



Town of Shelburne, Vermont

SELECTBOARD MEETING AGENDA
SHELBURNE TOWN OFFICES, 5420 SHELBURNE ROAD
Tuesday, April 26, 2022, 7:00 P.M.
Hybrid Meeting – in person and via Zoom

Join SELECTBOARD Zoom Meeting

<https://us02web.zoom.us/j/84799439682?pwd=SEw3QnBrTIV2UWRDVVdsdE41K2I4Zz09>

Meeting ID: 847 9943 9682; Passcode: 9gCgQQ

Or by phone: 301 715 8592 US (Washington DC); 312 626 6799 US (Chicago); 929 205 6099 US (New York)

Meeting ID: 847 9943 9682; Passcode: 843074

Call to Order/Roll Call	7:00 P.M.
*Approve Agenda	7:00 P.M.
*Approve meeting minutes of April 12, 2022	7:00 P.M.
Public Comments re: items not on the agenda	7:05 P.M.
Selectboard Comments	7:15 P.M.
Town Manager Report	7:20 P.M.
*CBC Appointment	7:25 P.M.
*Cat and Dog of the year	7:30 P.M.
*Property Tax late fee waiver request	7:35 P.M.
*Fair and Impartial Policing policy proposal	7:40 P.M.
*Police Chief search process	8:00 P.M.
*Funding request from Natural Resources and Conservation Committee	8:30 P.M.
*Request to authorize a grant application by the Diversity and Equity Committee	8:45 P.M.
*Ratify updated contract for Police and Dispatch	8:55 P.M.
*Receive zoning amendment approved by the PC and schedule hearing	9:00 P.M.
*Executive Session – personnel	9:05 P.M.
*Adjourn	9:25 P.M.



Town of Shelburne, Vermont

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ANNOTATED AGENDA
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You will recall Jeff Carr, new Shelburne resident and recent appointee as our alternate to the CCRPC Board. Although not yet confirmed as of this writing, we hope that with his significant experience in the economic arena, that he will now also seek appointment to the Finance Committee. This would be for a new, full three-year term.

MOTION: I move to appoint Jeff Carr to the Finance Committee, effectively immediately and running until April 1, 2025.

*Cat and Dog of the year	7:30 P.M.
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This annual, joyful event is facilitated and hosted by Town Clerk Diana Vachon, who will join us this evening for this event.

***Property Tax late fee waiver request**

7:35 P.M.

This is a request from a property owner for a waiver of the late fee and penalty related to the recent property tax installment. The amount sought to be waived is \$351.73. The reason offered relates to criterion #3 in the attached Selectboard policy – health/medical condition. There is no record of this property owner having been late on prior property tax payments. Note that standard practice per the policy is that a property owner enroll in automatic payment unless there is a justifiable reason otherwise. If the Board is so inclined, then

MOTION: I move to waive the late fee and penalty in an amount of \$351.73 related to account number 371-0056, as long as the property owner enrolls in automatic payment unless they are unable to do so.

***Fair and Impartial Policing Policy proposal**

7:40 P.M.

As you'll recall, this matter was brought to the Selectboard last year. Based on concerns raised about conflicts with federal law governing such matters, the matter was tabled and the proponents were asked to rework the proposal accordingly. The revised proposal is now back before the Board for consideration. As I understand it, other external circumstances may have also changed that might lessen concerns about conflicts with federal law. Note that a new concern has been raised by our insurer VLCT/PACIF, whether such a policy could cause conflict with our insurance coverage in certain circumstances. While social pressures mount to adopt unique policies like this on a town by town basis, questions have also been asked whether there's ever been an actual problem of this sort here in Shelburne; whether it makes sense to have local policies like these that are inconsistent with existing State-mandated policies already in place; and whether it might be more appropriate for proponents of such policies to seek change at the State level so that all police departments are operating under the same guidelines statewide, as exist for many other policing-related and other municipal matters? Separate from the policy implications themselves, it may also be worth considering whether changing or adding any significant policy at this very time makes sense, when we are trying to regain a sense of stability within our Police Department.

Background documents and the current FIPP proposal are attached for your review. Town attorney Brian Monaghan will also be present for this conversation to answer questions and offer perspective as may be needed. Whether the Board will feel comfortable with this proposal remains to be seen; and as always, there is no presumptive requirement to take action. However, if the Board is inclined to adopt it as proposed or as may be modified, then

MOTION: I move to adopt the Fair and Impartial Policing Policy as proposed (or as modified) for the Shelburne Police Department.

***Police Chief search process**

8:00 P.M.

Various circumstances that have brought us to this point. While looking back may at times help to illuminate lessons learned, it's important to focus our vision and efforts forward toward a desired future condition. As is often the case, there are several possible options or strategies for moving forward. These are described in the attached memo as what I hope will be a helpful launch pad for discussion.

***Funding request from Natural Resources and Conservation Committee**

8:30 P.M.

As you will see in the attached letter, the Natural Resources and Open Space Committee seeks Selectboard authorization to spend \$50,000 from the Open Space Fund toward a land conservation project at Shelburne Farms. I anticipate that representatives from the Committee and/or the Farms will be present to explain this project and this request.

***Request to authorize a grant application by the Diversity and Equity Committee**

8:45 P.M.

I anticipate that someone from the Committee will present this request.

***Ratify updated contract for Police and Dispatch**

8:55 P.M.

The short story is that we thought we had reached agreement on all elements of the version of the contract that the Selectboard had ratified several meetings ago. Since that time, questions were raised about several aspects of the contract. Upon further negotiation, we present to you a new version of this contract, as reviewed by the Town attorney and as now already signed by the Union Steward. As noted previously, and unlike historical agreements, this is a five-year contract providing longer term certainty for both the Town and the Union, and for which we will not need to begin negotiations anew almost as soon as the ink is dry here.

MOTION: I move to ratify the Agreement by and between the Town of Shelburne and the New England Police Benevolent Association Local 413, which is effective July 1, 2021 to June 30, 2026.

***Receive zoning amendment approved by the PC and schedule hearing**

9:00 P.M.

Attached please find a proposed zoning amendment as approved by the Planning Commission. With minor revisions from the current interim bylaw, this would make permanent the allowances for outdoor dining and conduct of business that were enacted to help our business community during the COVID emergency. As you know, interim bylaws are a short term 'fix' which must eventually either expire or be adopted in some form. Absent further action, then the current interim bylaw will expire on June 30. This brief bylaw is believed effective and supportive of Town Plan goals, and the Planning Commission supports adoption as presented.

As this requires further action by the Selectboard, and presuming that the Board will wish to keep this process moving forward, then

MOTION: I move to accept the proposed zoning amendment entitled Conduct of Outdoor Business Activity and to warn a public hearing for May 24, 2022.

***Executive Session – personnel**

9:05 P.M.

Having discussed major aspects of a Police Chief search process earlier this evening in open session, this item is on the agenda in case the Selectboard would like the opportunity to discuss other aspects of this in executive session, as it is entitled to do. If so, then

MOTION: Pursuant to 1 VSA 313, I move to enter executive session to consider the appointment or employment or evaluation of a public officer or employee, and to invite the Town Manager to participate.

Please remember, if we do go into executive session, then it is thought good practice to return to open session in order to make any announcements or decisions that may result, or simply to adjourn.

***Adjourn**

9:25 P.M.

**TOWN OF SHELBURNE
SELECTBOARD
MINUTES
April 12, 2022**

***Hybrid meeting held via teleconference and in-person.**

MEMBERS PRESENT: Mike Ashooh (Chair), Luce Hillman, Cate Cross, Kate Lalley, Matt Wormser.

ADMINISTRATION: Lee Krohn, Town Manager; Peter Frankenburg, Finance Director; Adele Gravitz, Planning Director; Diana Vachon, Town Clerk.

OTHERS PRESENT: Members of the public participating in the meeting included Sean Moran, Sue Furry Irish, Auditi Guha, Barbara Johnson, Bill Deming, Bill Keogh, Charlotte, Chris Kent, Don Porter, Donna Fialkoff, Eric, Gail Albert, Helen C, iPhone, James Mack, Jane Zenaty, Jean-Henri LaPierre, John, Ken Scott, Laura Kingsland, LG Stylo 5, Linda, Louis Maguire, Maria Horn, Mary Kehoe, Michael Thomas, Patricia Fontaine, Peggy Coutu, Jessica Brumsted, Robilee Smith, Shelburne Town Host, Steve, Susan McLellan, Tom Zenaty, Linda Riell, Lee Suskin, Judy Ravin, Mike Donoghue, Media Factory.

1. CALL TO ORDER

Chair Mike Ashooh called the hybrid in-person and teleconference meeting to order at 7 PM.

2. APPROVE AGENDA

MOTION by Cate Cross, **SECOND** by Kate Lalley, to approve the agenda.
VOTING: unanimous (5-0); motion carried.

3. MINUTES

March 15, 2022, March 22, 2022, March 30, 2022

MOTION by Matt Wormser, **SECOND** by Cate Cross, to approve the minutes of 3/15/22, 3/22/22, and 3/30/22 as presented. **VOTING: unanimous (5-0); motion carried.**

4. PUBLIC COMMENT

- There were comments and questions on the following:
- The problem(s) within the Police Department and any other Town departments need to be rectified.
 - Amount of the settlement agreement with the Police Chief and paying the dispatchers and police officers enough so everyone is at the appropriate step in the paygrade.
 - Seeking a new legal team to advise the town.

- Informing the public on how the Police Chief position will be advertised and how a search committee will be put together.
- Thanks to the Selectboard for the follow through to the Planning Commission on the concerns with the Mixed Residential Character District of Form Based Code.
- Consider a crossing guard at the railroad tracks on Harbor Road at the start and end of the school day to help the schoolchildren safely cross the tracks.

5. SELECTBOARD COMMENTS

- The Selectboard committed to learning from what went wrong within the Police Department and moving forward with transparency.
- The warning sign by the railroad crossing on Harbor Road is welcomed.
- National Public Safety Telecommunications Appreciation Week recognizes all dispatchers.
- Article about Highway Superintendent Paul Goodrich in *Seven Days* on Shelburne reflected nicely on the town.
- Mike Ashooh read a statement on events, causes, and actions that need to be rectified in the Town.

6. TOWN MANAGER REPORT/UPDATE

Lee Krohn reported:

- Double warning signs and a flashing yellow beacon have been installed at the Harbor Road railroad crossing. The stop bar on the road will be painted when the weather permits.
- The Town is committed to increasing pay for the police and dispatchers. The Selectboard signed the union contract. The union has not yet signed.
- Article about Highway Superintendent Paul Goodrich in the *Seven Days* newspaper on the Town of Shelburne was wonderful.
- National Public Safety Telecommunications Appreciation Week recognizes all the Shelburne Dispatchers (James Mack, Tricia Vincent, Laurie Fox, Kristin Wright, Ryan Brown, Kayla DeBellis, Melissa Theborge, Cathleen Pigeon, Ashley Lizotte, Angela Bellizzi, Tim Francis, Jake Kilpeck, Kelsey Parker).

7. CBC APPOINTMENT(s)

MOTION by Cate Cross, SECOND by Kate Lalley, to reappoint the individuals as listed in the document titled “2022 CBC Reappointments and Term Expirations”.

DISCUSSION: It was noted there will be training on the Open Meeting Law and Shelburne Ethics Ordinance for all appointees.

VOTING: unanimous (5-0); motion carried.

Current CBC openings:

Planning Commission

Social Services Committee

Ethics Committee

Water Committee

Finance Committee

Shelburne Historic Preservation & Design Review Committee

8. SOCIAL SERVICES COMMITTEE CHARTER UPDATE

Sue Furry Irish reviewed proposed changes to the charter for the Social Services Committee which includes increasing the membership to seven people. There was discussion of the guiding principles and objectives, funding, and disbursement of funds. Sue Furry Irish will incorporate the changes and clarify the language in the committee documents as discussed for future Selectboard consideration.

9. PROPERTY TAX REVENUE UPDATE

Peter Frankenburg reported the Town had billed out \$34 million to be paid in three tax installments for the current fiscal year. The pandemic did not have a huge impact on tax collections. Delinquencies did not increase dramatically. Staff provides great customer service and residents are very pleasant and cooperative. The Town Manager is working with the Town Attorney on the few chronically delinquent tax payments. There is a tax sale process if necessary. The Water and Sewer funds have higher delinquencies than the general fund. Disconnection notices will be sent for non-payment (we were not allowed to do so under prior State COVID rules). The stormwater utility fee is added onto the water and sewer bill. Residents not on municipal water and sewer are provided an explanation as to why they are receiving the stormwater utility bill, when they had not previously received utility bills from the Town.

10. CONGRESSIONAL PROJECT PROPOSAL

Staff reported federal earmarks have been reinstated on short notice to the Town for projects. Discussion of potential projects included: bike/ped path connections from both ends of the Ti Haul Trail to Shelburne Farms; additional funding to cover cost increases for the Irish Hill path project; energy audits and upgrades of Town and School buildings, and essential improvements for the Rescue Squad building. The Town Manager will contact the Congressional delegation to discuss these potential projects, determine which might be eligible, and will pursue applications ASAP (due on 4/18 and 4/22). It was noted that having cost estimates in hand is essential in these application processes.

11. “MOW LESS MAY” PROPOSAL

MOTION by Kate Lalley, SECOND by Cate Cross, to declare the month of May 2022 as “Mow Less May”. VOTING: unanimous (5-0); motion carried.

12. SELECTBOARD RETREAT PLANNING/LOGISTICS

There was discussion of potential topics for the Selectboard retreat on April 30, 2022 beginning at 2 PM which may include the Vermont Council on Rural Development, regulatory reform, capital planning and ARPA funds, Police Chief position, Shelburne 2035 and what people want, how to get there, and how to pay for it.

13. PAVING GRANT APPLICATION

MOTION by Cate Cross, SECOND by Kate Lalley, to authorize the submittal of the paving grant application as proposed and to have the Selectboard sign the required documents.

DISCUSSION: It was noted in past years the Selectboard asked that certain east-west roads be striped with narrower travel lanes.
VOTING: unanimous (5-0); motion carried.

14. STANDARD ALLOWANCE UNDER FINAL ARPA RULES
MOTION by Kate Lalley, **SECOND** by Cate Cross, that the Town of Shelburne take the standard allowance as provided by the U.S. Department of Treasury for the coronavirus local and state fiscal recovery funds final rules for purposes of allocating federal ARPA funds for local purposes. **VOTING:** unanimous (5-0); motion carried.

15. ADJOURNMENT
MOTION by Cate Cross, **SECOND** by Matt Wormser, to adjourn the meeting. **VOTING:** unanimous (5-0); motion carried.

The meeting was adjourned at 9:23 PM.

RScty by tape: MERiordan

For the Selectboard

Date

7. Other extenuating circumstances not considered above which the Selectboard considers equivalent in nature to 'just cause' justifications listed herein.

Process: If one of the criteria listed above is met, the Selectboard will use its authority under §147-9.2 of the Town Charter to consider the waiver of the property tax penalty fee, at a duly warned meeting. As a condition of waiver, the Selectboard shall require that the property tax payer first enrolls with the automatic payment option, unless a justifiable reason is provided for why the property tax payer is unable to enroll in the automatic payment option.

Adopted: February 13, 2018.

Shelburne Selectboard

_____/s//_____
Gary von Stange, Chair

_____/s//_____
Jerry Storey

_____/s//_____
Colleen Parker

_____/s//_____
Josh Dein

_____/s//_____
Jaime Heins

Dear Selectboard Members,

Thank you for the opportunity to present on November 23, 2021, and discuss our proposal to strengthen Shelburne's Fair and Impartial Policing Policy. This is an issue that is championed by the human rights organization, Migrant Justice, and has resonated deeply with Vermonters, as shown by the passage of this exact reform in eight jurisdictions across the state since 2018 - Winooski, Burlington, Hartford, Norwich, Richmond, South Burlington, Brattleboro, and the Addison County Sheriff. This issue has also resonated with the Shelburne community. In 2020, a group of five or six Shelburne residents convened the Shelburne Fair and Impartial Policing Policy Team, and we have spent the past year talking to our neighbors and friends, town officials, and statewide organizers. To date, 351 Shelburne residents have signed our petition to urge the Shelburne Selectboard to adopt this policy. We contacted the Shelburne Police Department starting in February 2021 to inform them of our policy proposal, and former Chief Noble assigned Sgt. Bruce Beuerlein as a liaison to our team, and Bruce has repeatedly expressed his support for our efforts. Recently we have also reached out to Acting Chief Thomas.

On the day before our scheduled presentation, Mike Ashooh provided the selectboard and our team with a 9-page policy review from Shelburne Town Attorney Brian P. Monaghan against the revised Fair and Impartial Policing Policy that our team proposed. Our team had insufficient time to prepare a response to Mr. Monaghan's review during our aforementioned selectboard presentation. With legal assistance from the American Civil Liberties Union of Vermont (ACLU) and the National Lawyers' Guild (NLG), we present to you today a strong legal and moral case for why the Shelburne Selectboard should adopt the strengthened Fair and Impartial Policing Policy that we proposed. The attached letter from the ACLU and NLG responds directly to Mr. Monaghan's concerns regarding the policy proposal. We've also attached a memo from the Chittenden County Attorney, Sarah George, which urges all municipalities in Chittenden County to adopt strengthened fair and impartial policing policies. Finally, we are including the proposed policy and a factsheet with a high-level overview of this issue.

We ask that you review these documents and reach out to any of us on the Shelburne Fair and Impartial Policing Team via email or phone with any questions. Thank you for your service to the town and for your consideration of this important issue that allows all people, whether they are residents of Shelburne or visitors, to feel safe living and driving through our town.

We look forward to hearing when you can put this item to a vote on an upcoming Selectboard meeting agenda.

Best,
Shelburne Fair and Impartial Policing Policy Team

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Caryn Feinberg
Doug Marden

Attachments:

- Letter from ACLU - NLG
- Memo from Sarah George
- Proposed Policy (mark-up version)
- Decision Maker Overview

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Marcela Pino
Shelburne FIPP Team

SHELBURNE POLICE DEPARTMENT

SUBJECT: Fair and Impartial Policing

EFFECTIVE DATE: ~~April 12,~~
2019TBD

NUMBER: General Order #9

REFERENCE: Supersedes all previous

SPECIAL INSTRUCTIONS:

REEVALUATION DATE: as needed

APPROVED:

NO. PAGES: 97

PURPOSE

The purpose of this policy is to require that all Shelburne Police Department employees conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics, or immigration status, when making law enforcement decisions and to reinforce processes and procedures that enable us to provide services and enforce laws in an equitable and impartial way. The Shelburne Police Department is required to adopt each component of the Vermont Criminal Justice Training Council's model fair and impartial policing policy. The Shelburne Police Department ~~may adopt~~ has adopted additional components. Nothing in the Shelburne Police Department Fair and Impartial Policing Policy is intended to violate federal law.

INTRODUCTION

Employees are prohibited from engaging in biased policing. This means no member of The Shelburne Police Department shall take actions based on any personal characteristics, or immigration status, except as described below, in the services our employees provide to the community in connection with our law enforcement activities.

Because partnership with Vermont residents is the most effective way to ensure public safety, maintaining the public's trust is a primary concern. To secure this trust, personal characteristics, or immigration status, should have no adverse bearing on an individual's treatment in the Shelburne Police Department's custody. Enforcement of civil immigration law is a federal responsibility and agencies should not engage in such enforcement except as otherwise outlined in this policy. Vermont residents are more likely to engage with law enforcement and other officials by reporting emergencies, crimes, and acting as witnesses; to participate in economic activity; and to be engaged in civic life if they can be assured they will not be singled out for scrutiny on the basis of their personal characteristics or immigration status.

To achieve these objectives The Shelburne Police Department will implement a combination of best practices including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

POLICY

I. Definitions

“Biased policing”: ~~is~~ conduct by law enforcement officers motivated by an individual’s actual or perceived or self-identified personal characteristics.

“Personal characteristics”: May include but is not limited to actual or perceived identity, race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socio-economic status.

“Immigration status”: Generally refers to the legal rights, if any, of a non-citizen to enter or remain in this country. Examples include, without limitation, “lawful permanent resident,” “temporary worker,” “refugee,” and “undocumented.”

“Reasonable suspicion”: Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.

“Probable cause”: Facts or circumstances that would lead a reasonable person to believe that a crime has been committed, or is being committed, or is about to occur.

“Member” or “employee”: ~~any~~ Any employee employed by the Shelburne Police Department, regardless of their assigned tasks or duties.

“Federal immigration authorities”: ~~federal~~ Federal agencies, departments, or employees or contractors thereof, tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

II. Policing Impartially

- a. As required by law, all enforcement actions by law enforcement officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, etc. must be based on reasonable suspicion, probable cause or other or relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action.
- b. The Shelburne Police Department members may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant, temporally specific information that links a person of specific description to particular criminal incidents and is combined with other identifying information.
- c. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services, either in person or telephonically, to any person in need of it. Shelburne Police Department employees shall not contact federal immigration authorities for

interpretation services, unless a clear emergency requires it and qualified interpretation services are not available through any other means. Unless one of the exceptions included in Section VIII applies, the Shelburne [Police](#) Department member shall not ask about the immigration status of the person for whom interpretation is sought.

III. Community Relations

To cultivate and foster transparency and trust with all communities each Shelburne Police Department member shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with members of the public unless circumstances indicate it would be unsafe to do so:

- a. Be courteous and professional;
- b. Introduce him/herself to person (providing Officers name and Shelburne Police Department affiliation), and state the reason for the stop as soon as practicable unless providing this information will compromise officer or public safety, or a criminal investigation;
- c. Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and the Shelburne Police Department member conveys the purpose of the reasonable delays;
- d. Provide the Shelburne Police Department member's name verbally when requested. The Shelburne Police Department's member may also provide the information in writing or on a business card;
- e. In addition to the above, officers should answer relevant questions the person may have if doing so will not compromise safety and/or the investigation.

IV. Responding to Bias-Based Reports or Reports Regarding Bias from the Community

- a. If any Shelburne Police Department employee receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the Shelburne Police Department member will attempt to ascertain if there are other circumstances or facts that would constitute reasonable suspicion or probable cause. If the complainant can offer no further information, the complainant will be advised that the shift supervisor will be in contact at the first opportunity.
- b. The shift supervisor should attempt to familiarize the caller with the Shelburne Police Department's Fair and Impartial Policing policy. If the caller is concerned about the person's perceived immigration status, the caller should be referred to federal authorities.
- c. At the conclusion of the call, the shift supervisor will document the contact using Shelburne Police Department's incident report system.
- d. If a Shelburne Police Department employee receives a report of a potentially biased or hate-motivated incident, the Shelburne Police Department shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

V. Training

- a. The Shelburne Police Department will ensure that, at a minimum, all members and employees are compliant with Council and legislative requirements regarding fair and impartial policing training.
- b. Additional trainings may include but not be limited to instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.

VI. Accountability and Compliance

- a) The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- b) All Shelburne Police Department employees are required to promptly report allegations, complaints or knowledge of biased policing or suspected violations of this policy to their supervisor and the department's internal investigation function. Where appropriate, employees are required to intervene at the time the biased policing incident occurs.
- c) State law requires all Vermont law enforcement agencies to conduct valid investigations of alleged biased law enforcement, even if the named member or employee resigns. Effective July 1, 2018, The Shelburne Police Department is required to report to the Criminal Justice Training Council instances in which officers have willfully engaged in biased law enforcement or substantially deviated from policies prohibiting such enforcement. The regulating authority may, in turn, impose sanctions up to revocation of officers' certification.¹
- d) Violations of the policy shall result in appropriate disciplinary action as set forth in the Shelburne Police Department's rules and regulations. Supervisors shall ensure that all employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert for and respond to indications of potential biased policing.

VII. Establishing Identity

- a. Shelburne Police Department employees may make attempts to identify any person they detain, arrest, or who come into the custody of the Shelburne Police Department.
- b. Acceptable forms of identification, which must include a photograph of the individual, include, but are not limited to, driver's licenses from any U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards. All identification is subject to reasonable scrutiny and follow-up for authentication consistent with the provisions of this policy.
- c. An individual shall not be stopped or detained solely for the purpose of establishing his or her identity. However, if the individual has already been stopped for a lawful purpose, he or she may be subject to objectively reasonable additional detention in order to establish identity (*e.g.*, inquiry into identity during the course of a lawful traffic stop).

- d. In exercising their discretion to use federal resources to establish an individual's identity, Shelburne Police Department employees should remain mindful that (1) their enforcement duties do not include civil immigration enforcement and (2) The Shelburne Police Department stands by its mission to serve all Vermonters, including immigrant communities, and to ensure trust and cooperation of all victims/witnesses. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity, ~~though this provision does not prohibit any communication governed by 8 U.S.C. §§ 1373 and 1744. See Section XI below.~~

Due Process, Immigration and Citizenship Matters

VIII. Federal Civil Immigration Law: Stops, Detention, Arrests and Administrative Warrants/ Detainers

Shelburne Police Department employees do not have authority to enforce federal civil immigration law. The Constitution's Fourth Amendment and the Vermont Constitution's Article 11 right against unreasonable search and seizure apply equally to all individuals residing in Vermont.

- a. Shelburne Police Department employees will not inquire of a person about that person's immigration status unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status. ~~This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644.~~ See Section XI below.
- b. Shelburne Police Department employees shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations. ~~This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644.~~ See Section XI below.
- c. Shelburne Police Department employees shall not initiate or prolong stops for the purpose of enforcing civil immigration matters, such as suspicion of undocumented status, nor shall they prolong stops for the purpose of allowing federal immigration authorities to conduct such investigation.
- d. Shelburne Police Department employees shall not arrest or detain any individual based on an immigration "administrative warrant" or "immigration detainer." These documents have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. In addition, these documents do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution.
- e. Shelburne Police Department employees shall not hold for, or transfer people to, federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer is not a warrant and is not reviewed by a judge, and therefore is not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime,

shall not be confused with immigration detainers. This provision does not affect the proper handling of arrests and detentions associated with judicially-issued criminal arrest warrants.

~~f. In assessing whether to seek continued custody under Vermont Rule of Criminal Procedure 3, Shelburne Police Department employees shall not presume that undocumented individuals necessarily present a risk of flight. Instead, such judgments shall be made on the facts presented in each case, rather than made simply on the basis of immigration status. In addition, personal characteristics shall not be used as a reason to arrest someone instead of citing them, and personal characteristics shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.~~

~~g.f.~~ Personal characteristics and/or immigration status, including the existence of a civil immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes such as referral to diversion or a Community Justice Center. Furthermore, personal characteristics and/or immigration status shall not be used as a criteria for citation, arrest, or continued custody under Rule 3 of the Vermont Rules for Criminal Procedure.

IX. Federal Criminal Law: Border Crossings

~~Shelburne Police Department employees have authority to enforce federal criminal law. Unauthorized border crossings by persons who are not U.S. citizens or nationals can be a federal crime. (Generally speaking, unauthorized entry is a misdemeanor and unauthorized re-entry following prior deportation or immigration removal is a felony.) All laws and constitutional rights applicable to criminal investigations apply to the enforcement of federal criminal law. shall not make warrantless arrests or detail individuals on suspicion of "unlawful entry", unless the suspect is apprehended in the process of entering the United States without inspection.~~

~~However, mere unauthorized presence in the country (e.g., overstaying a visa) is not a federal crime, but a civil infraction.~~

~~a. As stated in Section VIII(a), Shelburne Police Department employees shall not inquire of a person about that person's immigration status unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status. (For example, they cannot ask someone about immigration status merely on the basis race, color, or perceived national origin.) This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below. If a Shelburne Police Department member is contacted by federal authorities please refer to Section XI, Collaboration with Federal Immigration Officers.~~

X. Victim and Witness Interaction

The cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all residents. The following provisions are intended to support crime victims/witnesses and enhance trust between the police and community.

- a. Shelburne Police Department employees shall not ask about or investigate immigration status of crime victims/witnesses, except as allowed in subsections (b) and (c) below. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witnesses.
- b. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, Shelburne Police Department employees will not ask about, or investigate, immigration status of crime victims/witnesses unless information regarding immigration status is an essential element of the crime (such as human trafficking).
- c. If a victim/witness is also a suspect, Shelburne Police Department employees should follow the provisions in Section VII related to stops, detention and arrest and Section VIII(a) related to ongoing criminal investigations.
- d. Shelburne Police Department employees will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. Shelburne Police Department employees should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses. In considering whether to contact federal authorities pursuant to 8 U.S.C. § 1373, ~~Shelburne Police Department employees should remain mindful that (1) their enforcement duties do not include civil immigration enforcement and (2) The Shelburne Police Department stands by its mission to serve all Vermonters, including immigrant communities, and to ensure the trust and cooperation of all victims/witnesses. Shelburne Police Department employees shall not share information about crime victims/witnesses with federal immigration authorities, unless it is with the individual's consent.~~
- e. Shelburne Police Department employees may, in appropriate situations, advise an individual that if they are undocumented they may be eligible for a temporary visa.ⁱⁱ

XI. Collaboration with Federal Immigration Officers

~~Shelburne Police Department employees have no obligation to communicate with federal immigration authorities regarding the immigration or citizenship status of any individual. Two federal statutes, 8 U.S.C §§ 1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with other government officials (for example, ICE or CBP) regarding an individual's "citizenship or immigration status". The Shelburne Police Department shall apply this policy in a manner consistent with the lawful operation of these two statutes.~~

- a. ~~Information about an individual that is outside the scope of Sections 1373 and 1644 (i.e., information other than "citizenship or immigration status") should not be shared with federal immigration authorities unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law. No information about an individual shall be shared with federal immigration authorities unless necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations.~~

- b. Sweeps intended solely to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime shall not be conducted unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.
- c. Shelburne Police Department members are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for civil immigration enforcement. ~~This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644.~~
- d. Unless ICE or Customs and Border Patrol (CBP) agents have a judicially-issued criminal warrant, or Shelburne Police Department employees have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, Shelburne Police Department employees shall not ~~propose granting~~ ICE or CBP agents access to individuals in the Shelburne Police Departments custody.

SAVINGS CLAUSE

~~Pursuant to 8 U.S.C §§ 1373 and 1644, The Shelburne Police Department may not prohibit, or in any way restrict, any government agent or official from sending to, or receiving from, federal immigration authorities' information regarding the citizenship or immigration status, lawful or unlawful, of any individual. The Shelburne Police Department also may not prohibit, or in any way restrict, the sending, receiving, maintaining, or exchanging information regarding the immigration status of any individuals. Nothing in this policy is intended to violate 8 U.S.C §§ 1373 and 1644.~~

This Fair and Impartial Policing policy was approved by the Vermont Criminal Justice Training Council on 12-7-2017.

ⁱ VT Act 56 (2016), *codified in* 20 V.S.A. § 2402(2) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), . § 2404 (duty to investigate) and § 2406 (Council-issued sanctions).

ⁱⁱ For example, an individual might qualify for a U, S, or T visa if they are a victim or material witness to certain serious offenses.

SHELBURNE POLICE DEPARTMENT

SUBJECT: Fair and Impartial Policing

EFFECTIVE DATE: TBD

NUMBER: General Order #9

REFERENCE: Supersedes all previous

SPECIAL INSTRUCTIONS:

REEVALUATION DATE: as needed

APPROVED:

NO. PAGES: 7

PURPOSE

The purpose of this policy is to require that all Shelburne Police Department employees conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics, or immigration status, when making law enforcement decisions and to reinforce processes and procedures that enable us to provide services and enforce laws in an equitable and impartial way. The Shelburne Police Department is required to adopt each component of the Vermont Criminal Justice Training Council's model fair and impartial policing policy. The Shelburne Police Department has adopted additional components. Nothing in the Shelburne Police Department Fair and Impartial Policing Policy is intended to violate federal law.

INTRODUCTION

Employees are prohibited from engaging in biased policing. This means no member of The Shelburne Police Department shall take actions based on any personal characteristics, or immigration status, except as described below, in the services our employees provide to the community in connection with our law enforcement activities.

Because partnership with Vermont residents is the most effective way to ensure public safety, maintaining the public's trust is a primary concern. To secure this trust, personal characteristics, or immigration status, should have no adverse bearing on an individual's treatment in the Shelburne Police Department's custody. Enforcement of civil immigration law is a federal responsibility and agencies should not engage in such enforcement except as otherwise outlined in this policy. Vermont residents are more likely to engage with law enforcement and other officials by reporting emergencies, crimes, and acting as witnesses; to participate in economic activity; and to be engaged in civic life if they can be assured they will not be singled out for scrutiny on the basis of their personal characteristics or immigration status.

To achieve these objectives The Shelburne Police Department will implement a combination of best practices including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

POLICY

I. Definitions

“Biased policing”: Is conduct by law enforcement officers motivated by an individual’s actual or perceived or self-identified personal characteristics.

“Personal characteristics”: May include but is not limited to actual or perceived identity, race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socio-economic status.

“Immigration status”: Generally refers to the legal rights, if any, of a non-citizen to enter or remain in this country. Examples include, without limitation, “lawful permanent resident,” “temporary worker,” “refugee,” and “undocumented.”

“Reasonable suspicion”: Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.

“Probable cause”: Facts or circumstances that would lead a reasonable person to believe that a crime has been committed, or is being committed, or is about to occur.

“Member” or “employee”: Any employee employed by the Shelburne Police Department, regardless of their assigned tasks or duties.

“Federal immigration authorities”: Federal agencies, departments, or employees or contractors thereof, tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

II. Policing Impartially

- a. As required by law, all enforcement actions by law enforcement officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, etc. must be based on reasonable suspicion, probable cause or other or relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action.
- b. The Shelburne Police Department members may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant, temporally specific information that links a person of specific description to particular criminal incidents and is combined with other identifying information.
- c. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services, either in person or telephonically, to any person in need of it. Shelburne Police Department employees shall not contact federal immigration authorities for

interpretation services, unless a clear emergency requires it and qualified interpretation services are not available through any other means. Unless one of the exceptions included in Section VIII applies, the Shelburne Police Department member shall not ask about the immigration status of the person for whom interpretation is sought.

III. Community Relations

To cultivate and foster transparency and trust with all communities each Shelburne Police Department member shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with members of the public unless circumstances indicate it would be unsafe to do so:

- a. Be courteous and professional;
- b. Introduce him/herself to person (providing Officers name and Shelburne Police Department affiliation), and state the reason for the stop as soon as practicable unless providing this information will compromise officer or public safety, or a criminal investigation;
- c. Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and the Shelburne Police Department member conveys the purpose of the reasonable delays;
- d. Provide the Shelburne Police Department member's name verbally when requested. The Shelburne Police Department member may also provide the information in writing or on a business card;
- e. In addition to the above, officers should answer relevant questions the person may have if doing so will not compromise safety and/or the investigation.

IV. Responding to Bias-Based Reports or Reports Regarding Bias from the Community

- a. If any Shelburne Police Department employee receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the Shelburne Police Department member will attempt to ascertain if there are other circumstances or facts that would constitute reasonable suspicion or probable cause. If the complainant can offer no further information, the complainant will be advised that the shift supervisor will be in contact at the first opportunity.
- b. The shift supervisor should attempt to familiarize the caller with the Shelburne Police Department's Fair and Impartial Policing policy. If the caller is concerned about the person's perceived immigration status, the caller should be referred to federal authorities.
- c. At the conclusion of the call, the shift supervisor will document the contact using Shelburne Police Department's incident report system.
- d. If a Shelburne Police Department employee receives a report of a potentially biased or hate-motivated incident, the Shelburne Police Department shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

V. Training

- a. The Shelburne Police Department will ensure that, at a minimum, all members and employees are compliant with Council and legislative requirements regarding fair and impartial policing training.
- b. Additional trainings may include but not be limited to instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.

VI. Accountability and Compliance

- a) The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- b) All Shelburne Police Department employees are required to promptly report allegations, complaints or knowledge of biased policing or suspected violations of this policy to their supervisor and the department's internal investigation function. Where appropriate, employees are required to intervene at the time the biased policing incident occurs.
- c) State law requires all Vermont law enforcement agencies to conduct valid investigations of alleged biased law enforcement, even if the named member or employee resigns. Effective July 1, 2018, The Shelburne Police Department is required to report to the Criminal Justice Training Council instances in which officers have willfully engaged in biased law enforcement or substantially deviated from policies prohibiting such enforcement. The regulating authority may, in turn, impose sanctions up to revocation of officers' certification.¹
- d) Violations of the policy shall result in appropriate disciplinary action as set forth in the Shelburne Police Department's rules and regulations. Supervisors shall ensure that all employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert for and respond to indications of potential biased policing.

VII. Establishing Identity

- a. Shelburne Police Department employees may make attempts to identify any person they detain, arrest, or who come into the custody of the Shelburne Police Department.
- b. Acceptable forms of identification, which must include a photograph of the individual, include, but are not limited to, driver's licenses from any U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards. All identification is subject to reasonable scrutiny and follow-up for authentication consistent with the provisions of this policy.
- c. An individual shall not be stopped or detained solely for the purpose of establishing his or her identity. However, if the individual has already been stopped for a lawful purpose, he or she may be subject to objectively reasonable additional detention in order to establish identity (*e.g.*, inquiry into identity during the course of a lawful traffic stop).

- d. In exercising their discretion to use federal resources to establish an individual's identity, Shelburne Police Department employees should remain mindful that (1) their enforcement duties do not include civil immigration enforcement and (2) The Shelburne Police Department stands by its mission to serve all Vermonters, including immigrant communities, and to ensure trust and cooperation of all victims/witnesses. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity.

Due Process, Immigration and Citizenship Matters

VIII. Federal Civil Immigration Law: Stops, Detention, Arrests and Administrative Warrants/ Detainers

Shelburne Police Department employees do not have authority to enforce federal civil immigration law. The Constitution's Fourth Amendment and the Vermont Constitution's Article 11 right against unreasonable search and seizure apply equally to all individuals residing in Vermont.

- a. Shelburne Police Department employees will not inquire of a person about that person's immigration status unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status. See Section XI below.
- b. Shelburne Police Department employees shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations. See Section XI below.
- c. Shelburne Police Department employees shall not initiate or prolong stops for the purpose of enforcing civil immigration matters, such as suspicion of undocumented status, nor shall they prolong stops for the purpose of allowing federal immigration authorities to conduct such investigation.
- d. Shelburne Police Department employees shall not arrest or detain any individual based on an immigration "administrative warrant" or "immigration detainer." These documents have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. In addition, these documents do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution.
- e. Shelburne Police Department employees shall not hold for, or transfer people to, federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer is not a warrant and is not reviewed by a judge, and therefore is not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This provision does not affect the proper handling of arrests and detentions associated with judicially-issued criminal arrest warrants.
- f. Personal characteristics and/or immigration status, including the existence of a civil immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated

pre-court processes such as referral to diversion or a Community Justice Center. Furthermore, personal characteristics and/or immigration status shall not be used as a criteria for citation, arrest, or continued custody under Rule 3 of the Vermont Rules for Criminal Procedure.

IX. Federal Criminal Law: Border Crossings

Shelburne Police Department employees shall not make warrantless arrests or detail individuals on suspicion of “unlawful entry”, unless the suspect is apprehended in the process of entering the United States without inspection.

X. Victim and Witness Interaction

The cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all residents. The following provisions are intended to support crime victims/witnesses and enhance trust between the police and community.

- a. Shelburne Police Department employees shall not ask about or investigate immigration status of crime victims/witnesses, except as allowed in subsections (b) and (c) below. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witnesses.
- b. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, Shelburne Police Department employees will not ask about, or investigate, immigration status of crime victims/witnesses unless information regarding immigration status is an essential element of the crime (such as human trafficking).
- c. If a victim/witness is also a suspect, Shelburne Police Department employees should follow the provisions in Section VII related to stops, detention and arrest and Section VIII(a) related to ongoing criminal investigations.
- d. Shelburne Police Department employees will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. Shelburne Police Department employees should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses. In considering whether to contact federal authorities Shelburne Police Department employees shall not share information about crime victims/witnesses with federal immigration authorities, unless it is with the individual’s consent.
- e. Shelburne Police Department employees may, in appropriate situations, advise an individual that if they are undocumented they may be eligible for a temporary visa.ⁱⁱ

XI. Collaboration with Federal Immigration Officers

- a. No information about an individual shall be shared with federal immigration authorities unless necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law. Such information includes but is not limited to the individual’s custody status, release date/time, court dates,

- whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations.
- b. Sweeps intended solely to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime shall not be conducted unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.
 - c. Shelburne Police Department members are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for civil immigration enforcement.
 - d. Unless ICE or Customs and Border Patrol (CBP) agents have a judicially-issued criminal warrant, or Shelburne Police Department employees have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, Shelburne Police Department employees shall not grant ICE or CBP agents access to individuals in the Shelburne Police Departments custody.

This Fair and Impartial Policing policy was approved by the Vermont Criminal Justice Training Council on 12-7-2017.

ⁱ VT Act 56 (2016), *codified in* 20 V.S.A. § 2402(2) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), . § 2404 (duty to investigate) and § 2406 (Council-issued sanctions).

ⁱⁱ For example, an individual might qualify for a U, S, or T visa if they are a victim or material witness to certain serious offenses.

To: Shelburne Selectboard
From: The ACLU of Vermont and the Vermont Chapter of the NLG
Re: Monaghan Memo Discussing the Proposed Fair and Impartial Policing Policy
Date: February 16, 2022

Dear Shelburne Selectboard:

We write to you on behalf of a group of Shelburne residents who shared with us the November 20, 2021 memorandum you received from Brian Monaghan regarding Shelburne's proposed enhanced Fair and Impartial Policing Policy ("FIPP"). In order for this Board to have a broader and more accurate understanding of the issues at play with respect to this Policy and the state and federal laws it intersects with, the Vermont Chapter of the National Lawyers Guild and the American Civil Liberties Union of Vermont offer this supplementary memo for your consideration.

To preface the following legal analysis, we would like to note the importance of distinguishing between legal and ideological considerations. Unfortunately, local human rights policies such as the enhanced FIPP highlight a juncture where the motives of a municipal corporation and its residents may diverge: the municipality and its legal counsel frequently center a motivation to exercise an abundance of caution with regards to navigating gray areas of the law so as to eliminate even a minute risk of legal repercussions to the municipality, while residents may advocate for prioritizing personal safety and well-being of the community members as human beings.

This juncture may explain the phenomenon that proponents of enhanced FIPPs across the state have regularly observed: that a municipality's initial reaction is hesitation, typically grounded in an ever-changing array of perceived legal concerns. With the diligent efforts of residents and scholars to dispel inaccuracies and reduce legal concerns down to their appropriate dimensions, eight jurisdictions across the state of Vermont have successfully revised the model state-wide FIPP. Seven of those jurisdictions adopted policies virtually identical to the one that Shelburne is contemplating, and one jurisdiction adopted an ordinance that goes even farther than this proposed FIPP's prohibitions on collaboration between Shelburne law enforcement and federal immigration authorities.

These eight jurisdictions provide important lessons; their leadership and resident-driven research have paved the way for other towns, cities, and counties in Vermont to contemplate a strengthened FIPP with a greater understanding of the legal issues at play.

Legal Considerations of Passing the Proposed Fair and Impartial Policing Policy

"No Polimigra" measures such as enhanced FIPPs identical to the one proposed in Shelburne, as well as the significantly bolder Welcoming Hartford Ordinance, have been in effect in the State of Vermont for several years. Many of these measures took effect during the Trump administration, with its markedly more aggressive enforcement stance



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on federal immigration law. None of these eight municipalities have faced any state or federal lawsuits or any other legal repercussions for their legislative acts. This is no coincidence: the United States Constitution strictly limits the ways that the federal government may interfere with state and local police powers, rendering it almost inconceivable for the Town of Shelburne to face any legal consequences more severe than even the unlikely loss of the town’s ability to apply for JAG Byrne or COPS grants.

1. The risk of state legal repercussion is practically nonexistent, and intimations to the contrary amount to a gross over-abundance of caution that endangers Shelburne’s residents and visitors for no perceptible benefit.

A departure from the model policy is not “by itself . . . problematic”: the legislature passed the model policy as a “floor” and the statute itself permits municipalities to adopt more stringent protective measures if they so choose.¹ 20 V.S.A. § 2366(a)(1). Indeed, the State’s Attorney General has certified each of the seven enhanced FIPPs and the Welcoming Hartford Ordinance as being in compliance with 20 V.S.A. § 2366 – the same law that the Monaghan Memo repeatedly claims the enhanced FIPP to run afoul of.

The assertion that the State of Vermont will pursue legal action against a town that passes a FIPP that is either identical to or more conservative than the eight previously certified by the State’s own Attorney General is without merit. Shelburne, as a part of Chittenden County, is especially unlikely to face anything but support from the State considering that the Chittenden County State’s Attorney submitted her own memorandum in support of the enhanced FIPP, which encouraged “all municipalities and counties [to] adopt fair and impartial policies that strengthen and improve upon the State’s baseline FIPP.” As noted above, none of the eight towns that has adopted substantially similar—or more protective—policies to the one under consideration here has faced any challenge from either the State or any State’s Attorney in the several years they have been in effect.

A legal opinion that posits State repercussions as a legitimate risk is nothing short of alarmist.

2. Concerns that the enhanced FIPP would incite federal litigation or jeopardize all federal funding are similarly illogical; the sole legal consequence of adopting a FIPP that may contravene 8 U.S.C. §§ 1373 and 1644 would be to render Shelburne ineligible for two federal grants if the DOJ were to return to the Trump-era funding conditions it has since rejected.

The federal government is extremely limited in how it can regulate states and municipalities. Only where the U.S. Constitution has explicitly vested a power to a branch of the federal government may that entity take action. Furthermore, the 10th

¹ Nowhere does the model policy or 20 V.S.A. § 2366 require enhanced FIPPs to include a reference to 8 U.S.C. §§ 1373 or 1644. The Monaghan memo asserts on page 4 that reference to these federal statutes is a “minimum” component that § 2366(a)(1) requires any FIPP to include, but this is simply incorrect.

Amendment anticommandeering doctrine explicitly prohibits the federal government from dictating what states can or cannot do. *Murphy v. NCAA*, 138 S. Ct. 1461 (2018) (“The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, *i.e.*, the decision to withhold from Congress the power to issue orders directly to the States.”). This doctrine prohibits the federal government from commandeering state and local government resources to do the work of enforcing federal legislative schemes, such as immigration. The sole means that the Constitution offers the federal government to regulate states in any capacity is the Spending Clause, in Article I, Section 8.

This clause gives Congress the authority to attach limited conditions to certain funding it offers to states and municipalities, subject to the four criteria outlined in *South Dakota v. Dole*, 483 U.S. 203 (1987). Conditions placed on the receipt of federal funds must be: (1) for the general welfare, (2) unambiguous, (3) related to the federal interest that the funding promotes, (4) not otherwise unconstitutional, and (5) not coercive. *Id.*

The Second Circuit’s anomalous² decision in *New York v. United States Dep’t of Justice*, 951 F.3d 84 (2d Cir. 2020), does not significantly change the risk/benefit analysis of passing an enhanced FIPP. The opinion’s sole legal impact is that, in the Second Circuit, compliance with these statutes can be a condition the federal government places on the receipt of JAG Byrne and COPS grants. *In no way will the passage of the FIPP jeopardize Shelburne’s receipt of any other federal funds than these two very specific grants.* Moreover, the Biden administration has retroactively rescinded those conditions as to previously withheld funds and has not included them in subsequent grant application cycles.³ Thus, the Memo’s claim that Shelburne must “generally certify that it does comply with, and intends to continue its compliance with,” 8 U.S.C. §§1373 and 1644 is incorrect (see page 4).

Per the *South Dakota v. Dole* ruling, the federal government may *only* withhold funding from jurisdictions who pass FIPPs that contravene 8 U.S.C. § 1373 if that withheld

²The Second Circuit is the *only* federal circuit court to have ever upheld the use of 8 U.S.C. § 1373 as a Spending Power condition; the Third, Seventh, and Ninth Circuits have all found 8 U.S.C. § 1373 to be unconstitutional and/or that the DOJ lacked authority to require compliance with it as a condition of receiving JAG Byrne funds.

³ See DOJ, *Important: Revised Guidance Impacting Your DOJ COPS Grant Award*, available at <https://cops.usdoj.gov/content/important-revised-guidance-impacting-your-doj-cops-grant-award>; DOJ, *Legal notice pertaining to FY 2017, FY 2018, FY 2019, and FY 2020 awards (and award offers)*, available at <https://www.ojp.gov/funding/explore/legal-notices>; see also Sarah N. Lynch, *U.S. Justice Department ends Trump-era limits on grants to ‘sanctuary cities,’* Reuters (Apr. 28, 2021), available at <https://www.reuters.com/world/us/exclusive-us-justice-department-ends-trump-era-limits-grants-sanctuary-cities-2021-04-28/>; Letitia James, Press Release, Attorney General James Secures the Restoration of Over \$30 Million in Public Safety Grants: Trump Administration Withheld Critical Byrne JAG Law Enforcement Grants to New York and Other States and Localities (May 4, 2021), available at <https://ag.ny.gov/press-release/2021/attorney-general-james-secures-restoration-over-30-million-public-safety-grants>.

funding is related in some way to law enforcement. The only federal funding related to law enforcement that municipalities may choose to apply for are the JAG Byrne and COPs grants. Law enforcement funding comes almost entirely from local budgets.

Nor is passing the FIPP likely to expose Shelburne to a federal lawsuit: all of the district court cases that the Second Circuit overturned in *New York v. United States Dep't of Justice* were brought *by* the municipalities, *against* the federal government, challenging the withholding of funds.

The federal government did attempt to sue the state of New Jersey in 2020 to challenge the New Jersey Attorney General's "Immigrant Trust Directive," which like the enhanced FIPP draws a clear line between police and federal immigration authorities. *United States v. New Jersey*, No. 3:20-cv-01364, 2021 WL 252270 (D.N.J. Jan. 26, 2021) (unpublished opinion). The District Court of New Jersey quickly decided that the lawsuit lacked merit, granting the State's motion to dismiss and agreeing that the federal government had no grounds to enforce the state's compliance with 8 U.S.C. §§ 1373 and 1644. *Id.*

Omitting any mention whatsoever of the 10th Amendment anticommandeering doctrine and its illuminating case law was a glaring oversight in the Monaghan Memo, as was failing to specify that the only federal funding at stake are two very specific grants that no longer even contain the challenged conditions.

3. *The Memo incorrectly states that the VCJC model policy makes Vermont a "sanctuary" jurisdiction to the "extent lawfully possible."* (page 2).

Differences between the state model FIPP and other strengthened protections, such as the enhanced FIPP, reflect a policy choice and not a legal prohibition. The model policy represents the legislature's intent to set a protective floor and should not be construed as a legal opinion that any further protections are unlawful.

For example, and contrary to the Memo's incorrect assertion (page 8), federal law does *not* require the Shelburne (or any) police department to grant access to individuals in secure locations in their facilities. As Assistant Attorney General Julio Thompson advised the VCJC at its October 20, 2021 meeting, this is an operational choice, not a legal one. The same is true of the recommendation to close the border-crossing pretext; there is simply no legal requirement that Vermont law enforcement officers enforce federal immigration law. Again, AAG Thompson advised the VCJC that there was no legal impediment to adopting this recommendation; it is a question of how we want Vermont law enforcement to exercise its discretion. And the same is true of the recommendation regarding non-discrimination in detention discretion, which, again, AAG Thompson described as a matter of operations, not a legal restriction. The Monaghan Memo may

disagree with these recommendations on a policy basis, but it is simply false to say that they are impermissible on a legal basis.

4. *The Memo incorrectly states that Shelburne would violate the Second Circuit's ruling if it did not abide by the access, notice, and certification conditions DOJ previously imposed. (page 3).*

This is a fundamental misunderstanding of the Second Circuit's ruling and is flatly incorrect. As noted above, the Second Circuit ruled only that the DOJ had authority to condition JAG Byrne and COPS funding on compliance with the access, notice, and certification conditions and could withhold those funds for failure to comply. It did not rule that states and municipalities were required to comply with those conditions. It simply said that the plaintiff jurisdictions had a choice: comply with the conditions and receive the funds, or don't comply with the conditions and risk DOJ withholding the funds. Moreover, the notice and access conditions are not based on any federal legal obligation; they are simply policies DOJ sought to advance via attaching strings to certain funds. And, as noted above, those strings are no longer attached.

5. *The proposed changes do not "delete a vital legal protection for people who visually present as non-white." (page 5).*

In suggesting that deleting language in Section VIII(f) regarding the exercise of discretion in detention decisions removes a protection against discrimination, the Monaghan Memo fails to note that the proposed changes actually strengthen that protection. That is, the proposal is to delete the weaker language in the current policy and *replace* it with stronger language: "Furthermore, personal characteristics and/or immigration status shall not be used as [] criteria for citation, arrest, or continued custody under Rule 3 of the Vermont Rules for Criminal Procedure." The proposed language strengthens the protections against discrimination in two distinct ways. First, the current policy prohibits reliance on personal characteristics in deciding whether to cite rather than arrest someone; the proposed changes expand that protection to reliance on immigration status as well. And second, rather than providing that law enforcement officers "shall not *presume* that undocumented individuals *necessarily* present a risk of flight" (emphasis added), the proposed changes would provide that immigration status (and personal characteristics) may not be considered *at all* when exercising discretion to cite, arrest, or seek continued custody of an individual. It is baffling that the Memo notes only the language that would be deleted and ignores entirely the language that would replace it.

Thank you for your consideration of this important matter. Please reach out if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kira Kelley".

Kira Kelley
Chairperson
Vermont NLG

A handwritten signature in cursive script that reads "Lia Ernst".

Lia Ernst
Legal Director
ACLU of Vermont

Lee

It was nice to catch up a bit. Please do not hesitate to let me know if I can be of further assistance as you move forward on policing issues.

As to the Fair and Impartial Policing Policy question, I offer a response PACIF provided to Hartford when they had the same question in mid-2019. Our coverage has not changed since 2019, so our response to your question would be the same.

My best,
Trevor

Trevor Whipple
Law Enforcement Consultant
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From: Fred Satink <fsatink@vlct.org>
Sent: Monday, June 10, 2019 1:54 PM
To: Brannon Godfrey <bgodfrey@hartford-vt.org>
Cc: pkasten@hartford-vt.org; Joe Damiata <jdamiata@vlct.org>; Trevor Whipple <twhipple@vlct.org>
Subject: Insurance implications - Fair & Impartial Policing Policy changes

Good afternoon Brannon:

As we have discussed, the Hartford Selectboard has requested some input from VLCT PACIF, regarding the potential impacts on the town's insurance coverage should the town revise its Fair & Impartial Policing policy to prohibit all communication with federal immigration officers. PACIF's current model Fair and Impartial Policing policy has language to ensure that there is no violation of law, as it relates to such communications. This email provides some clarification on the potential insurance coverage implications of the proposed policy change, so that the Selectboard can consider it as part of their overall decision-making process on this issue. It is not our intent to sway the town's decision either way, but to simply provide insurance coverage advisory information.

The fact that each situation or claim has its own unique set of factors and characteristics, makes it extremely difficult to determine whether a given scenario qualifies for coverage. In reality, each "incident" is evaluated on its own merits and facts, and is adjudicated according to the Agreements, Conditions, Definitions, and Exclusions in the PACIF coverage documents. With regard to the proposed policy change, exclusion "6." in the Public Officials Liability coverage (page 86) may come into play. It reads:

For any loss brought about or contributed to by the fraud, dishonesty, or bad faith of a Member or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule or regulation.

What this means is that if a claim occurs, and it is determined that the town deliberately violated a law, there may be no public officials' liability coverage. I should note that other lines of coverage are not impacted by the above exclusion. To determine if the exclusion might come into play, the town may wish to consult with legal counsel to clarify whether the proposed changes to your Fair & Impartial Policing policy would violate any laws, etc., as noted above.

We greatly respect the autonomy of our individual municipal members, and therefore only provide this information in an advisory role, to fulfill the board's request for an insurance coverage opinion on this issue. We appreciate the town reaching out to us for our input, as part of their due diligence. Doing so ensures that board has an awareness of the potential insurance coverage implications of any decision. I hope you find this explanation helpful. Please feel free contact me if you have any questions.

Regards,
Fred

Frederick J. Satink
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Strengthen Shelburne's Fair and Impartial Policing Policy

Mission

The Shelburne Fair and Impartial Policing Committee is a group of concerned Shelburne residents that seeks to ensure that policing practices are applied equally to everyone regardless of race, color, sexual orientation, immigration status, and other personal characteristics. Our founding principle is simple: "Shelburne should be a place where everyone feels safe."

Currently, the Town of Shelburne's Fair and Impartial Policing Policy (FIPP) allows Shelburne Police to actively work with federal immigration enforcement agencies such as Immigration and Customs Enforcement's (ICE) to target and hold migrant workers on suspicions of immigration status. This impacts the migrant community's freedom of movement and access to transportation in and through Shelburne and Charlotte, and it impacts this community's ability to work with dignity and safely. In addition, the existing FIPP profoundly suppresses the safety of the migrant community who cannot seek police assistance without significant fear of reprisal or negative consequence in situations of domestic disturbances, illegal housing practices, and other routine policing matters; who may be subject to traffic stops based on appearances; and who may not have appropriate access to health care. In short, the existing FIPP operates without fair or adequate limitations.

Our mission is to strengthen Shelburne's existing Fair and Impartial Policing Policy so that everyone is treated fairly and equally.

Why is strengthening Shelburne's Fair and Impartial Policing Policy (FIPP) important?

- **Human rights:** Everyone should be treated equally under the law. The process of getting a traffic ticket or a DUI should be the same for every person, regardless of outward appearances or immigration status.
- **Public safety:** The current system causes immigrant and New American communities to not trust law enforcement and not contact or work with them, which creates a less safe community for everyone.
- **Resource utilization:** Spending public resources on local police officers helping to deport our undocumented neighbors may result in fewer resources to address problems that affect the daily lives of people in our community.

How was Vermont's FIPP developed?

- **2014:** Farm workers and Migrant Justice leaders and activists won passage of Act 193, mandating that all police departments in the state implement FIPP and gave a July 1st, 2016 deadline for departments to adopt the model state policy.
- **2016:** The Vermont Criminal Justice Training Council created a model FIPP that protected all Vermonters from biased policing based on personal characteristics (e.g., race, gender, or sexual orientation) or immigration status and greatly limited local police from engaging in federal immigration enforcement.
- **2017:** Due to many departments not fully implementing the policy, a law compelling all departments to implement the policy in full was passed. Unfortunately, during this process, changes were introduced that significantly weakened the policy. The end result is that local departments like Shelburne's have achieved compliance, but with a policy that contains critical loopholes.

What are the loopholes in Shelburne's current FIPP?

- It allows for the reporting of immigration status of victims and witnesses of crimes to deportation agents.
- It evades prohibitions on asking about immigration status by allowing officers to rely on the pretext that the person is suspected of having recently crossed the border.
- It allows the sharing of confidential information with immigration agents, so long as it's justified on the subjective grounds of "public safety" or "law enforcement needs". Such sharing of information should only be part of an ongoing investigation with probable cause.
- It grants deportation agents access to individuals in police custody, effectively turning local police stations into temporary holding cells for ICE and Border Patrol.

What can we do to strengthen Shelburne's FIPP?

- Vermont's statewide policy is a floor, not a ceiling. The law specifically allows municipalities to provide protections above and beyond those in the statewide model policy. Other municipalities, including Burlington, Winooski, Richmond, Norwich, Hartford, and Addison county, have improved their FIPP by building on the statewide policy and adopting stronger language that helps protect their residents and all people visiting or passing through their towns. Similar efforts are underway in Montpelier, Brattleboro, South Burlington, and Thetford.
- Our citizen-led coalition, the Shelburne Fair and Impartial Policing Team, with support from Migrant Justice, is working to strengthen the Shelburne FIPP and close the policy loopholes that currently allow the Shelburne Police to assist federal authorities in enforcing immigration law.

SHELBURNE PD/DISPATCH

Premise: we have been through challenging times, have experienced major change, and now need to move forward to regain stability and rebuild the department. In my opinion, a key, foundational component for that is clarifying leadership, at least for the short to medium term; and of course, eventually, for a hopeful longer term. While there may be a desire to launch immediately into a full-featured regional or national search, I think it helpful and important to consider various alternatives before making that decision. As I see it, there are several possible approaches to or options for this process; not all are mutually exclusive.

External Search

Pros: Casts a wide net, demonstrates intent to find 'the best', "transparency".

Cons: My continue unsettled feelings of uncertainty among staff, may make it hard to recruit, may perpetuate feelings or beliefs that there are no opportunities for advancement within the department, will take considerable time, will cost money, and will further erode administrative 'bandwidth' to accomplish other municipal needs and priorities. Would likely feel rather disheartening to those who have worked unbelievably hard over this past year to keep PD on as even a keel as possible under incredibly challenging circumstances.

Direct Appointment

Pros: Clarity, timeliness, demonstrates confidence in those who have been doing the job – and that internal advancement is possible, puts questions to rest, allows us to move forward with retention, recruitment, and rebuilding.

Cons: Likely perceived lack of "transparency", may limit opportunities we didn't know we'd have, may not create confidence externally re: due diligence.

Internal Search

Pros: May ensure a level of process and inquiry with those who might express interest, would promote a belief that internal advancement is at least possible and is acknowledged by management, may instill confidence among the ranks, timeliness; yet does not preclude an external search if internal candidates are not thought to be the right choices.

Cons: Likely perceived lack of "transparency", may limit opportunities we didn't know we'd have, may not create confidence externally re: due diligence.

Interim Appointment

Yet another idea to consider is making interim appointments for a Chief and/or Lieutenant. These could be from within the department, or potentially from the outside, appointing or bringing in interim leadership for a specified timeframe while other internal and/or external matters are considered. With the right person(s), this can be a way to help regain and rebuild stability, while keeping options open for the longer term. Some interim appointments have a clear, mutual understanding of their intentionally temporary nature; in other cases, there is the potential (but neither implicit nor explicit guarantee) that interim could become 'permanent'.

In Addition:

The union contract requires posting internally for bargaining unit positions before searching externally. That would not apply to Chief or Lt. positions, but would be procedurally analogous, and might demonstrate good faith by management among the ranks. In small towns or organizations, there are not often opportunities for advancement from within. While that option will not always be the 'good' or 'right' choice, I believe it worth considering when such opportunities do arise. Otherwise, the implicit message to our employees is that they will always be 'stuck' where they are.

Note also that the Personnel Policy allows the Town Manager to transfer or promote from within without searching externally, but it is understood that this does not make it good or right in every circumstance.

Understanding both the internal and external dynamics involved, and that a commitment to form a search committee has already been made, I think it worth considering starting with either an internal search and/or an interim approach, see where that leads, and determine next steps as deemed appropriate or necessary. I think we owe it to the folks within.

While the dream or excitement of launching a full external search and hoping to find the "perfect" candidate, whoever that may be or whatever that may mean, I think it fundamentally important to keep in the forefront what might work best to create confidence and stability within the PD and Dispatch. Retention is critical; recruitment and succession planning are right behind that in foundational importance. We have precious few officers as it is; no one's getting any younger; and competition is fierce for certified Police Officers and Dispatchers. Let's stabilize the ship before setting sail in new directions.

Finally, as we work through whatever process is thought best, consider also the prospect of hiring a Chief on a contract basis rather than as a 'permanent' appointment. Perhaps this might help in some ways to allay and address certain concerns raised in recent times. As of this writing, I have learned that both Colchester and Essex hire their Chiefs on a contract basis. I will continue to inquire regarding opportunities or constraints to doing so here.

To : Members of the Shelburne Select Board
From: Shelburne Natural Resources and Conservation Committee (SNRCC) (
Gail Albert, Co-Chair; Don Rendall, Co-Chair; Jon Cocina, Christine Haines, Fred Morgan,
Chandler Noyes, Robert Pacquin, Mike Schramm
Re: Request for Allocation of \$50,000 from the Shelburne Open Space Conservation Fund
Date: 18 April 2022

At our meeting on April 13, 2022, SNRCC received a request from Alec Webb for a \$50,000 allocation from the Open Space Conservation Fund (OSCF). This fund contribution would help leverage an amazing conservation opportunity within Shelburne Farms on the property known as Windmill Hill that had previously been held by private owners for possible housing development. Eight members of SNRCC voted its enthusiastic support to use the OSCF to help support this project. (Our ninth member, Sean MacFaden, recused himself since his wife is a Shelburne Farms Employee.

The proposed conservation parcel consists of approximately 65 acres, including a very high value potential residential lot, incorporating 3 privately held lots within the Farm that, when conserved, would add to the farmland, woodland and trails network that Shelburne Farms has already protected and which offers access for Shelburne residents and visitors who add so much to Shelburne's economic prosperity. It is the mission and tradition of SNRCC to apply OSCF monies, voted for annually by ballot item and overwhelmingly supported by Town residents, to leverage far greater contributions from other organizations and individuals, to demonstrate the Town's support to those donors by verifying the value and commitment we hold for the projects we support with the Fund.

As a protected gem along the Lake Champlain shoreline, an educational resource, an ecologically responsible and widely recognized steward of its historic Shelburne property, and a tourist attraction with an international reputation, Shelburne Farms is a treasure in our midst that exemplifies the quality of life the Town Plan envisions. From a Natural Resources perspective, the Windmill Hill properties will complete a link previously beyond our reach. About 36 acres of the larger parcel is underlaid by calcium rich shale and nutrient rich soils representing the ancient oceanic history of the land. Today it supports a classic Northern hardwood forest community of sugar maple, white ash, and bitternut hickory with rich wildflower groundcover. This portion of the parcel is one of the largest remaining forest patches in this part of the Champlain Valley and provides rich habitat for species including the scarlet tanager, wood thrush, eastern wood-pewee and pileated woodpecker that thrive in undisturbed and unfragmented woodlands. In addition, we are well aware that undisturbed woodlands help to mitigate stormwater and preserve the quality of the waters that flow to the Lake Champlain. The remaining acreage of ecologically and sustainably managed grasslands and agricultural fields offer critical habitat for species like bobolink, savannah sparrow and northern harrier and the Farm's ecological practices ensure that this habitat will remain secure.

As is its practice, Shelburne Farms will provide trails that will link this new acquisition to its considerable trail network to include public walking paths within the conservation parcel that offer spectacular views in almost every direction—visitors will enjoy Lake and Adirondack views to the west and southwest; walkers going east will look beyond the eastern woodlands to face the Green Mountain skyline; and those heading west will overlook western facing views of the farmlands we've described above as the trail network expands.

This project is an unprecedented opportunity for the Town of Shelburne. Our small \$50,000 contribution from the OSCF is an essential contribution to the almost \$9,000,000 Shelburne Farms has committed to raise toward its land steward development fund, including bringing this project to fruition!

The OSCF balance currently totals \$215,228 and will total \$285,000 with the additional \$50,000 approved by voters for the coming fiscal year. The Town's contribution to the Windmill Hill project will require neither debt nor interest payments by the Town. Neither will it incur stewardship expenses to achieve project's goals. It is, however, an essential step to show our commitment to the project and is expected to leverage the yet to be raised \$4,000,000 the Farms are asking from the VT Housing and Conservation Board and other major and smaller private donors who will bring the project to fruition. Our contribution will support the programs we will benefit from and that we Shelburnites enjoy on a daily basis.

We urge the Selectboard to join us in supporting this request. It is an opportunity we cannot afford to miss. In doing so, we offer our profound thanks to you, the Select Board for your strongly expressed support of Shelburne's natural resource values and our Townspeople's commitment to resource protection. And, of course, we are deeply grateful to Shelburne Farms for their continuous and thoughtful focus on environmental sustainability and education that promises Shelburne is and will remain a wonderful place to live for generations to come.

Article 1980.11
Conduct of Outdoor Business Activity
“Outdoor public/private space activation”

1. Purpose

The purpose of this bylaw is to protect the general public health and welfare, enhance community vitality, and provide for orderly physical and economic growth of the Town of Shelburne, by allowing commercial establishments to conduct business outdoors, and in more flexible manner.

2. Applicability

Subject to zoning permit, this bylaw applies to all restaurants, retail, and service establishments throughout the Town of Shelburne.

3. Specific Provisions

A. Restaurants may create areas for outdoor dining in front, side, or rear yard areas that do not conflict with adjoining land uses, public sidewalks, or other required parking spaces or traveled ways. Reasonable provision shall be made for separation between dining areas and areas reserved for motor vehicle travel. Dining areas shall not interfere with pedestrian travel or emergency vehicle access. No additional parking shall be required for outdoor seating beyond what is or has been required for regular, year-round indoor dining.

B. Outdoor seating is exempt from the setback requirements of the underlying zoning districts and may use the public sidewalks, but shall not interfere with pedestrian travel by maintaining a 5-foot wide continuous pathway; and shall not reduce the number of on-site required parking spaces for the restaurant by more than 50%. No additional parking spaces are required for outdoor seating. At no time shall outdoor seating or food trucks interfere with pedestrian or emergency access.

C. Outdoor Provision of Services:

Any service establishment may provide their service outdoors. Outdoor provision of services shall be permitted to use the public sidewalks but shall not interfere with pedestrian travel by maintaining a 5-foot wide continuous pathway and shall adhere to the setback requirements of the underlying zoning district; and shall not reduce the number of on-site parking spaces for the specific business by more than 50%. No additional parking spaces are required for outdoor provision of services. At no time shall the provision of services interfere with emergency access.

D. Outdoor Displays of Merchandise:

Any business holding a valid permit to operate a retail store or restaurant may erect a display of goods offered for sale, or a display which is designed to promote the sale of goods, including produce, products, goods, equipment, prepared food or commodities, outside a building without meeting the area restrictions provided in the Shelburne Zoning Regulations. Outdoor displays of merchandise shall not interfere with pedestrian travel by maintaining a 5-foot wide

continuous pathway and shall not reduce the number of on-site parking spaces by more than 50%. At no time shall outdoor displays interfere with emergency access.

E. Temporary Tents for Outdoor Seating, Displays of Merchandise or Provision of Services:
Temporary tents may be erected on site, as long as they do not interfere with required parking or pedestrian or emergency access. Tents shall not be located closer than five feet to the side and/or rear property lines.

In no case shall any combination of these provisions interfere with emergency services or reduce the number of parking spaces currently in existence by more than 50%.

All other provisions of the Shelburne Zoning Regulations shall remain in effect.

4. Enforcement of these Bylaws shall be as provided for in Title 24 of State Statute and the Shelburne Zoning Regulations.

5. In accordance with 24 V.S.A., Section 4464(c), administrative review of applications is hereby required. Department of Planning and Zoning staff may review and approve such permit applications.

REPORT OF THE PLANNING COMMISSION
REGARDING PROPOSED ZONING AMENDMENTS
WARNED FOR A PUBLIC HEARING ON April 14, 2022

Pursuant to 24 VSA 4441, the Planning Commission shall prepare a report to accompany proposed zoning amendments addressing how any proposal:

Conforms with or furthers the goals and policies in the Town Plan, including the availability of safe and affordable housing;

Is compatible with future land uses and densities of the Town Plan; and

Carries out, as applicable, specific proposals for planned community facilities.

The proposal presented in this package relates to implementing the goals as expressed in the Shelburne Comprehensive Plan (2019) to support Land Use in Shelburne and Economic Development through placemaking: activation of the Town's outdoor spaces.

Land Use in Shelburne p. 8

Goal: Pursue future land use based on the principles of "placemaking." Placemaking is the process of creating quality places where people want to live, work, play and learn. Thus, the explicit aim of the future land use section of this plan is to promote the creation of quality places that combine:

- a) Appropriate physical form (i.e., development occurs at a human scale and is pedestrian oriented),
- b) A mix of land uses and functions, and
- c) A mix of social opportunity.

Economic Development in Shelburne p. 52

Encourage town residents and businesses to utilize local service providers (professionals, trades, etc.) in order to support local businesses efforts.

The proposal presented in this package is the First Recommendation listed in the Town of Shelburne Economic Development Report (2021) p. 3

Recommendations:

1. Make the current Interim Bylaws for Outdoor Business permanent. Residents highly value local businesses, and they would like to see more small businesses, especially restaurants. Help your local businesses thrive by allowing them to advertise with flexible signage, hold outdoor sales events, lower restaurant parking /table ratios, and allow open dining areas. In essence, don't require your local businesses to "hide" their businesses; let people see what they have to offer.

This proposal makes permanent an interim bylaw that was supported and enjoyed by the town for the last two years.

To be reviewed by the Planning Commission as a part of its public hearing on April 14, 2022.