal corporation and body politic having its corporate limits located within the County of Middlesex and State of Connecticut (hereinafter the "Town"), and \_\_\_\_\_ of East Hampton, Connecticut ("Company"), a Connecticut corporation with a principal place of business at \_\_\_\_\_, East Hampton, Connecticut.

WITNESSETH:

WHEREAS, Company is responsible to pay all real property taxes associated with the real property known as \_\_\_\_\_ East Hampton, Connecticut ("the Real Property"); and

WHEREAS, Company intends to make improvements to the land and structures on the Real Property, including the construction of approximately \_\_\_\_\_ square feet of commercial office building and associated site improvements located on the Real Property (the "Facility"); and

WHEREAS, the estimated costs to be invested by Company in making the above-described improvements to and constructing the Facility on the Real Property will be a minimum of \$ \_\_\_\_\_; and

WHEREAS, the Town, acting by and through its duly authorized Tax Assessor, will assess and value the Real Property and personal property on the Grand List of October 1, 2018.

WHEREAS, the Town wishes to assist Company in its plans to add real property and personal property value to the Town's tax base; and

WHEREAS, the Town wishes to assist Company to develop its \_\_\_\_\_ plans to be submitted and approved to the Planning and Zoning Commission; and

WHEREAS, in consideration of the above, the Town is willing to provide tax relief to Company pursuant to the East Hampton Business Incentive Program Ordinance as a Tier \_\_\_ tax abatement for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of the Certificate of Occupancy for the Facility (the "Abatement Term"); and

NOW, THEREFORE, in consideration of the foregoing, the parties hereby covenant and agree that:

1. **Cost of Improvements:** The costs for the improvements shall equal or exceed \$ \_\_\_\_\_ in construction costs. Company will install and properly account to the Town for all taxable personal property assets added to or installed in the Facility.
2. **Certificate of Occupancy:** Company will commence construction within six months, and not prior, to this Agreement and complete construction and obtain a Certificate of Occupancy not later than 24 months from the date of this Agreement. Company shall actively operate or cause said Facility to operate as \_\_\_\_\_ at the Real Property for not less than the Abatement Term from the date of the Certificate of Occupancy.
3. **Employment:** Company shall use its best efforts to employ or cause to be employed at least \_\_\_ full-time and \_\_\_ part-time employees at said Facility throughout the Abatement Term.
4. **Reduction of Assessment:** Commencing with the issuance of a Certificate of Occupancy, the Real Property tax assessment shall be established on the Grand List for the period following the issuance of the Certificate of Occupancy, and the Town shall grant to Company a \_\_\_% reduction in its Real Property assessment such that the net effect of the reduced assessment reduces the tax liability for the Real Property in the amount of \$ \_\_\_\_\_ over the \_\_\_\_\_ year

- period according to a schedule attached hereto as Exhibit A, including the above-described Improvements and the construction of the Facility (the "Abatement").
5. **Abatement Period:** The Abatement Term shall be for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of a Certificate of Occupancy for the Facility; provided, however, that if such assessment is changed by any future Town revaluation, the tax payments due under the new assessed value of the Real Property shall be adjusted for the remainder of the Abatement Term in accordance with the terms of the Abatement set forth in Paragraph 4 above.
  6. **Tax Payment:** Company shall maintain all tax obligations owed by it to the Town current and in good standing during the Abatement Term.
  7. **Certification of Value of Site Improvements:** Company shall be required to provide proof via affidavit of an appropriate officer within one year after the commencement of operations at the Facility as to a) the actual value of the site improvements and that said improvements are substantially in conformance with the provisions hereof as to the scope of construction; b) the cost of construction (a minimum of \$\_\_\_\_\_.00); and c) the number and type (full-time or part-time) of employees employed at such Facility.
  8. **Ongoing Employment Obligations:** Notwithstanding anything herein contained to the contrary, Company and the Town acknowledge and agree that, while Company shall make every good-faith effort to maintain and employ at least \_\_\_\_\_ full-time and \_\_\_\_\_ part-time employees during the Operating Term, economic circumstances, financial considerations, and employee transience may make it impossible to maintain precisely the level of employment described herein. Accordingly, Company and the Town acknowledge that variations in the numbers of employees will occur and may continue for unspecified periods of time during the Operating Term of this Agreement. Company will, upon request, disclose to Town its employment statistics no more than once per year. Subject to the above requirement of good faith and Company's cooperation in disclosing all efforts made to comply with the employment parameters stated herein, such variations shall not otherwise constitute a default of this Agreement, provided the Facility is operating in accordance with applicable law and Company is in compliance with the terms of this Agreement in all other respects.
  9. **Default:** The following events shall constitute an event of default: Company at any time fails pay real estate and/or personal property taxes when due and payable; or Company fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement; or Company, within 10 years of the date of the Agreement, becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days, or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days; or Company makes an assignment for the benefit of creditors; or Company property or lease is taken under a writ of execution or becomes the subject of foreclosure proceedings; or Company abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in this Ordinance; or Company fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of this Agreement. In such event of default, the Town shall provide notice to the Company of such event of default, and the Company shall have 30 days from such notice within which to cure such default. In the event Company fails to cure the default with 30 days of such notice, then this Agreement shall be null and void, and the Company shall reimburse the Town for all tax relief provided to Company, retroactive to the due date of the first abated tax payment, plus interest at the rate set and payable pursuant to the provisions of Conn. Gen. Stat. § 12-146, or other applicable statute, plus all prior waived fees, if any, plus all actual costs to the Town in providing in-kind considerations to the Company, and the Town shall be under no obligation to grant further tax relief hereunder.
  10. **Legal Action to Enforce the Terms:** In the event that the Town must resort to legal action to enforce the terms of this Agreement, any amount determined by a Court of competent jurisdiction to be due from Company shall be subject to interest at the rate of 18% per annum. Such interest shall accrue from the postmark date for the notice of default described in

Paragraph 9. In addition, the Town shall be entitled to recover from Company all costs of collection, including reasonable attorneys' fees, incurred in enforcing this Agreement.

11. No Further Abatement: Company acknowledges and agrees that the Abatement offered pursuant to this Agreement is not binding upon the Town and shall not continue, beyond the \_\_\_\_\_ year Abatement Term agreed to herein.
12. No Admission as to Values: Company and the Town acknowledge and agree that the values placed upon the Real Property, the Facility, and/or the Improvements as a result of the Abatement shall not now or at any other time be construed as an admission by any party or as evidence of any kind as to the true fair market value of the Real Property, the Facility, and/or the Improvements.
13. Notices: All notices hereunder are to be sent by the Town to Company at the following address or to such other address as requested by the Company or its successors or assigns: \_\_\_\_\_, East Hampton, CT 06424 Attention: \_\_\_\_\_. All such notices shall be sent via certified mail, return receipt requested, or overnight mail service. Notices are deemed effective upon delivery. Any refusal to accept such delivery shall still constitute the delivery of proper notice.
14. Assignment: Company may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written authorization of the Town Council and Economic Development Commission, which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of the Real Property or a transfer of ownership of the Company business or substantially all of the assets of the Company to a person or business organization or entity that is not a "controlled entity" which is owned or controlled by the Company shall not constitute a valid assignment of the Agreement or vest any rights under the Agreement in the grantee of the Real Property or transferee of the Company or the assets of the Company or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee, including, but not limited to, any remaining tax abatements under the terms of the Agreement. A "controlled entity" means a business which is 80% or more owned by the Company as grantor or transferor.
15. Release of Liability: Company and/or its successors or assigns releases the Town and its agents, servants and employees from any and all liability, of whatever nature, legal or equitable, which may have arisen or which may arise in connection with this Agreement, including the implementation hereof.
16. Indemnification: Company and/or its successors or assigns shall defend and indemnify the Town and any of its agents, servants and employees against any action, claim or suit of any nature whatsoever, arising from the Town's being a party to this Agreement and/or any undertaking of its obligations hereunder.
17. Execution: This Agreement has been executed by the parties' respective agents, duly authorized and acting in his or her official capacity.
18. Amendment: This Agreement may be amended only by mutual consent of the parties, and any amendments to this Agreement shall be in writing and shall be duly executed and dated by the respective parties.
19. Complete Agreement: This Agreement represents the entire and complete understanding and agreement of the parties, and any and all prior written or oral agreements not otherwise contained in this Agreement shall be and are hereby null and void and of no force or effect.
20. Choice of Law and Venue: In the event that litigation or other dispute resolution process arises, all litigation and dispute resolution shall take place in the State of Connecticut, Judicial District of Middlesex, and the Agreement shall be construed in accordance with Connecticut law, without regard to its conflict of law provisions.
21. Notice of Tax Abatement: Upon the execution of this Agreement, a copy of this Agreement or a proper "Notice of Tax Abatement Agreement" shall be filed upon the land records of the Town with respect to the Real Property.
22. Special Conditions: In addition to all other terms and conditions of this Agreement, the Town's obligations under this Agreement are conditioned on the following ("the Conditions"):



- (a) Project Financing: Company demonstrates to the reasonable satisfaction of the East Hampton Finance Director that it has private financing and state and federal grants in place in an amount sufficient to undertake and complete the project;
- (b) Property Maintenance: Company demonstrates that it has maintenance contracts in place to keep the property maintained during the period of construction;
- (c) Non-Transferable: As set forth in Paragraph 14 herein, Company acknowledges and affirms that this tax abatement is non-transferable and any transfer of the tax abatement to a non-related entity shall be an event of default; and
- (d) \_\_\_\_\_ [other specific terms]

In the event that the Company fails to satisfy the Conditions set forth in this Special Conditions paragraph, this Agreement shall be null and void and the Real Property as improved shall be assessed in accordance with the Connecticut General Statutes without regard to the terms and conditions of this Agreement.

**SIGNATURES FOLLOW**

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first written above.

Witnessed By:

\_\_\_\_\_

\_\_\_\_\_

Witnessed By:

\_\_\_\_\_

\_\_\_\_\_

COMPANY:

By: \_\_\_\_\_  
Its CEO, Duly Authorized

TOWN:

By: \_\_\_\_\_  
Its Town Manager, Duly Authorized



# ETAP: EAST HAMPTON TAX ABATEMENT PROGRAM

EAST HAMPTON ECONOMIC DEVELOPMENT COMMISSION

TOWN COUNCIL BRIEFING, 6/27/2023



# EAST HAMPTON TAX ORDINANCE: BUSINESS INCENTIVE

## GOALS: CLARIFY, SIMPLIFY, EXPAND OPPORTUNITY

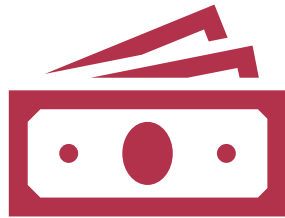
### Town Council Directive

- Make East Hampton competitive
- Allow businesses to start investing in East Hampton before application is submitted
- Expand opportunities to drive business investment in East Hampton
- Simplify application

### EDC Response

- Benchmark tax incentive & abatement programs in the local area and in CT towns similar in size to East Hampton
- Maximize benefit to East Hampton's economic development
- Increase EDC responsiveness to business climate
- Drive clarity & transparency

# REBRAND AS ETAP: EAST HAMPTON TAX ABATEMENT PROGRAM



Tax abatement starting at minimum  
\$100k investment level



Application within one year of receiving  
building permits



Company shall obtain Certificate of  
Occupancy not later than 24 months  
after tax abatement agreement is signed

# MAXIMIZE BENEFIT TO EAST HAMPTON: EXPAND ABATEMENT CRITERIA

Cobalt Center

Mixed-use with less  
than 20% residential

Greater than 50%  
service business

Provides services for  
senior citizens, families,  
youth

Provides adult  
recreation  
opportunities

Provides growth for  
existing businesses in  
East Hampton

Supports a healthy  
Lake Pocotopaug  
watershed

Supports or  
contributes to  
reduction of cost for a  
Town public water  
system

3. ETAP Criteria. Please fill out the following table by checking the box next to each criterion that applies to your business.

Please check the box if it applies to your business:	Tax Incentive Criterion Category	Tax Incentive Criterion
	Good Standing	Are there any unpaid taxes, fees, or municipal charges owed to East Hampton by the applicant, the businesses, or any other business organization or entity owned or controlled by the applicant?
	Location	Your business is in a Commercial, Industrial, or Design Development Zone such as the TIF District
	Location	Village Center
	Location	Cobalt Center
	Use/Business Purpose	Your business provides additional adult recreation opportunities to the Town
	Use/Business Purpose	Healthcare & medical services
	Use/Business Purpose	Informational Technology services & retail
	Use/Business Purpose	Office use

# ETAP APPLICATION

APPLICATION TRANSFORMED INTO A  
QUICK & EASY CHECKLIST



## SIMPLIFY ORDINANCE: REMOVE SCORING & CRITERIA



Increases EDC  
responsiveness to a shifting  
business climate



Annual evaluation of  
application & scoring  
criteria



Drives transparency to the  
applicant & Town Council



Clarifies criteria for  
businesses via simplified  
application

# ETAP: EAST HAMPTON TAX ABATEMENT PROGRAM

## SUMMARY: CLARIFY, SIMPLIFY, EXPAND OPPORTUNITY

### Town Council Directive

- Make East Hampton competitive
- Allow businesses to start investing in East Hampton before application is submitted
- Expand opportunities to drive business investment in East Hampton
- Simplify application

### EDC Response

- Allow businesses to invest in East Hampton first by moving to an abatement program
- Expanded criteria for abatement opportunity
- Simplified application

# East Hampton Memorials

P.O. Box 90 • 112 Main St.  
East Hampton, CT 06424  
(860) 267-2226

Date June 14, 2023 No. \_\_\_\_\_  
In agreement with Town of East Hampton  
Street 1 Community Dr.  
City East Hampton State CT 06424

Please enter my order for a memorial, with lettering as specified herein, for which I agree to pay you the sum of \$5,423.85 ~~\$5,100~~ Dollars in the manner specified hereinafter, to be erected in Lot No. \_\_\_\_\_ in Bevin Park ~~Cemetery~~ East Hampton, CT (city & state) subject to the Rules and Regulations of said Cemetery. Material, design, dimensions, finish and lettering of the memorial are to be substantially as follows:

Material:
China Grey
Design No.
Park Bench
Location in Lot

Park Bench: 4-0 x 1-2 x 0-2; China Grey Back: 4-0 x 0-2 x 1-2;  
Bench Legs: 1-8 x 0-2 x 2-6: all polished

Bench Complete with shipping	\$4,000.00
Engraving as per Drawing	\$ 600.00
Setting on existing pad	\$ 500.00
	<u>\$5,100.00</u>
CT Sales Tax	<u>-\$ 323.85</u>

Total Due \$5,423.85

The said memorial is guaranteed by you against any defect in workmanship. The said memorial, which title thereto and right of possession thereof, shall remain your personal property until I have paid for it in full. In default of any payment hereunder I license you to repossess and remove the said memorial without guilt of trespass or other wrong, and authorize and empower you, in my name and on my behalf, to apply to the management of said Cemetery or other premises for a permit for its removal and to take any other steps you may deem necessary or expedient and further agree to save you harmless from and under any entry, repossession and removal; you may then retain said memorial or dispose of it at your own discretion without being answerable to me for it or for any proceeds therefrom.

### Agreement of Payments:

\$ <u>5,100</u> <del>5,423.85</del>	cash herewith;
\$ _____	when the memorial is ready for lettering; and the remainder
\$ _____	in or within ten days after erection of said memorial

After \_\_\_\_\_ a FINANCE CHARGE of \_\_\_\_\_% monthly (ANNUAL PERCENTAGE RATE of \_\_\_\_\_%) will be added to the unpaid portion of the Balance Due, which is the AMOUNT FINANCED. I agree to pay and/or guarantee payment of the charges listed on this Statement, plus any applicable finance charges. In the event of default payment, I agree to pay reasonable attorney's fees and court costs. I agree that the liability is being personally assumed by me and is in addition to the liability imposed by law upon the estate, and this agreement does not constitute a release of liability. By my signature below, acknowledgement and agreement of the above is hereby made:

X \_\_\_\_\_  
Signed \_\_\_\_\_ Dated \_\_\_\_\_  
X \_\_\_\_\_  
Signed \_\_\_\_\_ Dated \_\_\_\_\_

This order is not subject to cancellation after acceptance.

ACCEPTED: Date 06/14/2023  
by: [Signature] Pres. \_\_\_\_\_  
Title \_\_\_\_\_

**East Hampton  
Middle School Roof Building Committee  
East Hampton, CT 06424**

**MINUTES: June 16, 2023**

**Voting Members Present:**

Kevin Reich, Committee Chair, East Hampton Town Council Member  
Nancy Kohler, Board of Education Member

**Other Committee Members Present:**

Paul Smith, Superintendent  
Steve Fontanella, Director of Facilities and Roof Project Manager  
Shelly Cibula, Recording Secretary

**Call to Order**

The meeting was called to order by Chair, Mr. Reich at 11:13 a.m. in the East Hampton Town Hall Conference Room #102 and via Zoom.

**Approval of Minutes**

A motion was made by Ms. Kohler, seconded by Mr. Reich to approve the minutes of the April 4, 2023 Meeting. Voted Unanimously.

**Project Bid Approval**

A summary of three bids that were received were reviewed. Contractor bid details were evaluated for relevant experience, availability of materials and the pros-and-cons of an extended warrantee. The substantial project completion by the start of the 2023-24 school-year was determined as mandatory.

A motion by Ms. Kohler, seconded by Mr. Reich to accept the lowest bid from Armani Restoration, Inc. of a base bid of \$1,708,000 and a possible additional work allowance of \$90,500, for a maximum project cost of \$1,798,500. This approved bid amount is for the 60-mil black EPDM with a 20-year warrantee.  
Voted Unanimously.

**Future Meeting**

The committee plans to meet at the end of July and August and as needed. TBD

**Adjournment**

A motion to adjourn was made by Ms. Kohler, seconded by Mr. Reich. The meeting was adjourned at 11:33 a.m.

Respectfully Submitted,

Shelly Cibula, Recording Secretary

Company Name	Base	allow 1 Metal Deck	allow 2 Wood block	allow 3 wood block	allow 4 Caulk removal	allow 5 Masonry	allow 6 Alum Fascia	<b>total allow</b>
Barrett	\$2,111,900.00	\$376,000.00	\$3,000.00	\$40,000.00	\$60,000.00	\$75,000.00	\$75,000.00	\$629,000.00
Armani	\$1,708,000.00	\$36,000.00	\$1,000.00	\$32,000.00	<i>\$40.00 LF</i>	\$1,500.00	\$20,000.00	\$90,500.00
OffShore	\$1,762,000.00	\$30,520.00		\$18,700.00		\$1,400.00	\$40,500.00	\$91,120.00

plus caulk removal

plus caulk removal

**BID FORM**

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(To be submitted in duplicate)

BIDDER: Barrett Inc.  
Name

106 Mill Plain Rd, Danbury, CT 06811  
Address

To: *Name*  
*Title*  
*Address*  
*Address*

Project: Town of East Hampton  
East Hampton Middle School  
East Hampton Middle School Roof Replacement  
19 Childs Road  
East Hampton, CT 06424

In preparing this bid, we have carefully examined the Bidding Documents for this Project. We have visited the site and noted the conditions affecting the Work.

The Bidding Documents referred to include Drawings and Project Manual dated (3.28.2023) for the above referenced project, prepared by Don Hammerberg Associates, Farmington, CT.

We propose to perform the work described in the Bidding Documents, in keeping with definitions of Article 1 of the Instructions to Bidders, for the Base Bid Sum as follows:

**Base Bid (Total Cost for East Hampton Middle School Roof Replacement):**

East Hampton Middle School Roof Replacement for a Total Cost of:

\$ Two Million Seven Hundred Forty-Eight Thousand Dollars (\$ 2,748,000 .00).  
written figure

We will commence work on the project 15 calendar days after receipt of "Notice to Proceed" or signing of Contract (whichever is earlier). We will be able to substantially complete the project within 450 calendar days thereafter (see SIB-1. 1.1.B) but no later than September 2024



**BID FORM**

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**Allowances: (See Section 012100)**

Allowance No. 1: Metal Deck Repair/Replacement	\$ <u>376,000.00</u>
Allowance No. 2: Pressure/Fire Treated Wood Blocking	\$ <u>3,000.00</u>
Allowance No. 3: Pressure/Fire Treated Wood Blocking	\$ <u>40,000.00</u>
Allowance No. 4: Caulk Removal	\$ <u>60,000.00</u>
Allowance No. 5: Chimney Brick Masonry Repointing and Hazmat Abatement	\$ <u>75,000.00</u>
Allowance No. 6: Aluminum Wrap of Wood Fascia	\$ <u>75,000.00</u>

**Unit Prices:**

As required by the Base Bid, should deteriorated or damaged materials be required to be removed as determined by the Architect or Owner, the cost to remove and replace the referenced material, (or credit for specified material not provided or installed) including all labor, material, equipment and related furnishings is as follows:

1. Add Metal Deck Repair/Replacement, as specified, cut to fit around roof structure and systems and installed \$ 100.00 /sf
2. Add pressure treated wood blocking, as specified, cut to fit around roof structure and systems and installed \$ 5.00 /bf
3. Add mortar repointing, as specified, scraped and repointed \$ 150.00 /lf
4. Add brick replacement, as specified, removal and installation of new masonry units \$ 300.00 /sf

**Alternates: (See Section 012300)**

Alternate No. 1: 90-mil black EPDM roof system with 30-year warranty	\$ <u>110,000.00</u>
Alternate No. 2: 90-mil white EPDM roof system with 30-year warranty	\$ <u>135,400.00</u>

If written notice of the acceptance of this Bid is mailed, telegraphed or delivered to the undersigned at the Address designated below, within ninety (90) days after the date of Bid Opening, or any time thereafter before this Bid is withdrawn, the undersigned will, within ten (10) days after the date of mailing, telegraphing or delivering of the notice, execute and deliver a contract in the Standard Form of Agreement Between the Owner and Contractor, AIA Document A101, or similar contract modified as may be mutually agreed upon.

The undersigned acknowledges that he has examined the documents, visited, and examined the site as required under "Instructions to Bidders", examined the availability of labor and materials and further agrees to comply with all the requirements as to the conditions of employment and wage rates set forth by the Department of Labor.

**BID FORM**

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(To be submitted in duplicate)

**BIDDER:** Armani Restoration, Inc.  
Name  
95 Bysiewicz Drive  
Middeltown, CT 06457  
Address

To: *Name* Town of East Hampton  
*Title* City Clerk's Office  
*Address* 19 Childs Road  
*Address* East Hampton, CT 06424

Project: Town of East Hampton  
East Hampton Middle School  
East Hampton Middle School Roof Replacement  
19 Childs Road  
East Hampton, CT 06424

In preparing this bid, we have carefully examined the Bidding Documents for this Project. We have visited the site and noted the conditions affecting the Work.

The Bidding Documents referred to include Drawings and Project Manual dated (3.28.2023) for the above referenced project, prepared by Don Hammerberg Associates, Farmington, CT.

We propose to perform the work described in the Bidding Documents, in keeping with definitions of Article 1 of the Instructions to Bidders, for the Base Bid Sum as follows:

**Base Bid (Total Cost for East Hampton Middle School Roof Replacement):**

**East Hampton Middle School Roof Replacement for a Total Cost of:**

\$ One Million Seven Hundred Eight Thousand 00/100 Dollars (\$ 1,708,000 .00).  
written figure

We will commence work on the project 14 calendar days after receipt of "Notice to Proceed" or signing of Contract (whichever is earlier). We will be able to substantially complete the project within 60 calendar days thereafter (see SIB-1, 1.1.B) but no later than 90.

**BID FORM**

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**Allowances: (See Section 012100)**

Allowance No. 1: Metal Deck Repair/Replacement	\$ <u>36,000.00</u>
Allowance No. 2: Pressure/Fire Treated Wood Blocking	\$ <u>1,000.00</u>
Allowance No. 3: Pressure/Fire Treated Wood Blocking	\$ <u>32,000.00</u>
Allowance No. 4: Caulk Removal	\$ <u>40.00 / LF</u>
Allowance No. 5: Chimney Brick Masonry Repointing and Hazmat Abatement	\$ <u>1,500.00</u>
Allowance No. 6: Aluminum Wrap of Wood Fascia	\$ <u>20,000.00</u>

**Unit Prices:**

As required by the Base Bid, should deteriorated or damaged materials be required to be removed as determined by the Architect or Owner, the cost to remove and replace the referenced material, (or credit for specified material not provided or installed) including all labor, material, equipment and related furnishings is as follows:

1. Add Metal Deck Repair/Replacement, as specified, cut to fit around roof structure and systems and installed \$ 9.00 /sf
2. Add pressure treated wood blocking, as specified, cut to fit around roof structure and systems and installed \$ 8.00 /bf
3. Add mortar repointing, as specified, scraped and repointed \$ 40.00 /lf
4. Add brick replacement, as specified, removal and reinstallation of new masonry units \$ 40.00 /sf

**Alternates: (See Section 012300)**

- Alternate No. 1: 90-mil black EPDM roof system with 30-year warranty Add to Base Bid \$ 80,000.00
- Alternate No. 2: 90-mil white EPDM roof system with 30-year warranty Add to Base Bid \$ 150,000.00

If written notice of the acceptance of this Bid is mailed, telegraphed or delivered to the undersigned at the Address designated below, within ninety (90) days after the date of Bid Opening, or any time thereafter before this Bid is withdrawn, the undersigned will, within ten (10) days after the date of mailing, telegraphing or delivering of the notice, execute and deliver a contract in the Standard Form of Agreement Between the Owner and Contractor, AIA Document A101, or similar contract modified as may be mutually agreed upon.

The undersigned acknowledges that he has examined the documents, visited, and examined the site as required under "Instructions to Bidders", examined the availability of labor and materials and further agrees to comply with all the requirements as to the conditions of employment and wage rates set forth by the Department of Labor.

**BID FORM**

---

(To be submitted in duplicate)

**BIDDER:** Offshore Construction, Inc.  
Name  
280 Hartford Rd. Manchester, CT 06040  
Address

To: *Name* Steve Fontanella  
*Title* East Hampton Town Hall  
*Address* 1 Community Drive, Suite 1  
*Address* East Hampton, CT 06424

**Project:** Town of East Hampton  
East Hampton Middle School  
East Hampton Middle School Roof Replacement  
19 Childs Road  
East Hampton, CT 06424

In preparing this bid, we have carefully examined the Bidding Documents for this Project. We have visited the site and noted the conditions affecting the Work.

The Bidding Documents referred to include Drawings and Project Manual dated (3.28.2023) for the above referenced project, prepared by Don Hammerberg Associates, Farmington, CT.

We propose to perform the work described in the Bidding Documents, in keeping with definitions of Article 1 of the Instructions to Bidders, for the Base Bid Sum as follows:

**Base Bid (Total Cost for East Hampton Middle School Roof Replacement):**

**East Hampton Middle School Roof Replacement for a Total Cost of:**

\$ One million seven hundred sixty-two thousand and xx/100 Dollars (\$ 1,762,000 .00).  
written figure

We will commence work on the project 20 calendar days after receipt of "Notice to Proceed" or signing of Contract (whichever is earlier). We will be able to substantially complete the project within 40 calendar days thereafter (see SIB-1, 1.1.B) but no later than 8-30-2023

**BID FORM**

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**Allowances: (See Section 012100)**

Allowance No. 1: Metal Deck Repair/Replacement	\$ <u>30,520.00</u>
Allowance No. 2: Pressure/Fire Treated Wood Blocking	\$ <u>N/A</u>
Allowance No. 3: Pressure/Fire Treated Wood Blocking	\$ <u>18,700.00</u>
Allowance No. 4: Caulk Removal	\$ <u>N/A</u>
Allowance No. 5: Chimney Brick Masonry Repointing and Hazmat Abatement	\$ <u>1,400.00</u>
Allowance No. 6: Aluminum Wrap of Wood Fascia	\$ <u>40,500.00</u>

**Unit Prices:**

As required by the Base Bid, should deteriorated or damaged materials be required to be removed as determined by the Architect or Owner, the cost to remove and replace the referenced material, (or credit for specified material not provided or installed) including all labor, material, equipment and related furnishings is as follows:

1. Add Metal Deck Repair/Replacement, as specified, cut to fit around roof structure and systems and installed	\$ <u>8.00</u> /sf
2. Add pressure treated wood blocking, as specified, cut to fit around roof structure and systems and installed	\$ <u>4.25</u> /bf
3. Add mortar repointing, as specified, scraped and repointed	\$ <u>12.00</u> /lf
4. Add brick replacement, as specified, removal and reinstallation of new masonry units	\$ <u>85.00</u> /sf

**Alternates: (See Section 012300)**

Alternate No. 1: 90-mil black EPDM roof system with 30-year warranty	\$ <u>1,881,500.00</u>
Alternate No. 2: 90-mil white EPDM roof system with 30-year warranty	\$ <u>1,947,700.00</u>

If written notice of the acceptance of this Bid is mailed, telegraphed or delivered to the undersigned at the Address designated below, within ninety (90) days after the date of Bid Opening, or any time thereafter before this Bid is withdrawn, the undersigned will, within ten (10) days after the date of mailing, telegraphing or delivering of the notice, execute and deliver a contract in the Standard Form of Agreement Between the Owner and Contractor, AIA Document A101, or similar contract modified as may be mutually agreed upon.

The undersigned acknowledges that he has examined the documents, visited, and examined the site as required under "Instructions to Bidders", examined the availability of labor and materials and further agrees to comply with all the requirements as to the conditions of employment and wage rates set forth by the Department of Labor.



**EAST HAMPTON  
PUBLIC SCHOOLS**

**PAUL K. SMITH**  
Superintendent of Schools

**MARY E. CLARK**  
Director of Curriculum and Instruction

1 COMMUNITY DRIVE, SUITE 1  
EAST HAMPTON, CONNECTICUT 06424  
860-365-4000

**RODNEY L. MOSIER II**  
Director of Special Education  
and Pupil Personnel Services

**KAREN ASETTA**  
School Business Manager

**CONTRACTOR'S NOTICE TO PROCEED**

June 16, 2023

PROJECT:  
State Project # 042-0042 RR  
East Hampton Middle School Roof Replacement  
19 Childs Road  
East Hampton, CT 06424

PROJECT CONTACT:  
Steve Fontanella, Director of Facilities  
Town of East Hampton  
1 Community Drive  
East Hampton, CT 06424  
[sfontanella@easthamptonct.org](mailto:sfontanella@easthamptonct.org)  
860-894-9819

TO:  
Armani Restoration, Inc.  
95 Bysiewicz Drive  
Middletown, CT 06457

Dear Armani Restoration, Inc:

You are hereby notified to proceed with the roof replacement at the above project. Upon receipt of this notice, you are responsible for performing the work on said project under the terms and conditions of the bid specifications.

The Building Committee has voted to install the 20-year warrantee Black 60 mil EPDM. Please be aware that any change orders for any of the alternate work needs pre-approval

Regards,

Paul K. Smith  
Superintendent of Schools





## Parks Maintainer II

### Job description

The Parks Maintainer II is a skilled position performing manual labor in the operation and maintenance of municipal parks, facilities, grounds, and athletic complexes.

#### General description

This skilled position carries out coordinated work assignments and performs manual labor in the construction, installation, repair, and maintenance of municipal parks, grounds, various sports fields and surfaces, recreational areas, and facilities. Makes recommendations for equipment purchases and specifications. Contributes to the implementation of systematic maintenance plan. Assists in record maintenance on equipment, maintenance, repairs running hours, inventory, and health and safety documentation. Work is assigned, supervised, and reviewed by the Parks and Recreation Director or superior designee. Work performed is 90% outside in all weather conditions, including heat, cold, rain, and snow.

#### Supervision received.

Reports directly to the Parks and Recreation Director.

#### Supervision exercised:

Leads and assists a small work crew of seasonal, part-time, and full-time maintainers carrying out various work projects.

#### Essential job functions and accountability responsibilities:

- ~~— Leads and assists a small work crew of seasonal and full-time park maintainers, carrying out various work projects.~~
- Performs a variety of duties necessary to prepare and maintain equipment, fields, grounds, facilities, systems, and waterfronts for seasonal-use changes as dictated by sporting seasons, game schedules, peak and off-season parks and facility usage, weather, and field conditions.
- Operates various equipment; hand and power tools to cut trim and maintain turf on fields, grounds, recreational areas. Clear and maintain trails and courts and prepare other sports surfaces.
- Applies working knowledge of local, state, and federal health and safety standards to assure that work performed conforms to OSHA and MSDS requirements.
- Inspects and evaluates turf, sand based and all other sports-playing surfaces for maintenance needs and preventative maintenance projects that assure safe, superior playability.
- Prepares and operates vehicles, trailers, equipment, and watercraft and may operate heavy equipment.
- Makes minor repairs to mechanical equipment; reports malfunctions; does routine and preventative maintenance based on equipment hours and needs.



- Coordinates checking of fuel, lubricants, oil, battery, belts; sharpens blades, cleans machines; schedules other mechanical repairs and maintenance with appropriate vendor or department.
- Contributes to and utilizes oral and written daily and weekly assignments and makes own determinations in prioritizing work schedules.
- Coordinates and/or transports crew, required equipment and supplies to and from various work sites efficiently.
- Performs custodial maintenance duties and semi-skilled tasks, such as cleaning restrooms and buildings; leaf removal and other tasks as assigned.
- When not working as a Parks Maintainer II, works as a Parks Maintainer I; ~~When when~~ not working in either of these capacities, assists in the Public Works Department, works as a Public Works Maintainer II.

#### Nonessential duties

Assists Town staff in other related municipal projects.

#### Required knowledge, skills, and abilities:

Possess a working knowledge of the techniques and methods used in the care and maintenance of turf, courts, sand-based fields, and recreational areas. Skilled in the operation of turf maintenance and heavy equipment. Knowledge of working/mechanical systems including but not limited to irrigation, athletic lighting, plumbing and drainage.

#### Acceptable experience and training:

- Certifications and/or some education in landscape planning, turf management, and/or park maintenance or closely related field, or equivalent combination of experience and training which provides the required knowledge, skills, and abilities. ~~Three years'~~ One year of experience in parks or grounds maintenance work, including some lead-worker experience. ~~Certificated~~ Certified – Playground Safety Inspector (CPSI) certification ~~preferred; otherwise preferred, otherwise,~~ must be obtained within one year. Must possess and maintain a valid Connecticut motor vehicle operator's driver's license with a clear driving record.

#### Additional requirements ~~Special requirements:~~

- ~~Must possess a valid motor vehicle operator's CDL; possess~~ Must possess or be willing to obtain a Certificate of Personal Watercraft \_\_ Operation License each issued by the State of Connecticut.
- Must agree to and pass all Town criteria required on a criminal background check, drug testing and health physical.
- Must attend training necessary to gain and maintain certifications and knowledge relevant to requirements and essential job functions.
- Ability to work cooperatively, professionally, and effectively with staff, other departments, and the public in everyday, stressful, and demanding situations. This is a union position.





Tools and equipment used.

Including but not limited to manual shift trucks, towing trailers, hand and riding mowers, power tools and other equipment used in maintenance of turf, athletic fields, and recreation areas. Snow plowing equipment and other Public Works equipment as required.

**Physical demands:**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is frequently required to walk, sit, and talk or hear. Understand, interpret, and carry out and communicate instructions and directives. The employee is required to use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. Possess the manual dexterity and mechanical aptitude required to use hand and power tools and equipment. The employee is required to climb or balance; stoop, kneel, crouch or crawl. Have significant stamina; be in good health and physical condition; Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus. Willingness and ability to perform strenuous physical labor; lift and/or carry objects more than 40 pounds.

Work environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee works in outside weather conditions. The employee is exposed to wet, cold, humid, or airborne particles. The noise level in the work environment may be moderate to loud in the field.

General guidelines

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of the employer and requirements of the job change. This is a bargaining unit position.

Approved by: ~~P&R-Director and Union Pres.~~ 7/7/2008.

**TOWN OF EAST HAMPTON  
CONSERVATION – LAKE COMMISSION  
AGENDA REPORT**

DATE: June 21, 2023  
SUBJECT: Use of Metafloc in Lake Pocotopaug  
DEPARTMENT: Conservation - Lake Commission

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RECOMMENDED ACTION

During a special meeting on Wednesday, June 21<sup>st</sup> at 10:00 am the Conservation – Lake Commission approved a motion following discussion from the members to apply Metafloc, a biological phosphorus bunding agent to lake Pocotopaug to be used as a clarifier. Metafloc is designed to bind phosphorus in the water column and drop it to the bottom of the lake. The commission feels this treatment will help reduce phosphorus in the water column which will help reduce the rate of cyanobacteria forming at the surface. Here is the website that talks about Metafloc in more detail: <https://naturalake.com/product/metafloc/>  
The commission voted unanimously to pass this motion 7 – 0.

BACKGROUND OF METAFLOC

As the data has shown over the past three seasons, the aeration and biological treatment program has done a very good, BUT not perfect job of reducing phosphorus to levels required to further minimize the risk of harmful algal blooms. We have provided detailed analysis showing that post aeration phosphorus concentrations across the entire water column have dropped from an average concentration of 46 ug/l pre-aeration to 28 ug/l in 2022.

However, it is generally agreed that getting a lake to below 20 ug/l is the target to almost certainly eliminate the risk or harmful algal blooms. In addition, lakes with P levels below 20 ug/l typically have water clarity of 2 meters or better. This would be very desirable for Lake Pocotopaug

There are two reasons why aeration and biological treatment are not the perfect solutions for phosphorus reduction:

1. Aeration increases biological activity at the bottom which is very beneficial in reducing organic material at the bottom over time, but this process also releases some phosphorus to the water column as part of the process of biodegrading the material. This release of P is MUCH less than what is released from sediments in a lake bottom with no oxygen as is reflected in the P data for Lake Pocotopaug pre and post aeration.
2. Beneficial, aerobic bacteria are great at consuming carbon (organic matter) and nitrogen BUT not nearly as good at consuming or binding phosphorus.

Metafloc fills these gaps and has the potential to dramatically accelerate the pace of our restoration effort for Lake Pocotopaug.

We have done the necessary calculations and it would take just 300 gallons of Metafloc to neutralize more than 200 lbs. Phosphorus in Lake Pocotopaug. This would drop total P levels close to 15 ug/l. Achieving

this would immediately reduce the level of water column blue-green algae and boost the effectiveness of both the aeration and BioBlast treatments in the lake by reducing the overall oxygen demand in the lake.

The cost for the treatment would be:

- Product Cost: \$19,800
- Application: \$1,650

The commission understands that using this funding source will eliminate the potential to apply bio blast for a fourth time during the summer of 2023. As it stands, the town currently budgets for 4 bio blast treatments each summer at a cost of \$12,500 per application and will adjust accordingly to stay on budget for in lake treatments.

Chair of the Conservation Lake Commission  
Chuck Yenkner



**TOWN OF EAST HAMPTON  
CONSERVATION-LAKE COMMISSION  
SPECIAL MEETING**

**WEDNESDAY, JUNE 21, 2023**

**10:00 AM**

**TOWN HALL 2ND FLOOR MEETING ROOM #201 AND VIA ZOOM**

**MINUTES**

**Present:** Vice Chairman Jack Solomon, John Purple, Marty Podskoch, Chairman Chuck Yenker, Wes Jenks, and Jason Hartling with Parks & Rec Director Jeremy Hall.

**Absent:** Cheryl Lobo, Margaret Wilcox, Victor Rodriguez

**Call to Order:** Chairman Yenker called the meeting to order at 10:00am at the Town Hall in the 2<sup>nd</sup> floor meeting room and via Zoom. Alternate member John Purple was seated.

**New Business:** Chairman Yenker discussed the use of MetaFloc as a clarifier product to be used for in lake treatment. Yenker read verbatim an email received by the State of CT that stated the town did not need permitted approval of this product to be used in the lake as it was clear the product would be used as a clarifier.

*A motion was made by Mr. Solomon, seconded by Mr. Hartling, to approve the application of MetaFloc for use in Lake Pocotopaug and applied by EverBlue Lakes. Voted 6-0 in favor.*

**Adjournment:** *Chairman Yenker adjourned the meeting at 10:12 am*

Respectfully Submitted,

Jeremy Hall  
Director of Parks & Recreation



	<u>July 2023 Budget</u>	
<b>EXPENDITURES</b>		
EDUCATION	\$	675,000
<b>TOWN OPERATIONS</b>		
ADMINISTRATION & FINANCE		400,000
PUBLIC SAFETY		248,000
HEALTH & HUMAN SERVICES		41,500
CULTURE & RECREATION		70,000
REGULATORY		21,000
PUBLIC WORKS		142,000
<b>TRANSFERS TO OTHER FUNDS</b>		
OTHER FUNDS		-
CAPITAL IMPROVEMENT		-
<b>DEBT SERVICE</b>		<u>1,471,425</u>
<b>TOWN OPERATIONS</b>	\$	<u>2,393,925</u>
<b>TOTAL EXPENDITURES</b>	\$	<u>3,068,925</u>

**Finance Department**

# Memo

**To:** David Cox, Town Manager

**From:** Jeff Jylkka, Finance Director

**Date:** 06/19/2023

**Re:** Pension plan amendment no. 2023-1

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In consultation with the Town's pension attorney and actuary, I am proposing the following amendment (attached) to the Town's pension plan. The first recommended change (1.4 Actuarial Equivalent) updates the current 1971 mortality table to PUB-2010 (Public Retirement Plans Mortality Tables) and projection table to MP-2021 (Mortality Improvement Scale). This amendment also puts an evergreen clause to allow for the mortality table to be automatically updated when the PUB table is updated (generally every five years). This proposed change will have no financial impact on the pension plan.

The second amendment allows a participant who terminated employment on or after their normal retirement date but does not elect to commence benefit payments until after their normal retirement date to receive an increase in their annual pension payment. The employee will have a choice to receive their normal benefit payment over a longer period of time or wait and receive a larger payment over a shorter period of time. This proposed change will have no financial impact on the pension plan.

The last proposed amendment allows the pension plan to retain any benefit due to a participant, spouse or beneficiary if that individual is unable to be located. This proposed change may have a positive financial impact on the pension plan.

**AMENDMENT NO. 2023-1  
TO THE  
TOWN OF EAST HAMPTON RETIREMENT INCOME PLAN**

The Town of East Hampton Retirement Income Plan (the “Plan”) is hereby amended effective January 1, 2023 pursuant to Section 15.1 of the Plan as follows:

I.

Article I of the Plan is amended by deleting Section 1.4 thereof and substituting the following new Section 1.4 therefore:

**1.4 “Actuarial Equivalent”** means the actuarial equivalent determined using the following assumptions:

(a) Mortality:

- (1) Effective July 1, 2023, the base mortality tables shall be the PUB-2010 tables. These tables shall be updated effective on the July 1 next following publication of updated PUB tables. The following base PUB mortality tables shall be used:
  - a. Non-Police members: General Liability-weighted Healthy Annuitant
  - b. Non-Police beneficiaries: General Liability-weighted Contingent Annuitant
  - c. Police members: Public Safety Liability-weighted Healthy Annuitant
  - d. Police beneficiaries: General Liability-weighted Contingent Annuitant
- (2) Effective July 1, 2023, the projection table shall be the MP-2021 Ultimate Mortality Improvement Scale. This table shall be updated to the most recently published MP Ultimate Mortality Improvement Scale when an updated version of the PUB tables is effective as provided in (a)(1) above. For avoidance of doubt, for Actuarial Equivalent purposes the projection table shall **only** be updated when the PUB tables are updated (generally every five years) and **not** upon publication of updated MP tables (generally every year).
- (3) Mortality improvement shall be projected on a static basis to a date equal to the base year of the PUB table plus 30. Effective July 1, 2023, the projection shall be to  $2010 + 30 = 2040$ . This year shall be updated when an updated version of the PUB tables is effective as provided in (a)(1) above.
- (4) Both the base PUB tables and the MP projection table shall be a blend of the respective tables for males and females. Effective July 1, 2023, the gender ratios used to create the blended tables shall be:
  - a. Non-Police members: 50% male and 50% female
  - b. Non-Police beneficiaries: 50% male and 50% female
  - c. Police members: 90% male and 10% female

- d. Police beneficiaries: 10% male and 90% female
- e. At such time as an updated version of the PUB tables is effective as provided in (a)(1), these gender ratios shall be redetermined based on the actual gender mix of active plus terminated vested members, separately for Police and Non-Police, rounded to the nearest 10%, as of the valuation date one year earlier than the effective date. The gender ratio for beneficiaries shall be the converse of the gender ratio for members.

(b) Interest rate: 6.00%.

II.

Article V of the Plan is amended by adding the following paragraph at the end of Section 5.2 thereof:

If a Participant terminates employment with the Employer but does not elect to commence benefit payments until after his Normal Retirement Date, that Participant's monthly normal retirement benefit will be the Actuarial Equivalent of the Participant's benefit at Normal Retirement Date.

III.

Article XIII of the Plan is amended by adding a new Section 13.7 at the end thereof to read as follows:

**13.7. Location of Participant**

In the event that notice of any benefit that shall become payable or due hereunder to any Participant, Spouse or Beneficiary is provided to such person and such person does not respond within two (2) years after the mailing of such notice and the Administrator is unable locate such person, the amount of said benefit shall be forfeited. However, in the event that such person is subsequently located, such benefit shall be restored and paid in accordance with the terms of the Plan. The Administrator's obligation to locate individuals under this Section shall be satisfied if the Administrator employs reasonable efforts to that end.

IV.

If there shall be any inconsistency between the provisions of this Amendment 2023-1 and the provisions of the Plan as amended, this Amendment 2023-1 shall control.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

TOWN OF EAST HAMPTON

By: \_\_\_\_\_  
Its



June 27, 2023

To: The East Hampton Town Council,

The documentation for the tax refunds listed below is available in the Office of the Collector of Revenue for your review. There are four (4) refunds totaling \$1,771.45.

Respectfully Submitted,

Kristy L. Merrifield, CCMC  
Collector of Revenue

	0.	CL
	809.44	⊕
	391.73	⊕
	450.00	⊕
	120.28	⊕
004	1,771.45	TL⊕