

The Town of Upper Marlboro

RESOLUTION: 2022-23

SESSION: Regular Town Meeting

DATED: October 25, 2022

A RESOLUTION FOR THE PURPOSE OF ADOPTING A TOWN PERSONNEL RESPECT AND DIGNITY POLICY AND AMENDING THE EMPLOYEE HANDBOOK OF THE TOWN OF UPPER MARLBORO (THE “TOWN”)

WHEREAS, pursuant to Section 82-59 of the Charter of the Town of Upper Marlboro, the Town has the power to employ such officers and employees as it deems necessary to execute the powers and duties provided by the Town Charter or State law and to operate the Town government; and

WHEREAS, pursuant to Section 3-708 (Threat against State or local official) a person may not knowingly and willfully make a threat to take the life of, kidnap, or cause physical injury to a State official, or a local elected official; and

WHEREAS, the Town Commissioners find that it is in the best interest of the Town to amend the Employee Handbook that has been prepared to provide the Town’s officers and employees with a general understanding of Town personnel policies, work rules and benefits, and last substantially amended and approved on August 23, 2022; and

WHEREAS, said Handbook contains a prohibition on the use of abusive, threatening, or obscene language and includes harassment (anti-harassment), workplace violence and computer policies with a complaint procedure policy to consider any issues that may affect an employee’s job performance; and

WHEREAS, said Handbook is proposed to be changed or amended to add a provision entitled “Respect in the Workplace Policy Against Discrimination and Harassment in the Work Environment including the use of Unprotected Speech.”

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for The Town of Upper Marlboro, sitting in regular session this __ day of September 2022, *The Town of Upper Marlboro Employee Handbook, 2022 Version* is hereby amended as follows, to be apart of said Handbook and a general policy guide for all employees and officers of The Town of Upper Marlboro:

Respect and Dignity in the Workplace Policy Against Discrimination and Harassment in the Work Environment including the Use of Unprotected Speech

I. Background

The Town government believes that and Town employees, job applicants and officials should be treated with dignity and respect by other employees, including their supervisors, vendors and by the public. This includes not being subjected to abusive, foul, obscene or otherwise unprotected speech or harassing language. The Board of Commissioners similarly expects Town employees, contractors, agents, and officials to treat the public, other employees, agents and vendors with dignity and respect. Simply put, respect in the workplace is a fundamental value of the Town of Upper Marlboro (the “Town”).

Any form of discrimination or harassment based on an individual's age, ancestry, civil union, domestic partner, or marital status, color, disability, gender identity or expression, genetic information, military service, national origin, nationality, race, religion, sex, sexual orientation, veteran status, or any other characteristic protected by applicable law will not be tolerated and will result in disciplinary action, up to and including unpaid suspension and/or termination of employment. While it is not always easy to define discrimination or harassment with precision, such misconduct does include jokes, slurs, and other uninvited graphic, physical, or verbal conduct by one individual toward another.

The Town will not immediately honor requests or applications for Town services, petitions, interviews, grants or license/permits from customers, residents, vendors or other members of the public that would contravene this policy or promote bad behavior and a hostile work environment. However, the Town will comply with applicable government regulations that permit special or disparate treatment of certain citizens or residents (e.g., the disabled) when the law requires it based on an important or compelling governmental purpose.

The Town encourages applicants or employees to immediately report discrimination, harassment, retaliation, or any other inappropriate conduct or behavior to their supervisor, any other member of the Town’s management team, or any human resource representative. You should report such conduct or behavior even if you have not directly or indirectly been subjected to it yourself. All reports will be discreetly and promptly investigated by an appropriate member of the Town’s management team who is not involved in the alleged incident. The matter will be treated in confidence to the extent possible under the circumstances.

The Town cannot address incidents of discrimination, harassment, retaliation, or other inappropriate conduct or behavior it is unaware of unless you bring these incidents to our attention. Failure to report inappropriate conduct or behavior limits our ability to take steps to remedy the problem and prevent future occurrences. No one who has acted in good faith will be disciplined or otherwise retaliated against for bringing incidents of misconduct to our attention or for participating in the investigation of such incidents. The Town will not tolerate discrimination, harassment, or retaliation, and we are committed to complying with all applicable antidiscrimination and antiharassment laws.

The First Amendment protects speech even foul language and racial epithets. Fighting words are not protected speech but it is often difficult to determine what constitutes fighting words as a breach of the peace. See below case holdings on fighting words. Also, the law views police officers' over reaction to fighting words in a much dimmer light than civilians.

Normally “fighting words” (i.e., inflammatory words meant to incite immediate personal violence that possesses no social value or contribution to the expression of ideas) need to be accompanied by some sort of a threat of physical harm. Often criminal statutes make the use of unprotected fighting words an aggravating element of a crime but not the core basis for a crime. But it also depends on the forum (i.e., where the language takes place on public property as some public places are customarily viewed as places where the public can freely engage in protected speech). Of course, non-government actors such as private businesses can refuse to serve or remove anyone for any type of bad behavior or any reason whatsoever unless it relates to discriminatory treatment of a protected class of people (e.g., racial discrimination in a public accommodation such as a theater, restaurant or convenience store).

The First Amendment requires that the government not discriminate against particular viewpoints or in other words must be content neutral without regard to the substance or message. The Supreme Court has, however, upheld the idea that speech may be regulated under reasonable “Time, Place, and Manner” regulations. Time, place and manner restrictions include regulations of when, where and how someone speaks.

The U.S. Supreme Court established three different types of public forums which allow different levels of freedom of speech: (i) Traditional, or quintessential, public forums (i.e., public parks, sidewalks and areas where the public has a right to be); (ii) limited, or designated, public forums (i.e., town hall, town meetings, or the municipal building); and nonpublic forums (i.e., airport terminals, a public school’s internal mail system, and a polling place). Less can be done to restrict speech in a traditional forum, but for example, people can be removed or temporarily banned from a town hall meeting for using foul, disrespectful or inappropriate speech. (The rules for the conduct of public meetings typically address this form of bad behavior or limited speech.)

Regarding unprotected speech mentioned above, the federal and other appellate courts have had a difficult time determining whether certain epithets constitute “fighting words.” At the very least, they have reached inconsistent results. Consider the following situations in which offensive statements were found not to constitute fighting words:

- Calling a police officer a “son of a bit_h” (*Johnson v. Campbell*, 3rd Circuit, 2003).
- Yelling “fu_k you all” to police officer and security personnel at a nightclub (*Cornelius v. Brubaker*, Minnesota District Court, 2003).
- Telling a police officer: “I’m tired of this God damned police sticking their nose in shit that doesn’t even involve them” (*Brendle v. City of Houston*, Court of Appeals of the State of Mississippi, 2000).
- Telling a security officer “This is bullshit” when roused from a parking lot (*U.S. v. McDermott*, Eastern District of Pennsylvania, 1997).

However, other courts have determined that the expressions in the following situations were unprotected “fighting words:”

- Flashing a sexually suggestive sign repeatedly to a young woman driving a car (*State v. Hubbard*, Minnesota Court of Appeals, 2001).
- Yelling racial slurs at two African-American woman (*In re John M.*, Arizona Court

of Appeals, 2001).

- Repeatedly yelling the words “whore,” “harlot” and “Jezebel” at a nude woman on the beach (*Wisconsin v. Ovdal*, Wisconsin Court of Appeals, 2003).
- Calling a police officer a “white, racist motherf__ker” and wishing his mother would die (*State v. Clay*, Minnesota Court of Appeals, 1999).
- Calling a police officer a “fuc_ing asshole” in a loud voice and attempting to spit on the officer (*State v. York*, Maine Supreme Judicial Court, 1999).

The different results reached in the lower courts, including the examples mentioned above, often turn on whether an individual engages in any threatening conduct in addition to verbal assaults, then a fighting-words charge is more likely to stick. Most courts will look at the full circumstances to see if profane or insulting language was accompanied by any threatening behavior or conduct.

Profanity or insults directed at police are less likely to be considered fighting words than if they were aimed at other people. The Supreme Court has carved out an exception for “‘fighting’ words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572-3 (1942). However, the Court has indicated that the fighting words exception “might require a narrower application in cases involving words addressed to a police officer, because ‘a properly trained officer may reasonably be expected to exercise a higher degree of restraint’ than the average citizen, and thus be less likely to respond belligerently to ‘fighting words.’” *City of Houston, Tex. v. Hill*, 482 U.S. 451, 461-2 (1987); *Posr v. Court Officer Shield #207*, 180 F.3d 409 (2d Cir. 1999) (individual’s statement to officer “one day you’re gonna get yours,” spoken while in retreat, were not fighting words); *Buffkins v. City of Omaha, Douglas County*, 922 F.2d 465, 472 (8th Cir. 1991) (finding no evidence that individual caused “an incitement to immediate lawless action” by calling officer “asshole”).

If it is unclear whether an individual engaged in fighting words, the governmental official may receive qualified immunity even if the official wrongly assumes the individual uttered fighting words. Qualified immunity is a doctrine that shields government officials from liability when they do not violate clearly established constitutional or statutory law.

Town (UMPD) Special Order 19-001 adopted by reference the County’s police directives as the Town’s police general orders. Volume I of the Prince George’s County Police General Orders governs certain language violations committed by police officers and defines “abusive language” as “[h]arsh, violent, profane or derogatory language that would demean the dignity of any person.” Said General Orders define “discriminatory language” as “demeaning, derogatory or abusive language, or other unbecoming conduct relating to the race, color, national origin, gender, religion, sexual orientation, or gender identity/gender expression of a person. Said General Orders further defines “inappropriate language” as “[n]ame-calling, sarcastic remarks or other unnecessary language that serves to belittle or embarrass a citizen or otherwise inflame an employee/citizen contact.

Finally, the criminal code of Maryland defines certain hate crimes that accompany other crimes dealing with the destruction of property. Md. Ann. Code, CL art., § 10-304 (Crimes; destruction of property). The point here is that a hate crime motivated either in whole or in substantial part by another person’s or group’s race, color, religious beliefs, sexual orientation, gender, gender identity,

disability, or national origin, or because another person or group is homeless, a person requires a manifestation of physical violence in addition to hate speech.

II. Purpose

To establish the standards of behavior expected from all employees, officials and other individuals interacting in the Town workplace, at Town events, or while receiving services or performing work or duties on behalf of Town.

III. Scope

All Town employees, or elected and appointed officials, applicants for employment, paid and unpaid interns, contractors, other persons in Town workplaces, conference and event attendees and other invitees to Town premises, and other individuals performing duties or work on behalf of the Town or conducting business with the Town or its personnel.

IV. The Policy

Acceptable Behavior is expected in the workplace and regarding interactions with Town officials and employees. The Town fosters a work environment in which all employees and other individuals in the Town workplace and work environment are treated with decency and respect. Accordingly, we expect and require all individuals working or interfacing with the public on behalf of the Town or present in the Town's facilities, workplaces or at a Town organized or regulated event to follow these principles:

- Communicate in a manner that is conducive to effective working relationships.
- Work with others to create an environment in which all are inspired to interact through mutual respect, support, and appreciation of difference.
- Carry out all assigned responsibilities to the best of your abilities and in accordance with Town policies.
- Comply with all applicable local, state, and federal laws and regulations.

Unacceptable behavior will not be tolerated. This includes, but is not limited to:

- Use of abusive language, bullying, intimidating, or otherwise interfering with the job performance of employees, officials, contractors, vendors, public meeting attendees, visitors or other individuals in the workplace, in public where municipal services are rendered, and at Town events.
- Physically threatening remarks (written or verbal).
- Engaging in aggressive or hostile acts such as shouting, assaulting, aggressively using profanity, throwing objects at another person, fighting, or intentionally damaging another person's property.
- Engaging in behavior that could create a reasonable fear of injury, such as stalking.
- Knowingly making false representations about your work or your credentials, or about another employee, official, contractor, vendor, visitor or other individual in the workplace or work environment.

The Town may cease or delay in providing administrative or processing support for a grant or suspend a prospective grantee's grant or applicant's program participation if the individual persists in using inappropriate or profane language. For example, since the municipal building is a limited public forum, someone who comes into Town Hall requesting to interface with Town personnel on a grant or other service can be removed or asked to leave until they cease engaging in using profane language or offensive behavior before completing any necessary forms to obtain the grant, license or other municipal services. However, a Town employee or official may not use this policy to prevent an applicant from complying with any statutory or ordinance deadlines to obtain a license of permit.

Furthermore, a citizen or member of the public who abuses or harasses a Town official or employee by using abusive or disrespectful language, bullying, or intimidating behavior, or otherwise distracting, embarrassing, wasting, or interfering with the job performance of Town employees or officials may at the discretion of the employee or official be asked to immediately leave the premises and have their application or request for a grant or participation in a Town program delayed until a supervisor or senior official can intervene to properly process the request. Any person who refuses to leave the Town premises, may be escorted off the premises by a police officer.

Nothing in this policy is intended to prevent Town officials or employees from engaging in concerted activity protected by law. Any violations of this policy by Town employees or officials are grounds for disciplinary action, up to and including termination of employment. A violation of this policy by individuals who are not Town employees at Town workplaces, in public or on Town premises is cause for appropriate action in response, including but not limited to removal from Town premises, delay in service provision or possible termination of any existing contractual or grant recipient relationship. Serious alterations or breaches of the peace may be criminally prosecuted.

BE IT FURTHER RESOLVED, that said amendment to the Employee Handbook and the other provision of said handbook may be amended from time to time by the Board of Commissioners by a simple resolution provided the Handbook manuscript is updated and distributed in a timely manner; and be it,

FURTHER RESOLVED, that all officers and employees of the Town shall receive a copy of said Employee Handbook and this amendment as certified by an appropriate entry made into each personnel record and shall receive copies of the original and any amendments thereto as they are adopted and published from time to time, however, failure to receive said copies or notice of said Handbook or any amendments thereto shall not relieve or otherwise absolve an employee of his nor her duties and responsibilities as stated in said Handbook, as amended; and be it,

FURTHER RESOLVED, that all prior resolutions or parts of resolutions in conflict with this Resolution shall be considered repealed insofar as they conflict hereto; and be it,

FURTHER RESOLVED, that this Resolution shall take effect immediately following its adoption.

ATTEST:

THE TOWN OF UPPER MARLBORO

John Hoatson, Town Clerk

Sarah Franklin, President

Date: _____

Charles Colbert, Commissioner

Janice Duckett, Commissioner

Thomas Hanchett, Commissioner

Karen Lott, Commissioner

CERTIFICATION

I, the undersigned, hereby certify that I am the Town Clerk of the Town of Upper Marlboro and that the Board of Town Commissioners of the Town of Upper Marlboro at a public meeting at which a quorum was present adopted this Resolution, and that said Resolution is in full force and effect and has not been amended or repealed.

In witness whereof, I have hereunto set my hand and seal of the municipal corporation, this 25th day of October, 2022.

John Hoatson, Town Clerk