



TOWN OF NORWOOD PERSONNEL BOARD

#P-303 – AMERICAN WITH DISABILITIES POLICY

1. Purpose and Scope

- 1.1 The purpose of this document is to outline some of the statutory and regulatory requirements relative to the U.S. Americans with Disabilities Act of 1990, which relate to employment in the Town of Norwood.
- 1.2 Please see also the Town's Equal Employment Opportunity Policy, the Policy Against Harassment, Professional Conduct Policy, and Workplace Violence Protection Policy at www.norwoodma.gov, click Committee/Boards. Click Personnel Board, and click Town Personnel Policies.

2. Applicability

- 2.1 This policy applies to all incumbent or applicants of paid and appointed positions in Town government (herein after referred to as the "Town"), excluding those under the supervision and control of the School Committee. Positions covered by Civil Service Law or a collective bargaining agreement are subject only to those portions of the policy which are not separately regulated by Civil Service Law or a collective bargaining agreement.
- 2.2 To the extent permitted by law, individual employment agreements (new, updated or extensions) entered into after the effective date of this policy, with employees whose positions are subject to this policy, must follow all of the provisions of this policy.
- 2.3 This policy is intended to be consistent with any and all applicable laws. If any part of this policy is inconsistent with the law, that part of the policy shall be considered invalid, and the remaining provisions of the policy shall be construed so as to be consistent with the law.

3. Definitions

- 3.1 Please consult the Personnel Definitions Document (#D-100) regarding terms utilized throughout this policy.
- 3.2 **Qualified Individuals** – the term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires.
- 3.1 **Disability** – the term "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of the individual; a record of such impairment, being regarded as having such impairment. Terms included in

this definition, such as, “substantially limited”, “having record”, and “regarded as” are further defined by law.

- 3.2 **Major Life Activities** – major life activities include, but are limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also includes the operation of major bodily functions such as immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- 3.3 **Reasonable Accommodation** - A modification or adjustment to a job, employment practice, or work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity. A reasonable accommodation may include, but is not limited to, such things as job restructuring modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, provision of readers or interpreters, and/or making existing facilities readily accessible.
- 3.4 **Undue Hardship** – the term “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of certain factors.

4. Eligibility

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5. Policy

- 5.1 The Town of Norwood will not discriminate against a qualified individual with a disability on the basis of disability in regards to employment practices or in terms, conditions or privileges of employment, including, but not limited to: application, testing, hiring, assignment, evaluation, disciplinary action, training, promotion, medical examination, layoff/recall, termination, compensation, leaves or benefits.
- 5.2 The Town of Norwood will make reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee, unless such action would cause an undue hardship to the operations of the Town.
- 5.3 Drug and Alcohol Abuse
 - 5.3.a **Illegal Use of Drugs:** The Town will discharge or deny employment to current illegal users of drugs, in accordance with existing policy.
 - 5.3.b **Alcoholism:** An employee who is an alcoholic is considered to be a person with a disability under the terms of the ADA. However, the Town may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he or she is “not qualified” for the position. The Town does not permit the use of alcohol at work. Employees are not permitted to report to work or be at work while under the influence of alcohol.

- 5.3.c **Recovering Addicts:** Persons addicted to drugs, but who are no longer using drugs illegally and who are receiving treatment for drug addiction, or who have been rehabilitated successfully, are protected from discrimination by the ADA.
- 5.3.d **Pre-employment Inquiries:** The Town may ask certain questions regarding the use of alcohol or illegal use of drugs. However, the employer **may not** ask whether the applicant is a drug addict or alcoholic, or whether he/she has ever been in a drug or alcohol rehabilitation program.
- 5.4 Department Heads are required to act consistent with this policy and ensure this policy is implemented consistently within their department.
- 5.5 In the event of an error or violation of this policy, either intentional or unintentional, Human Resources must be immediately informed. Human Resources will identify and make the proper correction(s). A violation of this policy, whether intentional or unintentional, will not change this policy, nor set a precedent in any future application of this policy.

6. Provisions

- 6.1 **Establishing Standards** - The Town of Norwood has and will continue to establish bona fide occupational qualifications for each position, including the education, skills, and work experience required, and the physical, mental and environmental standards necessary for job performance, health, and safety. Such standards are job-related and consistent with business necessity.
- 6.2 **Reasonable Accommodations**
 - 6.2.a The Town of Norwood will provide reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee unless such accommodation will impose undue hardship on the Town. The Town will provide reasonable accommodation to ensure equal employment opportunity in the application process; to enable a qualified individual with a disability to perform the essential functions of the job; and, to enable an employee with a disability to enjoy equal benefits and privileges of employment.
 - 6.2.b The Town need not provide reasonable accommodation for an individual who is otherwise not qualified for a position.
 - 6.2.c The duty to provide reasonable accommodation is on-going, and may arise, for instance, at any time that an employee's job changes or that an employee experiences a disability.
 - 6.2.d The individual with the disability is required to make known or request the accommodation, unless the need for an accommodation as a result of a disability is known.

- 6.2.e If the cost of providing the accommodation is determined to meet the criteria of undue hardship on the Town, the affected individual may be offered the opportunity to provide the accommodation or partial accommodation him or herself.
- 6.2.f Some examples of reasonable accommodation include, but are not limited to, the following:
- Making facilities readily accessible and usable;
 - Restructuring a job by reallocating or distributing marginal job functions;
 - Altering when or how an essential job function is performed;
 - Creating part-time or flexible schedules;
 - Obtaining or modifying equipment or devices;
 - Providing qualified readers or interpreters;
 - Permitting the use of accrued or unpaid leave for treatment; and,
 - Providing reserved parking.
- 6.2.g When attempting to identify what is a reasonable accommodation, the persons making the determination and working with the employee or applicant should include in the process the following:
- 6.2.g.i Examine the particular job involved, determining its purpose and its essential functions.
- 6.2.g.ii Consult with the individual with the disability to find out his or her specific physical or mental abilities and limitations.
- 6.2.g.iii In consultation with the individual, identify potential accommodations and assess how effective each would be.
- 6.2.g.iv If an individual requests an accommodation that is thought to be unnecessary, it may be possible to seek further written documentation from a physician or other professional with knowledge of the individual's functional limitations.
- 6.2.g.v The determination that any reasonable accommodation represents an undue hardship will be made by the Town Manager or his/her designee.

6.3 **Non-Discrimination**

6.3.a Hiring Process

- 6.3.a.i **Job Advertisements and Postings** - Recruitment information should highlight the essential functions of the job.
- 6.3.a.ii **Accessibility of Job Information** - Information about job openings should be accessible to people with different types of disability. While the Town may not be obligated to provide written information in alternative formats in advance, it should make such available upon request.
- 6.3.a.iii **Recruitment** - Consistent with the purpose of the ADA, the Town will continue to extend its outreach to include sources of candidates with disabilities.

6.3.a.iv **Pre-employment Inquiries**

- 6.3.a.iv.1 The ADA prohibits any pre-employment inquiries about an applicant's disability. This prohibition does not prevent an employer from obtaining necessary information regarding an applicant's qualifications. Medical information may not be asked about, requested, or inquired about, during the application and interview process.
- 6.3.a.iv.2 Before making a job offer, the Town **may ask** questions about an applicant's ability to perform specific job functions and may make a job offer that is conditioned on satisfactory results of a post-offer medical examination or inquiry applicable to the position. The Town **may not** make inquiries about disabilities.
- 6.3.a.iv.3 Questions which **may not** be asked during a pre-employment interview include (but are not limited to):
- Have you ever had, or been treated for any of the following conditions?
 - Please list any conditions or diseases for which you have been treated in the past three years.
 - Have you ever been hospitalized? If so, for what conditions?
 - Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
 - Have you ever been treated for any mental condition?
 - How many days were you absent from work because of illness last year?
 - Do you have any disabilities or impairments which may affect your performance in the position?
 - Are you taking any prescription drugs?
 - Have you ever been treated for drug addiction or alcoholism?
 - Have you ever filed a workers' compensation claim?

6.3.a.v **Reference Checks** - Department Heads **may not** request information about a job applicant from a previous employer or other reference provider that they may not request of the job applicant him or herself.

- 6.3.a.v.1 For example, the hiring manager **may not** ask the reference provider about an applicant's:
- Disability
 - Illness
 - Worker's compensation history
 - Any other question listed in Section 6.1.d.iii

- 6.1.d.v.2 The employer **may** ask about:
- Job functions and tasks performed by the applicant
 - The quality and quantity of work performed

- How job functions were performed
- Attendance record
- Other job-related issues that do not relate to a disability

6.3.b **Health and Safety Considerations**

Even if the applicant is qualified to perform the job, the Town may sometimes deny employment, if such employment would pose a direct threat to the health and safety of others, if such threat cannot be eliminated through reasonable accommodation. This standard will be applied in accordance with both the ADA and Massachusetts Law. Such determination must be made by the Town's ADA Coordinator and HR Director, after careful review of the circumstances.

6.3.c **Other Employment Practices**

6.3.c.i **Opportunity for Advancement** - The non-discrimination requirements that apply to initial selection also apply to all aspects of employment, including opportunities for advancement. As a result, current employees applying for promotions may not be discriminated against based upon disability and must be provided reasonable accommodation.

6.3.c.ii **Training** - Employees with disabilities will be provided equal opportunity to participate in training to improve job performance and will be provided opportunities for advancement. Training opportunities will not be denied because of the need to make a reasonable accommodation, unless the accommodation would create an undue hardship for the Town.

6.3.c.iii **Evaluation, Discipline, Discharge** - The Town will hold employees with disabilities to the same standards of performance as other, similarly situated employees.

6.3.c.iv **Compensation** - The Town will not reduce the pay of an employee with a disability because of the elimination of a marginal job function, or because it has provided a reasonable accommodation at its expense. However, an employee who is reassigned to a lower paying job may be paid the lower amount, consistent with Town policy.

6.3.c.v **Health Insurance/Employee Benefits** - The Town will provide the same coverage to its employees regardless of disability.

6.3.c.vi **Leaves** - The Town will not refuse to grant a leave to an employee with a disability if other employees are granted comparable types of leave.

6.3.c.vii **Collective Bargaining Agreements** - The Town may not do anything through a contractual relationship that it cannot do directly.

6.4 **Grievance Procedure**

- 6.4.a The Town has developed an ADA employment grievance procedure. The purpose of this procedure is to encourage local resolution of grievance concerning employment. It is important to note that grievants are not required to exhaust the Town's procedures prior to filing a state or federal complaint or taking court action.
- 6.4.b Anyone who feels that he or she has been discriminated against by the Town of Norwood on the basis of disability in employment practices may file a grievance.
- 6.4.c It is requested that the grievant utilize the Complaint Form contained in ***Attachment A-ADA Grievance Procedure*** and follow the outlined process to try and resolve.
- 6.4.d Where a grievance requires the review, consideration, or submission of medical information, the grievant is asked to speak directly with Human Resources, as such medical information is highly private and only shared with those specifically responsible for handling such medical information.

7. **Applicable Laws / Statues**

7.1 Questions Regarding this Policy

Please contact Human Resources regarding questions about this policy. Please also consult the Personnel Definitions Document [#D-100] regarding other commonly used words and/or phrases not defined in this policy.

7.2 **Conflicts Between this Policy and the Law**

- 7.2.a In the event of a legally impermissible conflict between this policy and the ADA, the conflict will be resolved in terms of compliance with the ADA. In other words, whenever there is an impermissible conflict (if any) the ADA will supersede this policy
- 7.2.b Massachusetts handicap Discrimination Law also applies to all aspects of employment. If in any instance the Massachusetts Handicap Discrimination Law provides for greater protections than those found in the ADA or described in this policy, the Massachusetts Handicap Discrimination Law will apply
- 7.2.c A number of laws are implicated by this policy, which outline unacceptable or unethical conduct in the workplace. These include, but are not limited to:
- Title VII of the Civil Rights Act of 1964
 - American with Disabilities Act of 1990 and any subsequent amendments
 - Age Discrimination Act of 1967
 - Equal Pay Act of 1963
 - Fair Employment Practices Law, M.G.L. c. 151b

7.3 **External Agencies**

- 7.3.a Using our complaint process/document does not prohibit an individual from filing a complaint with any of the following agencies. Each of these agencies has a time period of 300 days for filing a claim.

