

The Town Manager Screening Committee, **a sub-committee of the Board of Selectmen**, was called to order Friday, April 24th at 10 am in Caucus Hall, Town Hall, 260 Commercial Street, Provincetown

All Members Present: Tom Donegan, Cheryl Andrews, Tony Bracket, Lee Ash, and Steve Katsurinis

Also present: Joellen Earl, Search and screening consultant via conference call.

Also present: Peter Brown, reporter Provincetown BANNER

A) Introductions and Subcommittee Organization

Tom Donegan convened the meeting and acted as Chair for the meeting. The Group agreed by consensus that Cheryl Andrews will be Chair and call the next meeting.

Tom Donegan (Selectman) , Cheryl Andrews (Selectman) , Tony Bracket (School Committee, parent and musician) . Lee Ash (Realtor and former PPPC Board Member) , and Steve Katsurinis (Inn Keeper and Board of Health Member) introduced ourselves to Joellen Earl of GOVHR USA.

The group further agreed that the Chair Andrews will speak for the committee in public and that Tom Donegan may from time to time need to comment as a Selectman. Otherwise, public comment will be limited.

B) Discussion of process

Joellen reported we have received 52 applications, of which 17 are being screened for first round interviews. She reported the overall quality of the applications was very good.

Joellen will provide by email a 'matrix of skills' which she used to screen the candidates, and the committee will further review the matrix for Provincetown specific skills or prioritization of skills.
Joellen will provide by email a 'matrix of skills'

The interviews will be conducted with the same core questions, and include at least one 'behavioral' question that presents the candidate with a scenario and asks for reactions as part of the interview.

Joellen to provide a list of 30 possible questions to the committee by email .

Steve to develop behavioral question

Candidates will have the option to travel to Provincetown, at their own expense, for first round interviews.

The committee declined to provide a specific target on the number of applicants to be forwarded to the Board of Selectmen.

C) Discussion of dates and Timeline

- Committee members each receives "binders" of applications with suggested candidates for first round interviews **on May 8th** (pick up in the BoS office) . A single binder of applicants not selected for first round interviews will be also provided.
- The Committee meets with Joellen Earl on May 12th at 8:30 am to review the candidates recommended for first round.
- The committee will interview by skype on **May 14th, 18th and 19th**. The preference is for morning interviews, but the group agreed to be flexible depending on candidate availability.
- Interviews will last approximately 1 hour, with 15 minutes for discussion among committee members. Some interviews may naturally take longer while others may end more quickly.
- The Committed Targeted agreeing on the finalists and forwarding that list the Selectmen the week of May 25th.

D) Review of materials and Documents related to Town Manager search.

The Committee reviewed materials prepared the law firm of Kopelman & Paige related to the search specifically, the Open Meeting Law, Public Documents law and a list of guidelines for questions a public body may ask an applicant for town employment.

The Committee members each signed a confidential agreement which will remain on file with the Secretary to the Board of Selectmen.

The meeting adjourned without objection at 11:15 am

submitted by,
Tom Donegan

approved by committee on 5.28.15 by 5-0 vote

As a member of the Town of Provincetown Town Manager Preliminary Screening Committee (“Committee”), I acknowledge that I may be provided with or obtain information that is confidential and/or exempt from public disclosure under applicable laws. Such information may include, but is not limited to, personal details and information about candidates, as well as information about internal government procedures and activities. I further acknowledge that I have read the provisions of G.L. c. 268A, §23(c)(2) (a copy of Section 23(c) is attached), which prohibits me, as a member of the Committee, from “improperly disclos[ing] materials or data within the exemptions to the definition of public records as defined by section seven of chapter four,” or from “us[ing] such information to further [my] personal interest.”

In discharging my duties as a member of the Committee, I agree that I will not disclose any confidential or private information, or information that is exempt from disclosure under the Massachusetts Public Records Law, that I have obtained through my activities as a Committee member. In order to ensure the integrity of the search process, I further agree that I will not discuss confidential matters or information before the Committee, outside of properly posted and convened meetings of the Committee, or any other Town of Provincetown public body, as may be appropriate.

Name (printed) _____

Signed _____

Dated _____

G.L. c. 268A, Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

(2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion; or

(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the

provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than \$50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

Appendix A

ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in July 2004.

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

Guideline

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Guidelines

Public Confidence. Members should conduct themselves so as to maintain public confidence in their profession, their local government, and in their performance of the public trust.

Impression of Influence. Members should conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

Appointment Commitment. Members who accept an appointment to a position should not fail to report for that position. This does not preclude the possibility of

a member considering several offers or seeking several positions at the same time, but once a *bona fide* offer of a position has been accepted, that commitment should be honored. Oral acceptance of an employment offer is considered binding unless the employer makes fundamental changes in terms of employment.

Credentials. An application for employment or for ICMA's Voluntary Credentialing Program should be complete and accurate as to all pertinent details of education, experience, and personal history. Members should recognize that both omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a management position should show professional respect for persons formerly holding the position or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity in order to be appointed to a position.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report the matter to ICMA. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members should not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position having an incumbent administrator who has not resigned or been officially informed that his or her services are to be terminated.

4. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

Guideline

Length of Service. A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

Guideline

Conflicting Roles. Members who serve multiple roles—working as both city attorney and city manager for the same community, for example—should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

Guidelines

Elections of the Governing body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not engage in active participation in the election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members should not engage in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections in the Council-Manager Plan. Members may assist in preparing and presenting materials that explain the council-manager form of government to the public prior to an election on the use of the plan. If assistance is required by another community, members may respond. All activities regarding ballot issues should be conducted within local regulations and in a professional manner.

Presentation of Issues. Members may assist the governing body in presenting issues involved in referenda such as bond issues, annexations, and similar matters.

8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

Guidelines

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

Guideline

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

Guideline

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

12. Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

Guidelines

Gifts. Members should not directly or indirectly solicit any gift or accept or receive any gift--whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form--under the following circumstances: (1) it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or (2) the gift was intended to serve as a reward for any official action on their part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In *de minimus* situations, such as meal checks, some modest maximum dollar value should be determined by the member as a guideline. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

Investments in Conflict with Official Duties. Member should not invest or hold any investment, directly or

indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

In the case of real estate, the potential use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that members' official actions and decisions can be influenced if there is a conflict with personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided (see the guideline on "Confidential Information").

Because personal investments may prejudice or may appear to influence official actions and decisions, members may, in concert with their governing body, provide for disclosure of such investments prior to accepting their position as local government administrator or prior to any official action by the governing body that may affect such investments.

Personal Relationships. Member should disclose any personal relationship to the governing body in any instance where there could be the appearance of a conflict of interest. For example, if the manager's spouse works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, whether or not for compensation. Members may, however, agree to endorse the

following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by non-profit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

Appendix D:

Potential Interview Questions³

It is suggested that each member of the governing body ask the same question(s) of each candidate.

Candidate Traits/Experience/ Qualifications

1. Provide a brief summary of your education and work experience.
2. Please briefly describe your experience with
 - a. Land use planning
 - b. Economic development/redevelopment
 - c. Tax increment financing
 - d. Business attraction and retention programs
 - e. Beautification programs
 - f. Business assistance programs—e.g., façade improvement, code compliance
 - g. Annexation
 - h. Subdivision policies and regulations, particularly as they relate to storm-water management
 - i. Zoning
 - j. Building code administration
 - k. Municipal facilities expansion—in particular, water and wastewater utility expansions
3. How would you describe your leadership and management styles?

Interaction with Governing Body

1. What do you perceive to be the chief administrator's role in working with the governing body, local government attorney, and clerk?
2. What are your expectations of the governing body in relation to
 - a. Yourself
 - b. Other staff
3. How and when do you communicate with the governing body?

Candidate Thoughts on Role of Administrator

1. In your opinion, what role should the administrator have in the community?
2. Do you believe the administrator should be an active member of a service or fraternal organization? If yes, why?
3. How do you deal with the news media?
4. How do you deal with special-interest or single-interest groups?
5. What is the best way for an administrator to deal with an angry constituent?

Personnel Experience

1. How and when do you delegate responsibility and authority?
2. Have you ever been at the bargaining table and been actively engaged in negotiating an agreement?
3. Have you taken part in mediation, fact finding, or arbitration? Which ones? Please explain your experience in such process(es) including your role/level of involvement and your thoughts regarding the outcomes of these experiences.
4. Have you ever had to discipline, demote, or fire an employee? Please elaborate.
5. How do you educate, encourage, and motivate your staff?
6. Are you familiar with state and federal laws relating to nondiscrimination, sexual harassment, employees with disabilities, and equal opportunity?
7. Have charges of violation of state or federal employment laws or a grievance ever been filed against you or your city? Please explain.
8. What experience have you had in the preparation and implementation of personnel rules, regulations, procedures, and compensation plans? Please describe.

³ Adapted from the Illinois City/County Management Association's *A Guide to the Recruitment and Selection of a Chief Administrative Officer*.

9. What is your experience with employee benefits administration, group health insurance, and risk management?
10. What in your opinion is the most serious issue today in local government personnel management?
11. How and when should private sector resources (e.g., contractors) be used to provide village services?

Financial Management Experience

1. Is there a difference between a financial plan and a budget? If so, please explain how they differ.
2. Are/were you the designated budget officer for your local government? Did you prepare and present the budget to the council, and upon adoption, were you responsible for implementation? Please explain the outcomes of various budget processes and any challenges you encountered through budget development through council adoption.
3. What is your experience with debt financing? Please give an example.
4. Have you secured and administered any type of loans or grants? Please give an example.
5. Describe the most successful capital improvement project you were responsible for and what made it successful?
6. Have you reviewed our annual budget and/or annual report? If yes, what is your impression of our financial condition?
7. What is your opinion of "pay as you go" financing of maintenance and capital projects? Special assessments? Special taxing districts?

8. What type of financial reports do you provide the elected body and with what frequency?
9. Have you read our comprehensive or general plan? What are your impressions or thoughts?

Intergovernmental Relations Experience

1. What experience have you had in dealing with
 - a. Councils of government/intergovernmental agencies?
 - b. County government?
 - c. Other local governments (schools, parks, etc.)?
 - d. State agencies?
 - e. Federal agencies?
 - f. State legislature?
 - g. Congress?
2. Do you feel comfortable "lobbying"?

External Organizational and Professional Association Relations

1. Have you been an active participant in the activities of a statewide municipal league, statewide city or county management association, the International City/County Management Association (ICMA) or other professional organizations devoted to local government? Please give examples of your activities.
2. Are you an ICMA Credentialed Manager? If so, how do you fulfill your annual professional development requirement?



SEARCH COMMITTEE PROTOCOL

The following procedures may be used as a general guideline for conducting a search for a position to be filled by a committee:

General Guidance:

- All provisions of the Open Meeting Law (“OML”) apply to the search committee, including the requirements for posting detailed meeting notices, convening open sessions prior to going into executive session, making the statement required prior to convening executive session, taking a roll call vote for such purposes, and keeping detailed minutes of all open meetings and executive sessions.
- As a general rule, matters discussed in executive session may not be publicly discussed or disclosed except in accordance with a vote of the search committee, particularly where privacy rights of individuals may be implicated.
- Communications between or among members either in person, or by telephone, e-mail or social media are strongly discouraged, and communications initiated by members of the search committee must be limited to scheduling purposes only.
- All provisions of the Public Records Law (“PRL”) apply, subject to the exemptions contained therein, meaning that the materials created by or submitted to the search committee are subject to the law and are subject to disclosure unless falling within one of the limited exemptions to the law.
- Members of the search committee are Municipal Employees for purposes of the Conflict of Interest (“COI”) Law and should be aware of the restrictions and obligations of the law; unless designated as “special”, this fact can vastly limit the ability of members to appear on behalf of others in matters in which the Town has a direct and substantial interest.

Procedures:

The below suggested steps are meant as a guide; variations may be made to suit a particular hiring situation, provided that the applicable provisions of state law, and local charter or bylaws, are observed.

Step 1: Establish Parameters of the Search Process – Open Session (whether done by the appointing body or the search committee)

- Develop job criteria, minimum qualifications and application procedures.
- Establish a procedure for issuance and receipt of applications and deadlines for submissions and decision making.
- Determine how many candidates will be recommended to the appointing body as finalists, so that it is clear when the search committee's work is done. (Must be more than one; at least one court has concluded that using the preliminary screening process to winnow applicants down to only one finalist, all in executive session, violates the OML).

Step 2: Receive and Discuss Applications – Executive Session if OML Conditions are Met (Note - Step 2 and Step 3 may occur in reverse order or simultaneously)

- Pursuant to G.L. c. 30A, §21(a)(8), the search committee may meet in executive session to consider or interview applicants for employment **if the chair declares** that an open meeting will have a detrimental effect in obtaining qualified applicants.
- Generally, the search committee may enter executive session if one or more candidates have stated that they wish their candidacy to be considered confidentially at the initial stages of the search process.
- At this initial stage, if confidentiality is invoked, the search committee may discuss in executive session each of the applications received and determine which candidates, if any, will be invited for the first round of interviews.

Step 3: Develop Interview Questions – Open Session

- Core questions should be developed by the search committee in open session prior to the interviews.
- It is generally recommended that each candidate be asked the same core questions.
- If there is interest in asking candidates questions for which they are required to provide an instinctive answer, each member of the search committee could be asked to prepare a single question for such purposes, and each candidate could be asked that question in executive session.

Step 4: First Round of Interviews – Executive Session if OML Conditions are Met

- The search committee may interview each candidate in executive session if the requirements of Purpose 8 of the Open Meeting Law are met, as described above.

- The search committee may discuss in executive session the merits of each candidate, and decide whether the candidate will be invited for a second round of interviews or named as a finalist to be recommended to the appointing body.

Step 5: Second Round of Interviews – If Applicable

- Additional candidates may be interviewed.
- Similarly, candidates previously interviewed may be called back for a second interview provided that number of eligible candidates has not dropped to the number of candidates the search committee has indicated will be recommended as finalists to the appointing body.

Step 6: Notify Finalists and Make Recommendation to the Appointing Body

- Once the search committee has recommended finalists to the appointing body, Purpose 8 of the Open Meeting Law no longer applies and the remainder of the process must be carried out in open session.
- Prior to making a recommendation, each finalist should be notified of the search committee's decision and given an opportunity to withdraw their name from consideration.
- If the process was conducted in executive session, only the names of the finalists who agree to be considered by the appointing body should be released publicly.

Step 7: Appointing Body Interviews Finalists – Open Session

- Once finalists have been recommended to the appointing body, such board or committee's consideration of such finalists must occur in open session, including interviews of the candidates identified as finalists.
- There is no limit on the number of times a particular candidate may be interviewed in open session.
- Executive session may only be used for strategy with respect to negotiations with non-union personnel, or to actually negotiate an employment contract; in our experience, the appointing body will often delegate this responsibility to a single member, and then have that person bring recommendations back to the entire board.
- If all interviews are unsuccessful, the search committee may be tasked to revisit the search process, starting as far back in the process as Step 1, or later in the process.

Open Meeting Law, Public Records Law, and Conflict of Interest Law Implications

As noted above, the Open Meeting Law, Public Records Law, and Conflict of Interest Law apply to screening committees and their members.

Open Meeting Law –

1. Screening committee meetings must be posted in accordance with the OML, and all meetings must first convene in open session. The screening committee must provide 48 hours posted notice of any meeting, Saturdays, Sundays, and legal holidays excluded. The agenda must include notice of an executive session (if one is to be held), and the general topics to be discussed.

For instance:

- “To review resumes of candidates as part of the preliminary screening process.”
 - “To conduct interviews of candidates as part of the preliminary screening process.”
 - “To screen candidates as part of the preliminary screening process.”
 - “To develop a short-list of candidates for further screening or to recommend to the Board of Selectmen.”
2. Where executive session is appropriate, both the Agenda and the motion to convene in executive session should state that the chairman has determined that an open meeting will have a detrimental effect in obtaining qualified applicants.
 - The chairman may only make this declaration if one or more candidates have stated that he or she wishes that their candidacy be considered during the preliminary screening stages only in executive session.
 - Candidates should be asked this question prior to the screening process. It is advisable to include this question on the application form.
 3. Where an executive session is held, the vote to go into executive session and any votes taken during executive session must be by roll call. The vote to exit the executive session should also be by roll call. The vote to convene in executive session must state whether the screening committee will return to open session after the executive session.
 4. Of course, detailed minutes of both open and executive session meetings must be kept. We recommend that the executive session minutes be kept separate and apart from the minutes of any open session. The names of candidates screened must be included in the minutes. Do not discuss any matters in executive session that do not relate directly to the screening of candidates or were not included in the agenda notice.

5. Provided that the preliminary screening process was appropriately conducted in executive session, the names of candidates considered during the screening process may be kept confidential even after the selection is made, which includes redacting the names from the executive session meeting minutes in response to a public records request for same. (Protection of privacy rights under G.L. c. 214, s.1B and Exemption (7) of the OML – to comply with the provisions of any general or special law).
6. General OML principles govern email communications between screening committee members, and even communications between committee members and applicants, board of selectmen, town employees or officials, and the like. As such, avoid the use of email except for scheduling purposes. (The chair of the screening committee or a staff member may send an email to committee members scheduling meetings and distributing information.) Screening committee members should never email each other or engage in any discussions by email. Avoid sharing ideas, beliefs, reflections, or opinions in email communications, and never use “reply to all”.

Public Records Law –

1. Emails of screening committee members that relate to the business of the committee, even if exchanged through private email addresses, are public records and must be retained and disclosed if requested and if no exemption from disclosure applies.
2. Of note, given the privacy interests held by applicants who do not reach the finalist stage, it may be that the executive session minutes of the screening committee meetings might never properly be released. This has to be analyzed on a case-by-case basis.
3. Application materials, including resumes, of candidates that are never considered in open session, may be withheld from disclosure in response to a public records request. Resumes of finalists (but not other application materials), discussed in open session, are public records.

Conflict of Interest Law –

1. Members of a screening committee are considered municipal “employees” for purposes of the COI Law. G.L. c. 268A, s. 23(C) provides, in relevant part:
 - (c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:
 - (1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

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(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

2. As a result, it is a violation of the COI Law to reveal executive session information until the reason for the executive session no longer applies and the full committee votes to release the minutes.
3. Furthermore, screening committee members may not participate in any matter in which he or she or an immediate family member has a financial interest. Other prohibitions apply. If you are in doubt, contact the State Ethics Commission or Town Counsel (through the Town Manager's office.) If a screening committee member learns that an immediate family member, neighbor, friend, or business associate has applied for the position, the committee member should not participate any further in the screening process until an opinion has been issued with respect to the COI question.

Helpful Links

Attorney General's Open Meeting Law Website:

<http://www.mass.gov/ago/government-resources/open-meeting-law/>

Secretary of the Commonwealth Public Records Law:

<http://www.sec.state.ma.us/pre/preidx.htm>

State Ethics Commission Website:

<http://www.mass.gov/ethics>

Contact Information

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Reasons for Convening Executive Session (M.G.L. c.30A, Sec. 21(a) – Effective July 1, 2010)

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or discuss the discipline or dismissal of, or complaints or charges against, a public officer, employee, staff member or individual. (*See Rights of Individuals – next page*)
2. To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel.
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.
4. To discuss the deployment of or strategy regarding security personnel or devices, e.g., a sting operation.
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints.
6. To consider the purchase, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.
8. ~~To consider or interview applicants for employment by a preliminary screening committee, if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants. This shall not apply to any meeting regarding applicants who have passed a prior preliminary screening.~~
9. To meet with a mediator regarding any litigation or decision; provided that (i) any decision to participate in mediation shall be made in open session and the parties disclosed and (ii) no action shall be taken with respect to the issues involved without deliberation and approval of the action at an open session.
10. To discuss trade secrets or confidential or proprietary information regarding activities by a governmental body as energy supplier, municipal aggregator or energy cooperative, if an open session will adversely affect conducting business relative to other entities making, selling or distributing energy.

Procedures for Convening Executive Session

1. **The meeting must be convened in an open posted session, with executive session listed on the agenda when reasonably anticipated by the chair.**
2. **The chair states the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose of the executive session (and, under exemptions 3, 6, and 8, makes the required declaration).**
3. **A majority must vote in a recorded roll call to go into executive session.**
4. **The chair announces whether the meeting will reconvene in open session.**
5. **Accurate minutes and other records of the executive session must be maintained, with all votes recorded by roll call.**

Rights of Individuals (Exemption 1)

1. **When a governmental body wishes to discuss: (a) the reputation, character, physical or mental health of an individual; or (b) the discipline or dismissal of or complaints or charges brought against a public officer, employee, staff member or individual, it must notify that person in writing at least 48 hours in advance of the meeting, not including Saturdays, Sundays or holidays.**
2. **Written notice may be waived by the individual.**
3. **The individual may request that the meeting be held in open session.**
4. **If an executive session is held, the individual has the right to be present for deliberations and to speak, and to have counsel or a representative of choice present for the purpose of giving advice but not for active participation.**
5. **The individual may have an independent record of the executive session created by audio recording or transcription, at the individual's expense.**



Announces a Recruitment For

TOWN MANAGER

For Town of Provincetown, Massachusetts

GovHR USA, LLC is pleased to announce the recruitment and selection process for the position of Town Manager for the Town of Provincetown, Massachusetts. This brochure provides background information on the Town of Provincetown as well as the requirements and expected qualifications for the position. Additional information about Provincetown can be found on the Town's website: <http://www.provincetown-ma.gov/>.

Candidates interested in applying for the position should submit their resume and cover letter, along with contact information for five work-related references to www.govhrusa.com/current-positions/recruitment to the attention of Joellen C. Earl, CEO, GovHR USA, 650 Dundee Road, Suite 270, Northbrook, IL 60062. Tel: 847-380-3238. First review of resumes will commence on April 20, 2015.

Joellen Earl, Chief Executive Officer
GovHR USA
650 Dundee Road, Suite 270
Northbrook, IL 60062
TEL: 847-380-3240
FAX: 866-401-3100
Formal applications should be submitted to:
www.govhrusa.com/current-positions/recruitment

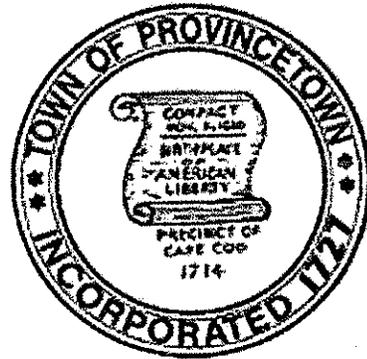


Photo by: Dan McKeon 2014

Town of Provincetown

PROFESSIONAL ANNOUNCEMENT

Town Manager, Provincetown, MA (pop. 3,000/30,000). Provincetown is located at the tip of Cape Cod, overlooking the beautiful Atlantic Ocean and Cape Cod Bay and surrounded by the Cape Cod National Seashore. This picturesque community features some of the most beautiful seaside venues found anywhere in the United States. The origins of this unique community date back to the Pilgrims' landing in the Mayflower in 1620. Provincetown, in Barnstable County, is located 116 miles southeast of Boston by road but is connected by seasonal high speed ferry and scheduled air service throughout the year. The Town consists of 17.5 square miles, 75% of which lies inside the National Park. The Town has 2,820 full-time residents and a seasonal population that can fluctuate between 20,000 and 50,000.

In the summer months, Provincetown is a popular international tourist destination, welcoming to all visitors including the LGBT community. The Town has an active nightlife and a variety of restaurants, shops and lodging options. In addition to the well-known nightlife, Provincetown is the country's largest whale watching gateway, with ecotourism representing an ever-increasing share of visitors. Provincetown has some of the most spectacular beaches and oceanside bike trails in the country, further supporting a broad tourist base. Known traditionally as a fishing community of multi-generation families of Portuguese descent, Provincetown also offers a vibrant and outstanding arts community, and is home to both renowned and emerging artists and writers. The Town has numerous art galleries and art-related cultural institutions and boasts the Pilgrim Monument, the tallest all-granite structure in the United States.

The Town is seeking a proven leader with a vision for Provincetown as its next Town Manager. The successful candidate will be a dynamic and engaging person with excellent communication skills who wishes to become part of the fabric of this small, highly engaged community. An understanding of the Open Town Meeting form of government is helpful but not required. The desire to live and work in a small town, among close-knit groups of diverse residents is essential.

The Town Manager is appointed by and works closely with the Board of Selectmen, as the Board sets the policy direction for the community. Candidates for the position will enjoy working with a collaborative, dedicated and highly competent team of Department Heads, technical staff and an outstanding Assistant Town Manager. Thus the technical skills needed to manage Provincetown, while important, are not as imperative as communication skills and the ability to develop a strategic vision for the community. The position enjoys latitude in the execution of its duties as it is considered a very strong Town Manager position under the Massachusetts General Laws. The Town has approximately 150-200 full-time/seasonal employees and a \$24,000,000 annual budget and additional \$6.4 Million in Enterprise Funds. The Town holds an AA Stable bond rating.

Candidates must possess a Bachelor's degree in Public or Business Administration or a related field; a Master's degree in Public Administration or a related field is highly desirable. In addition, the successful candidate will have a minimum of five years of progressively responsible experience in municipal management, with at least three years as a chief administrator or an assistant administrator in a municipal organization, or any combination of education and experience that would demonstrate the ability to perform the work.

Residency is required within a reasonable time after appointment and may possibly be expanded to include the neighboring Town of Truro. Starting salary range is up to \$140,000 DOQ. Candidates should send resume, cover letter and contact information for 5 (five) work-related references to www.govhrusa.com/current-positions/recruitment to the attention of Joellen C. Earl, CEO, GovHR USA, 650 Dundee Road, Suite 270, Northbrook, IL 60062. Tel: [847-380-3238](tel:847-380-3238). First review of resumes will commence on April 20, 2015.

Town Manager

Community Background

Provincetown is a small seaside village. Its chief features are expansive dunes, and a sparkling, 2-mile wide harbor which fills with ferries, whale watch boats, yachts, fishing boats and small motor and sailboats in the summer. Though the Pilgrims chose to settle across the bay in Plymouth, the outermost portion of Cape Cod enjoyed an early reputation for its valuable fishing grounds. Provincetown harbor was considered the best and the Town became a thriving whaling port during the 19th century. Summer tourism began in earnest when World War I put Europe out of bounds for the New York artists and writers that traditionally traveled abroad. As fishing declined, tourism and real estate management have become the backbone of the Town's economy.

The beautiful and inspirational environment attracts many to reside here year-round. In contrast to the summer months, Provincetown enjoys a very quiet and close-knit community in the off season. During this time, many of the seasonal residents leave, and the remaining residents enjoy the tranquil beauty of the community and its surroundings.

Provincetown Schools is an International Baccalaureate World School providing both Primary Years and Middle Years Programs for students in grades Pre K through 8. The School District of approximately 120 students benefits from rich and collaborative community partnerships and the extraordinary environmental resources surrounding the School. Provincetown Schools is a learning community committed to academic excellence and the nurturance of globally minded citizens.

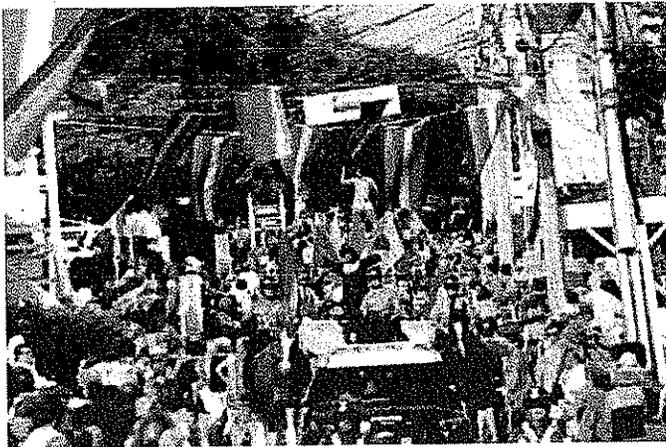


Photo by: Marilyn Lober Colucci 2014

In the summer months, Provincetown is a popular international tourist destination, welcoming to all visitors including the LBGT community. The Town has an active nightlife and a variety of restaurants, shops and lodging options.

In addition to the well-known nightlife, Provincetown is the country's largest whale watching gateway, with ecotourism representing an ever-increasing share of visitors. Provincetown has some of the most spectacular beaches and oceanside bike trails in the country, further supporting a broad tourist base. Known traditionally as a fishing community, Provincetown also offers a vibrant and outstanding arts community. It is home to both renowned and emerging artists and writers, and has numerous art galleries and art related cultural institutions.

The Municipal Organization

The Town Manager is appointed by the Board of Selectmen. The Board of Selectmen consists of five members elected for three-year overlapping terms, arranged so that the term of at least one member shall expire each year. They are elected at large by voters and the position is non-partisan.

The Board of Selectmen is the primary policy making, planning, and goal setting agency of the Town. They insure that the Provincetown General By-Laws are up to date and republished at least every five years, and make provisions for traffic regulation and control. The Board of Selectmen shall exercise the powers and duties prescribed by the Massachusetts General Laws, the Provincetown General By-Laws, or the Charter, and which are not vested in a Town officer or another Town board by the Massachusetts General Laws, the Provincetown General By-Laws, or the Charter.

Town of Provincetown

One of the most important roles is reviewing and adopting the annual budget that funds the Selectmen's priorities, Town operations, and capital projects for the fiscal year which begins every July. They also awards contracts, set user fees, and approve property tax rates.

Provincetown operates under the Open Town Meeting form of government. The Town Meeting shall be held at least one time annually to discuss and vote on matters before the community such as the municipal budget, employee compensation, large capital projects and purchases, and any changes to Town bylaws. The elected Town Moderator presides over the Town Meeting. Several committees will also make reports at the Town Meeting, including the Finance and School Committees.

In addition to the Board of Selectmen, Finance and School Committees, Provincetown enjoys the benefit of the dedication and assistance of its residents in running the municipal government. There are numerous boards, committees and commissions that meet regularly, some elected and some appointed, to discuss, recommended and/or act on matters facing the Town. Many of the committee meetings are televised and can be viewed at <http://provincetowntv.org/govt/>. The Town's website has a full listing of the boards, committees and commissions and their associated charges and responsibilities.

The Town Manager is responsible for the appointment of all Town staff and oversees the day-to-day operations of the community. To assist the Town Manager with that effort, there are approximately 125-200 full-time/seasonal employees. There is a highly competent team of Department Heads, technical staff and an outstanding Assistant Town Manager, which allows the Town Manager to focus on community projects and needs, as the day-to-day operations are in excellent hands. Traditional services range from finance, community development and housing, council on aging, library and recreation, to public health, public safety and public works. In addition, the Town owns and leases the operation of the municipal airport and has some specialized departments such as Harbor & Pier, Shellfish and Tourism. The municipal budget is \$24,000,000 and the Town holds an AA Stable bond rating.

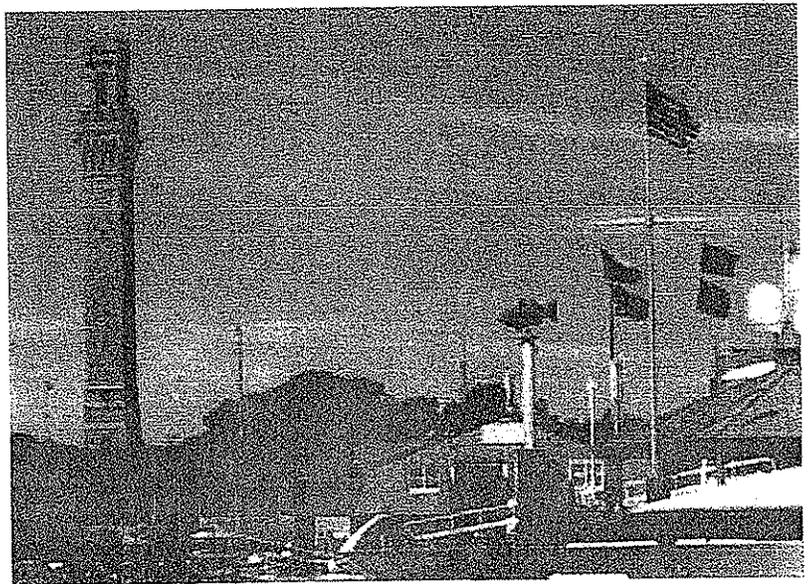


Photo by: Dan McKeon

The Position

Some of the essential functions of the position of Town Manager are as follows:

Serves as the Chief Administrative officer of the Town; plans, directs, implements and administers all of the daily operations of the Town. Manages the municipal budget; prepares budget-related warrant for town meetings and presents proposed budgets to the Board of Selectmen.

Coordinates the activities of the Board of Selectmen with activities of other departments, boards and commissions; implements policy direction established by the Board of Selectmen; keeps Selectmen fully informed regarding departmental operations, fiscal affairs and general issues. Provides reports as necessary. Prepares for meetings of the Selectmen and attends all such meetings unless excused. Serves as the official

Town Manager

Town representative for internal and external relations in the absence of the Board and/or Chair.

Serves as personnel manager, chief procurement officer and on the Commission of Public Safety, providing leadership in the Town's community-oriented policing program.

Serves as liaison to other levels of government, outside agencies and parties, and community stakeholders. Provides a vital public relations function for the Town.

Opportunities for the Town Manager

Provincetown applied for and was awarded a Design and Resiliency Team (DART) grant. Working with AIA and the New England Municipal Sustainability Network, the Provincetown 365 plan was developed. The plan focuses on developing a resilient community, as community stakeholders articulated the desire to identify more community and affordable housing and strengthening the local economy by improving the waterfront and the design of commercial areas. The plan was delivered to the community in November of 2014. The plan will be considered along with the review of the Local Comprehensive Plan.

There is an opportunity to develop or redevelop a number of land parcels in Provincetown and have a significant and positive impact on the future of the community. If the land can be developed in a manner to create year-round employment and housing opportunities, progress will be made toward achieving the residents' desire to develop a resilient community.

The Town Manager will have a significant amount of expertise available to assist with running municipal government. The residents who serve on the numerous boards, committees and commissions contain a wealth of information and institutional knowledge that can help the Town Manager in decision-making and in guiding the recommendations offered to the Board of Selection for consideration.

The business community in Provincetown is an active and engaged partner and does an excellent job of assisting in promoting the Town as an international tourist destination. There are numerous options for lodging, eating and shopping. Provincetown also offers an established art community and has numerous art galleries and art-related cultural institutions. All of these assets continue to bring guests to the community year after year.

The fishing industry is an integral part of the history of Provincetown and is an important part of the Town's current economy. Deep-sea and shell fishing operations occur for a majority of the year and are visible on the Town's waterfront. In addition, recreational boating and whale watching, which attract a large amount of day visitors, are activities that occur during the summer months and into the shoulder seasons.

Provincetown is an exquisite and beautiful community year-round. The new Town Manager will enjoy living among a close-knit group of people, some whose families stretch back generations, who are active, resilient and thoroughly respect and appreciate all that the region has to offer.

Challenges for the Town Manager

The cost of living is high in Provincetown and housing is in short supply. This phenomenon will present a challenge for a new Town Manager in relocation and it continues to be a



Town of Provincetown

pressing challenge for the residents of the community. Developing affordable housing to attract and retain year-round residents is a critical need of the community.

The population in Provincetown is aging. Finding ways to reverse this trend to move toward a more multigenerational population is desired by the community.

The seasonal nature of the community reinforces the need for seasonal workers to support the seasonal residents and guests. Housing for seasonal workers is expensive and scarce. Also, there is a high turnover of residents annually that feeds into the feeling that many of the people who reside in the community are there on a short-term basis and thus are not investing in the long-term growth and viability of the Town.

The further development of Provincetown is particularly challenging as the ability to develop any land is constrained by water supply and parking.

Desired Education, Characteristics and Traits for the Town Manager

The following education, experience, characteristics and traits have been identified by the Town of Provincetown.

Candidates must possess a Bachelor's degree in Public or Business Administration or a related field; a Master's degree in Public Administration or a related field is highly desirable, and five years of progressively responsible experience in municipal management, three of which as a chief administrator or an assistant administrator in a municipal organization, or any combination of education and experience that would demonstrate the ability to perform the work.

Candidates must be prepared to articulate a vision for Provincetown and must possess the leadership and management skills to work with the stakeholders in a diverse and engaged community, to make the collective community vision become a reality.

The Town Manager shall work in partnership with the Board of Selectmen, assisting the Board in achieving its goals and understanding and respecting the Board's responsibilities as they relate to setting the overall policy direction of the community. The Board of Selectmen will set and the Town Manager will execute policy.



Photo by: Dan McKeon

Town Manager

Listening and hearing the ideas, thoughts and comments of the elected and appointed officials, the residents and guests, and members of the staff is paramount. An open door is essential in Provincetown. Residents and guests will visit the office on a regular basis and the Town Manager must be willing to have meaningful discussions with all who walk through the door.

Public speaking and public appearances are necessary and encouraged. Being able to articulate the goals of the Selectmen and the community to other parties, both in Provincetown and in other forums where this is a vested interest, is an essential requirement. The Town Manager must possess a speaking style that is articulate, focused and significantly dynamic and engaging.

Previous Town Managers in Provincetown have been well-educated and exceedingly knowledgeable about municipal policies, procedures and operations. The new Town Manager will also possess the same qualities.

A thinker and a creative person and someone who will challenge and encourage people to ponder and develop new and exciting ideas for Provincetown will be welcomed into the community. Provincetown residents are smart, engaged and passionate about their community. The new Town Manager will be able to capture this enthusiasm and steer the community into the future.

Salary and Residency

Residency is required within a reasonable time after appointment and may possibly be expanded to include the neighboring Town of Truro. Starting salary range is up to \$140,000 DOQ.

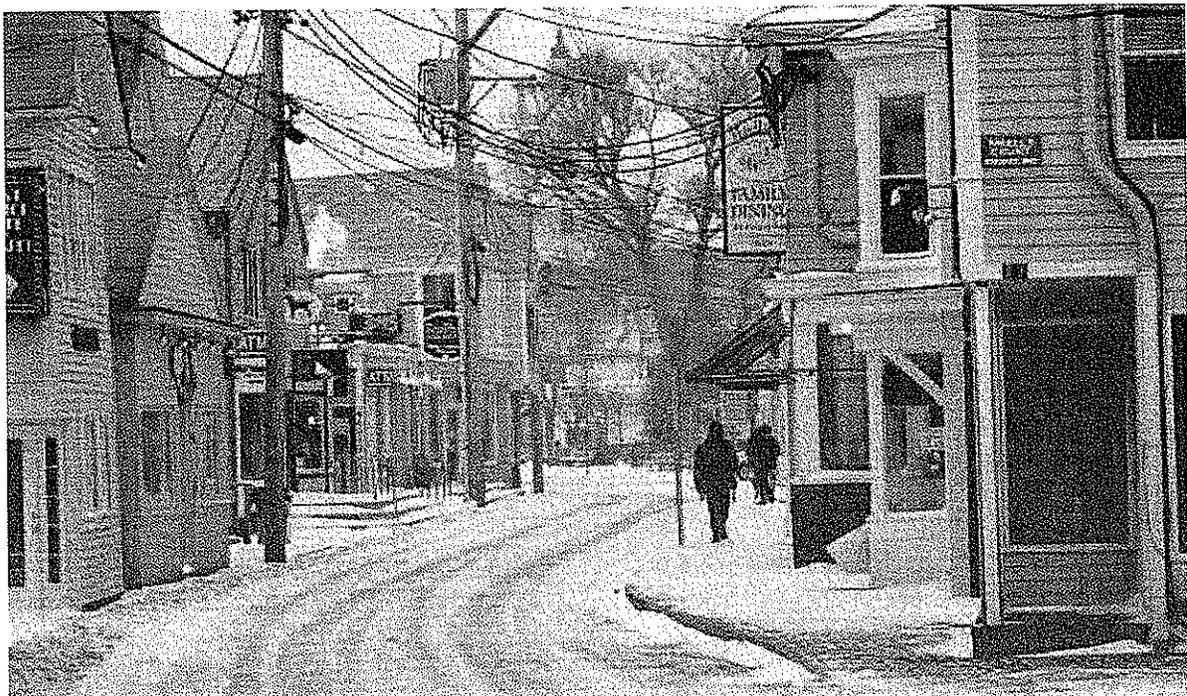


Photo by: Dan McKeon

What not to ask during an employment interview

The below chart is based upon content contained in 804 CMR §3.02. It has been modified to account for changes in the law that have occurred since this regulatory provision was last issued. It has also been expanded in order to provide further clarity and guidance.

TOPIC	EMPLOYERS MAY ASK	EMPLOYERS MAY NOT ASK
Age	<p>Generally; the only proper question is, "Are you under 18, yes or no?"</p> <p>Questions about age may be allowed if necessary to satisfy the provisions of a state or federal law (for example, certain public safety positions have age limits for hiring and retiring). Also, if the MCAD has previously identified age as a bona fide occupational qualification for the position.</p>	<p>Inquiry into the date of birth or age of the applicant, except as indicated to the left.</p>
Disability/ Handicap		<p>Inquiry into whether the applicant has a physical or mental disability, handicap or about the nature or severity of the disability/handicap.</p> <p>Inquiry into whether an applicant is alcoholic or drug addicted.</p> <p>Inquiry into whether an applicant has AIDS.</p>
National Origin/Ancestry/Citizenship	<p>"Are you legally authorized to work in the United States?"</p> <p>An employer may require an employee to produce documentation which evidences his or her identity and employment eligibility under federal immigration laws.</p>	<p>Inquiry into the birthplace of an applicant or the birthplace of his or her parent(s), spouse and/or other close relatives.</p> <p>Inquiry into the national origin ancestry or ethnicity of an applicant.</p> <p>Inquiry into whether an applicant for employment or an applicant's parent(s), and/or spouse are nationalized or native born citizens of the United States.</p>

TOPIC	EMPLOYERS MAY ASK	EMPLOYERS MAY NOT ASK
Medical Examinations	Once an offer of employment has been made, an employer may condition that offer on the results of a medical examination conducted solely for the purpose of determining whether the employee, with or without reasonable accommodation, is capable of performing the essential functions of the job.	
Race/Color	No questions.	Inquiry into the race or color of an applicant.
Photograph	No questions.	An employer cannot ask for photograph to accompany an application.
Religious Creed	No questions, except by religious organizations as provided in 804 CMR 3.01(7)(a).	Inquiry into the religious denomination or practices of an applicant, his or her religious obligations, or what religious holidays he or she observes.
Sex(Gender)	Generally, no questions. However, questions regarding gender may be permissible if they relate to a bona fide occupational qualification, which has been ruled to be a legitimate requirement for a particular position, as provided in 804 CMR 3.01(3)(b).	Inquiry into an applicant's maiden name or any question that pertain to only one sex (for example inquiries into marital status only asked of women). Inquiries into whether applicant has children, plans to have children, or has child care arrangements. Inquiries about transgender status.
Sexual Orientation	No questions.	Inquiry into applicant's sexuality (gay, bisexual, lesbian, heterosexual).
Education/ Experience/ References/ Organizations	Inquiry into the academic, vocational or professional education of an applicant for employment. Inquiry into the work experience shall also contain a statement that the applicant may include in such history any verified work performed on a volunteer basis. Inquiry into references.	Questions about education designed to determine how old the applicant is. Inquiry into the organizations which the applicant for employment is a member, the nature, name or character of which would likely disclose the applicant's protected class status.
Lie Detector Test	No questions.	It is unlawful to require or administer a lie detector test as a condition of employment or continued employment.

TOPIC	EMPLOYERS MAY ASK	EMPLOYERS MAY NOT ASK
Criminal Record	<p>Employers may ask the following series of questions:</p> <ol style="list-style-type: none"> 1. Have you been convicted of a felony? Yes or no? 2. Have you been convicted of a misdemeanor within the past five years (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no? 3. Have you completed a period of incarceration within the past five years for any misdemeanor (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no? 4. If the answer to question number 3 above is "yes" please state whether you were convicted more than five years ago for any offense (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no? 	<p>It is unlawful for an employer to make any inquiry of an applicant or employee regarding: 1. An arrest, detention or disposition regarding any violation of law in which no conviction resulted;</p> <ol style="list-style-type: none"> 2. First convictions for the misdemeanors of drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace. "Minor traffic violations" include any moving traffic violation other than reckless driving, driving to endanger and motor vehicle homicide. 3. Any conviction of a misdemeanor where the date of the conviction or the completion of any period of incarceration resulting therefrom, which ever date is later, occurred five or more years prior to the date of such inquiry, unless such person has been convicted of any offense within five years immediately preceding the date of the inquiry. <p>No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold, as outlined above.</p>

Please note that with respect to inquiries about criminal background, **NO** questions whatsoever may be asked of an applicant on an employment application (unless the position applied for is one for which a federal or state law, regulation, or accreditation disqualifies an applicant based on a conviction; or the employer has an obligation under a federal or state law or regulation not to employ persons who have been convicted of a crime.) This is as a result of a statutory change in 2010. Questions about criminal background may be asked during an interview of an applicant, subject to the limitations described above.

Furthermore, while it is up to the hiring authority's discretion whether or not to reject a candidate due to criminal background, there are certain factors that should be considered, namely:

- Relevance of the record the position;
- The nature of work being performed;
- Time since the conviction;
- Age of the candidate at the time of the offense;

- Seriousness and specific circumstances of the offense;
- The number of offenses;
- Whether there are pending charges;
- Any relevant evidence of rehabilitation or lack thereof; and
- Any other relevant information, including information submitted by the candidate or requested by the organization.

As a general recommendation, a screening committee should not have access to, nor should it ask applicants, questions concerning criminal background generally, as the recommended approach is to only conduct criminal background checks on the finalist (a conditional offer of employment would first be made, contingent upon the successful passing of a CORI check). Of course, if the candidate brings it up in an interview conducted by the screening committee, the committee can make note of the comments from the candidate, but it is best if the committee members do not ask follow up questions or otherwise base their decision whether to advance a candidate to the next round in the process upon this information.

Also, please be aware that if a candidate is rejected at any stage in the process, due to criminal background, state regulations require advance notice to the applicant of the possibility of an adverse decision based upon his/her criminal background, together with other notice provisions, which can be found at 803 CMR §§2.17 and 2.18.

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