

# Town of Douglas



# Committee Handbook

Prepared by:  
Eben W. Chesebrough  
**Board of Selectmen**

1994

**DOUGLAS  
COMMITTEE HANDBOOK**

	<u>Page</u>
1.0 <u>INTRODUCTION</u>	
1.1 Purpose	6
1.2 Additional Publications	6
2.0 <u>FORMATION OF COMMITTEES AND MEMBERSHIP</u>	
2.1 Types of Committees	6
2.2 Committee Formation	7
2.3 Committee Application Procedure	7
2.4 Appointment	7
2.5 Committee Orientation	8
2.6 Conflict of Interest Statute	8
2.7 Reappointment	10
2.8 Resignation	10
2.9 Other Terminations	11
2.10 Composition	11
3.0 <u>OFFICERS</u>	
3.1 Elections	11
3.2 Chairperson	11
3.3 Vice-Chairperson	11
3.4 Secretary	12

4.0	<u>MEETINGS</u>	
4.1	Definition	12
4.2	Open Meeting Law	12
4.3	General Guidelines	13
4.4	Executive Session	13
4.5	First Meeting	15
4.6	Meeting Schedule and Location	15
4.7	Public Postings	16
4.8	Meeting Notices	16
4.9	Record Keeping	16
4.10	Public Records Law	17
4.11	Quorum	17
5.0	<u>FINANCES</u>	
5.1	Committee Budgets	18
5.2	Source of Funds	18
5.3	Disbursements	19
5.4	Purchases	19
5.5	Written Proposals	19
5.6	Public Bidding Requirements	20
5.7	Contracts	20

6.0	<u>REPORTING PROCEDURES</u>	
6.1	Appointing Authority	20
6.2	Communication with Board of Selectmen	21
6.3	Public Information meetings	21
6.4	Warrant Articles	21
6.5	Town Reports	22
7.0	<u>PLANNING</u>	
7.1	Goals and Purposes	22
7.2	Plan of Action	23
7.3	Procedure	23
8.0	<u>MISCELLANEOUS</u>	
8.1	Dissolution	23
8.2	Sources of Information	24
Appendix A:	Reserve Fund Transfer Request Form	
Appendix B:	Procurement / Purchase Order Form	
Appendix C:	Open Meeting Law (MGL c.39, Sections 23A & B)	
Appendix D:	Meetings & Minutes Guide	
Appendix E:	Quorums and Other Voting Issues	

This handbook has been prepared by the Town of Douglas for use by boards, committees and commissions involved in Town Government. Although the handbook is designed to provide guidance to primarily appointed boards and committees, it serves also as a valuable framework to all boards and committees. It provides information concerning legal obligations, procedural matters and advice for the effective operation of these groups. We are grateful to the many residents of Douglas who serve in these positions and hope that this handbook will assist them in their duties and responsibilities.

Board of Selectmen

Douglas, MA

1994

## **1.0 INTRODUCTION**

### **1.1 PURPOSE**

The purpose of this handbook is to assist the many boards, committees and commissions of the Town. It provides a brief description of procedures which may be well known to many but are less familiar to others. It also provides details about important state statutes, such as Open Meeting Laws and Conflict of Interest Law.

### **1.2 ADDITIONAL PUBLICATIONS**

All committee members should read the Annual Town Report and the Town Bylaws for information regarding boards and committees. In addition, all committee members should review each set of laws that pertain to a certain board, committee or commission.

## **2.0 FORMATION OF COMMITTEE AND MEMBERSHIP**

### **2.1 TYPES OF COMMITTEES**

There are two types of appointed committees involved in Douglas Town Government:

- A. Permanent Committees of the Town (e.g. Planning Board, Finance Committee, Personnel Board, Conservation, etc.). These are established by Bylaw, state statute, or by Town Meeting vote. These committees are assigned specific responsibilities for certain functions of the Town.
- B. Study and Advisory Committees. These committees are established by Town Meeting vote or by the Board of Selectmen to study problems facing the Town and to bring back recommendations to the Town Meeting and/or the Board of Selectmen.

## **2.2 COMMITTEE FORMATION**

Appointments to committees in Douglas are made by any one or several elected boards, the Town Moderator, or by some combination thereof (hereinafter referred to as the “appointed agencies”). State statutes outline the authority and duties of many boards, and the Bylaws or Town Meeting vote further defines the work of some boards. Town Meeting may request the appointment of a committee by approving an article for that purpose. The appointing agency prepares the charge and receives the reports and recommendations of the committee. If appropriate, the committee may also report to Town Meeting.

## **2.3 COMMITTEE APPLICATION PROCEDURE**

When openings on committees are available, the openings are generally published in a local newspaper or advertised on Douglas cable TV. Candidates hoping to get on a particular committee are urged to send a letter of interest to the appointing agency as identified in the advertisement. For anyone interested in serving on a committee and no opening exists, the letter of interest will be held on file for consideration when an opening becomes available.

As well-written letter of interest will assist the appointing agency in making the best decision on committee appointments. Ideally, the application should list education, work experience and outside accomplishments that will significantly contribute to the committee’s area of responsibility.

## **2.4 APPOINTMENT**

The goal of the appointing agencies is to appoint qualified and interested Douglas residents who are broadly representative of the Town. The appointing agencies carefully consider letters of interest and recommendations by committees. The appointee receives formal written notification of appointment and the term of office from the appointing agency. The appointee shall appear before the Town Clerk or Town moderator to take the oath of office prior to

attending a committee meeting as an official member. The Town Clerk gives committee members information about the Open Meeting Law ( MGL Chapter 39, Section 23B) as state statutes require. Members must sign a written acknowledgment of receipt.

Permanent committee appointments are generally for three-year terms or as designated by the Bylaw or appointment notification.

NOTE: The above procedure does not apply to the filling of vacancies on elected boards. Vacancies on elected boards are filled by the remaining board members and Board of Selectmen until the next general election. A specific procedure must be followed and the Board of Selectmen should be consulted relative to the specifics.

Citizens who assist committees are not official committee members and, as such, have no vote in committee proceedings.

## **2.5 COMMITTEE ORIENTATION**

New members to a committee or board should be informed about the committee's specific role, authority and duties, rules and regulations, and any issues frequently encountered by the board or committee. Such information can be provided by the committee Chairperson, other members, and/or staff personnel.

## **2.6 CONFLICT OF INTEREST STATUTE (MGL Chapter 268A)**

### **2.6.1 PURPOSE**

The purpose of the conflict law is to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations. The law is broadly written to prevent a public employee from



becoming involved in a situation which could result in a conflict or give the appearance of a conflict. The law restricts what a public employee may do:

1) On the job; 2) After hours; and 3) After leaving public service.

## **2.6.2 PROVISIONS**

The law prohibits a variety of actions, including bribery, extra pay, receipt of gifts or privileges because of committee members' official actions, and acting as an agent or attorney for anyone in a claim against or doing business with the Town. The law prohibits all municipal employees from participating in a particular matter in which committee members or any of the following have a financial interest:

- Immediate Family: Includes the employee and spouse, their parents, children, brothers and sisters. Cousins, nephew and nieces, aunts and uncles, etc. are not considered immediate family members. Also, under the definition of the immediate family, some brothers-in-law are immediate family, while others are not (if your brother-in-law is your spouse's brother then he is immediate family. If he is your sister's husband then he is not immediate family for the purposes of the conflict law).
- Partner or Business Associates.
- A Business Organization in which the committee member serves as an officer, director, trustee, partner or employee (including a non-profit organization).
- Any Person or Organization with whom the committee member is negotiating or has any arrangement concerning prospective employment.

If board or committee members have a conflict of interest or an appearance of conflict in any matter before the board or committee, they should not be counted in the quorum nor participate in or be present for any pertinent discussion or votes. The law provides for the legal determination of conflict of interest status for any employee submitting a request to the appointing agency or State Ethics Commission.

NOTE: "Municipal Employee" refers to anyone holding any office, position, employment or membership in any municipal agency. Unpaid members of local Town Boards and committees are municipal employees as are private citizens serving on a special advisory committee.

The law also provides for continued service in certain circumstances if full disclosure is made or a special exemption is granted by the Board of Selectmen. If committee members have any questions about their activities, they should file a written request for an opinion from Town Counsel through the Board of Selectmen or seek a legal opinion from the State Ethics Commission legal department. The answer to the request will be in writing and become a matter of public record.

## **2.7 REAPPOINTMENT**

Reappointment is based on an evaluation by the appointing agency of the citizen's contribution to the committee, the desirability of widespread involvement, and the changing needs of the committee and the Town. There is no fixed limit on length of service. If a person chooses not to be appointed, the appointing agency should be advised in advance. A committee member is under no obligation to accept reappointment nor is the appointing authority obligated to offer reappointment.

It is incumbent upon the committee chairperson to make recommendations regarding the reappointment of committee members. Specific reasons for positive or negative recommendations should be stated.

## **2.8 RESIGNATION**

A committee member who is no longer able to serve should resign promptly so that the vacancy may be filled. A written resignation should be submitted to the Town Clerk, with a copy to the committee chairperson and the appointing agency (this procedure is specified in MGL Chapter 41, Section 109).

## **2.9 OTHER TERMINATIONS**

In rare circumstances such as continued unexplained absences or conflict of interest, the appointing agency may ask for a member's resignation or, if necessary, revoke the appointment. Prompt, written notification to the committee member will be given by the appointing agency in the event of such action.

## **2.10 COMPOSITION**

The Composition of most appointed committees is specified by Town Bylaw, Town Meeting vote or state statute.

## **3.0 OFFICERS**

### **3.1 ELECTIONS**

Committees elect a chairperson, vice-chairperson and a secretary annually (unless otherwise provided by State law or Bylaw), usually at the first meeting after new terms begin. It is the responsibility of the chairperson to notify the appointing agency, the Board of Selectmen, and the Town Clerk of changes in officers. Committees are not required to elect a secretary if that committee has a paid part-time secretary.

### **3.2 CHAIRPERSON**

The Chairperson presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the chairperson's signature. The chairperson has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon.

### **3.3 VICE-CHAIRPERSON**

The vice-chairperson acts for the chairperson whenever the latter is absent from meetings and performs other necessary duties.

### **3.4 SECRETARY**

The secretary is responsible for the following duties of the committee:

- Take and transcribe the committee's minutes.
- Prepare agendas and any other materials.
- Copy meeting materials and make available packets to committee members using, if necessary, facilities and materials at the Municipal Center.
- Schedule a place, date, and time of meeting and post the meeting with the Town Clerk no later than 48 hours before a meeting. The Town Clerk will insure that the notice is posted on the Municipal Center bulletin board.

### **4.0 MEETINGS**

#### **4.1 DEFINITION**

A public meeting occurs at any time a quorum of the committee (or subcommittee) members get together to discuss or consider any public business or policy over which the committee (or subcommittee) has some jurisdiction or advisory authority. No action of the committee (or subcommittee) is valid or binding unless ratified by the affirmative vote of the majority of the full board.

#### **4.2 OPEN MEETING LAW**

The Massachusetts Open Meeting Law requires that all meetings of elected or appointed boards, committees, subcommittees, or commissions be open to the public except in eight (8) specific situations where Executive Session is allowed (see Section 4.4 Executive Session). The law does not apply to chance meetings or social occasions; however, such meetings cannot be used to circumvent the requirement of discussing and deliberating at public meetings. The law does not apply to administrative meetings or to a group appointed by a single administrator to advise on administrative responsibilities.

Any person may record a meeting with a tape recorder or any other means of sonic reproduction and/or videotape equipment provided there is no active interference with the conduct of the meeting. The manner in which this right is to be exercised is subject to the reasonable direction of the chairperson.

### **4.3 GENERAL GUIDELINES**

A committee may adopt formal rules or order. Although most small committee discussions may seem to casual to be called debate, it is advisable for the committee to observe a minimum of generally accepted procedures. Attentive guidance by the chairperson and adherence to adopted procedures can increase efficiency as well as maintain objectivity and order.

The chairperson should limit all participation to concise, non-repetitive statements. Although desirable, it is not necessary for the committee to continue discussion until complete consensus is achieved. Other actions such as calling for a vote, postponing until more information is available, or referring to a subcommittee may be required.

The Open Meeting Law does not require that visitors be allowed to participate. It may be advisable for the chairperson to remind speakers of time and repetition limits. No one may speak at a committee meeting without permission of the chairperson. If a speaker refuses to be silent after warning from the chairperson, the chairperson has the authority to order the speaker removed from the meeting by the police. Nevertheless, all committee members represent and serve the Town. They should treat all visitors and other committee members with courtesy and consideration.

### **4.4 EXECUTIVE SESSION**

An Executive Session is closed to the public, but before an Executive Session can be called, the following procedures must be followed:

1. An open session, for which notice has been given, must be convened.
2. The presiding officer must cite the purpose for the Executive Session and state whether the board will reconvene thereafter in open session.
3. A majority of board members must vote, by roll call, to go into Executive Session and the vote must be recorded in the committee minutes.

Records of any Executive Session remain closed to the public only as long as publication may defeat the purpose(s) of the Executive Session. Topics discussed in Executive Session are confidential. Attendees do not discuss these matters with anyone until the purpose for the Executive Session no longer exists and the minutes can be released to the public. Releasing minutes is completed by majority vote of the appropriate committee.

Executive Sessions can be held only when the following matters are being discussed or considered:

1. The reputation and character, physical condition or mental health, rather than the professional competence of a single individual. Individuals involved must receive 48 hours notice, in writing, or proposed Executive Session.
2. Discipline or dismissal or the hearing of complaints or charges against an individual. Individuals involved must receive 48 hours notice, in writing, of the proposed Executive Session.
3. Strategy for collective bargaining or litigation where open discussion of the same may have a detrimental effect; collective bargaining itself may be conducted in Executive Session.
4. Deployment of security personnel or devices.
5. Allegations of criminal misconduct.
6. Transactions of real property where open discussion may have a detrimental effect on such transactions.

7. Complying with the provisions of any general or special law or federal grant-in-aid requirements.
8. Initial screening, including interviews if they are part of the initial screening process, of candidates for governmental employment if an open meeting would have a detrimental effect in obtaining qualified candidates.

When the Executive Session has been concluded a majority of members must vote, by roll, call, to come out of Executive Session. Following this, the regularly scheduled open meeting continues if there is additional business.

#### **4.5 FIRST MEETING**

The first meeting of a committee will be called by the chairperson of the committee or, being none, then by the appointing agency. At that time it is advisable to review the goals of the appointed committee so that all members understand and agree upon the objectives of the committee. Copies of the goals shall be distributed to all committee members, the Board of Selectmen, and the appointing agency.

#### **4.6 MEETING SCHEDULE AND LOCATION**

To accomplish committee objectives, regular meeting times and locations should be established. Depending upon the committee's workload, meetings may be held weekly, bimonthly, or, at the very least, monthly. The chairperson calls each meeting except for the first one, which is called by the appointing agency.

When possible, a regular meeting day, hour, and location should be established. By law, meetings must be conducted in a public building, but not scheduled for holidays, election days, or Sundays. Ideally, the location must also be accessible to the handicapped. Each committee member will need a key to the building as well as information pertaining to any alarm system.

## **4.7 PUBLIC POSTING**

By law, public notice of all committee meetings must be posted with the Town Clerk a minimum of 48 hours before any meeting; Saturdays are counted; Sundays and holidays are not. The Town Clerk will insure that the notice is posted on the Municipal Center bulletin board. They should contain the name of the committee and the date, time and place of the meeting.

## **4.8 RECORD KEEPING**

All committee members should be notified in writing of each committee meeting, if the committee is operating on an irregular schedule, and of each special meeting. Otherwise, at the conclusion of any meeting, the chairperson should announce the date and time of the next meeting, with written notice being sent to any absent member(s).

## **4.9 RECORD KEEPING**

State law requires that a committee keep accurate records of its public meetings. The committee must formally vote to accept all minutes. The records of each regular meeting are public information, and chairpersons or their designees must maintain a copy of all approved minutes for public inspection. In addition, a copy of all approved minutes must be filed with the Town Clerk's Office within a reasonable amount of time and a copy provided to the Selectmen and all other standing committees, boards, or commissions in order to maintain good communication.

Minutes must include:

- The names of committee members present and absent at the meeting.
- The names of others present if Executive Session.
- Date, time, place convened, and time adjourned.
- All agreements reached by vote or consensus.

Minutes should include:

- Assignments to committee members.
- Mention of topics discussed.



- Exact wording of all motions including who made the motion and who seconded. Also, the vote of each member and those members who did not participate in the vote should be recorded.
- Names of additional participants (not press or observers).

Minutes may include:

- Summary of discussions.
- Future meeting schedule.

Once minutes are accepted by committee vote, they become the official record of the meeting. Verbatim copies of proceedings, such as audio or video recordings, may be retained.

#### **4.10 PUBLIC RECORDS LAW**

The Massachusetts Public Records Law (MGL Chapter 4, Section 7(26), as amended, provides right of access to public records, broadly defined to include all documentary materials except specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property. The minutes, informational data, memoranda and circulating materials of any Town board or committee are mostly all public information. Any committee should consult the Board of Selectmen if questions arise concerning freedom of information.

#### **4.11 QUORUM**

A committee should establish a quorum necessary for conducting business. This quorum must be greater than fifty percent (50%) of committee members. This may deviate depending on the criteria used to establish the committee. State statute may dictate the quorum. If you have any questions, you should contact the Board of Selectmen.

## **5.0 FINANCES**

### **5.1 COMMITTEE BUDGETS**

If a committee anticipates a need to expend funds, it can request a budget for the next fiscal year through the Finance Committee. In the fall of each year, each committee should determine the necessary budget for committee operations over the next fiscal year, which begins on July 1<sup>st</sup>. The budget figures with appropriate narrative, are due on the date to be set by the Finance Committee, which shall inform all committees. If funds are needed during the fiscal year for unforeseen or extraordinary purposes, the committee can make a request (on the form attached to this handbook as Appendix "A") for a transfer from the Reserve Fund to the Finance Committee.

Committees which operate under appropriations voted at Town Meeting should check their balances with the Accountant's Office to make sure that they will have sufficient funds to continue their operations.

Requests for an appropriation to cover the cost of Capital Outlay should be submitted in writing with justification to the Finance Committee. A Capital Outlay item is any item in excess of \$5,000 having a life expectancy of three years or more.

### **5.2 SOURCE OF FUNDS**

A. Town Meeting Committees (standing committees of the Town Meeting and study committees established by Town Meeting).

1. Budget – Town Meeting will decide what sums, if any, shall be appropriated; provides modest sums for general office supplies, postage and clerical assistance; requires authorization of a majority of the committee before funds can be released.

2. Special Articles – Provide large sums for specific projects resulting from recommendations of particular committees. These funds may be disbursed by majority vote of the committee.
- B. Permanent Appointed Committees.
1. Individual elements of the budget provide the funds for the ongoing activities of the committee. These may be disbursed by majority vote of the committee.
  2. Special Articles – See above.

### **5.3 DISBURSEMENTS**

After a vote of approval, bills (vouchers) should be signed by a majority of the members of the committee and submitted to the Town Accountant's Office for processing and payment by the Treasurer. When authorization by the Board of Selectmen or other authority is required, their signature should be added to the bill (voucher) before submission for payment. The Town Accountant will review the specific paperwork needed to process bills.

### **5.4 PURCHASES**

All purchases exceeding \$1,000 or more, but less than \$10,000 must have three (3) quotes and comply with MGL Chapter 30B, the Uniform Procurement Law. A copy of a procurement/purchase form is attached as Appendix "B". The Uniform Procurement Law can be confusing and you should consult with the Selectmen's Office for guidance.

### **5.5 WRITTEN PROPOSALS**

In addition, MGL Chapter 30B states that all purchases for \$5,000 or more will also require a written proposal from the recommended vendor. A copy of the written proposal must be filed with the Town Accountant. You are advised to consult with the Selectmen's Office for assistance in the correct procedure.

## **5.6 PUBLIC BIDDING REQUIREMENTS**

All purchases exceeding \$10,000 are subject to the public bidding law. These purchases must be coordinated through the Selectmen's Office. Steps should be taken to secure prices or bids from sufficient producers or dealers in such equipment or supplies, or from persons in a position to furnish such services in order to enable the Town to avail itself of the lowest obtainable prices. The lowest bid shall be accepted, provided that the bidder is financially responsible and the bid is reasonable and complies with any conditions imposed and it is in the best interest of the Town. The Town reserves the right to reject any or all bids.

No contract or purchase shall be so divided as to bring the amount below \$10,000 for the purpose of evading the law.

## **5.7 CONTRACT**

By Bylaw, the Board of Selectmen is required to award all contracts for the Town, unless otherwise specified by special article at Town Meeting. Committees should submit to the Selectmen's Office copies of all specifications for their final approval. By law, a copy of all approved contracts must be filed with the Town Accountant.

## **6.0 REPORTING PROCEDURES**

### **6.1 APPOINTING AUTHORITY**

The Board of Selectmen recommends that the committee chairperson report regularly to the appointing agency about the committee's actions and plans. If needed, the chairperson may request a meeting with the appointing agency to report progress. A written request for an appointment with the appointing

agency should be made as far in advance of the necessary meeting date as possible. The request should indicate the items to be discussed.

## **6.2 COMMUNICATION WITH BOARD OF SELECTMEN**

There should be regular communication of all committees and the Board of Selectmen. All committees should distribute a copy of each meeting's approved minutes to all other interested committees and boards. If any committee is undertaking a major project the chairperson may want to give notice of the project on local cable TV to solicit input or request comment from residents. The Board of Selectmen will host general meeting of all relevant committees and boards from time to time to discuss issues of mutual concern.

## **6.3 PUBLIC INFORMATION MEETINGS**

The success of a committee's endeavors often depends on effective communication with the public. The committee should hold public meetings and hearings when necessary both to inform citizens of work in progress and to gain public reaction and comment. Such public meetings should be advertised in a local newspaper and on local cable TV.

## **6.4 WARRANT ARTICLES**

All warrant article for the May Annual Town Meeting shall be submitted in writing to the Board of Selectmen by the established deadline in the Town Bylaws. Early submission is preferable. Articles for any other Special Town Meeting shall be submitted upon notification from the Board of Selectmen that warrant articles are due. Full documentation of the background and reasons for the proposed articles should accompany the article request.

By Bylaw, the Board of Selectmen shall prepare the warrant for all Town Meetings. Articles may be submitted, in writing, in the following forms:

1. By an elected official or by a member of an elected board of committee, with the approval of the Board of Selectmen.

2. By an appointed committee or board, acting by a majority vote of its members, with the approval of the Board of Selectmen.
3. Any person or agency authorized through the bylaws or in any other legal manner, with the approval of the Board of Selectmen.
4. A written petition to the Board of Selectmen by any ten voters of the Town of inclusion of any article in the warrant for the Annual Town Meeting, and a petition of at least two hundred registered voters for inclusion of an article in the warrant for any Special Town Meeting. The timing and procedures for such actions are outlined in the Town Bylaws. The Town Clerk may be consulted for information and advice regarding petition forms and related issues.

## **6.5 TOWN REPORTS**

All appointed committees are expected (and required) to file an annual report of committee operations, which will appear in the annual Town Report. The report should detail committee membership, including changes, and describe the major accomplishments of the committee over the calendar year and highlight plans for the ensuing year. The report is due in the beginning of February and should be submitted to the Selectmen's Office.

## **7.0 PLANNING**

### **7.1 GOALS ~ PURPOSES**

A committee is expected to formally document its understanding of the committee's goals and purposes. Verification of these goals with the appointing agency will preclude wasted efforts through a misdirection of initiatives.

## **7.2 PLAN OF ACTION**

A plan of action should be developed, outlining how the committee is to accomplish its goals. Reporting of major accomplishments should be done so that the appointing agency may audit and be informed of the committee's progress toward its goals. Distribution of such reports may result in positive feedback and constructive comment from other Town officials.

## **7.3 PROCEDURE**

Each committee should draw up a list of procedures, fees and appropriate information to be made available to assist others in knowing how to work with the committee.

## **8.0 MISCELLANEOUS**

### **8.1 DISSOLUTION**

When a special committee or task force has completed its assigned goals, if approved by the Town Meeting or Board of Selectmen, as appropriate, the committee should request dissolution by appropriate action. Other committees can request formal dissolution from the establishing (appointing) authority, or accomplish the same by filing a "Final Report". Upon dissolution, the committee should deliver to the Town Clerk all records deemed by them to be appropriate for inclusion in the permanent records.

- Chapter 39, Section 23B: Open Meeting Law
- Chapter 268A, Conflict of Interest Law

## **8.2 SOURCES OF INFORMATION**

- “Committee Handbook” Town of Sturbridge, MA, 1993
- “Appointed Committee Handbook” Town of Amherst, MA 1990
- Massachusetts General Laws

Chapter 4, Section 7 (26): Public Records Law



Department Copy: \_\_\_\_\_

## Request For Transfer From the Reserve Fund

(To be submitted in triplicate, all originals)

To: Finance Committee

Date: \_\_\_\_\_

Committee Members:

Request is hereby made for the following transfer from the Reserve Fund in accordance with Chapter 40, Section 6, of the Massachusetts General Laws:

1. Amount requested: \$ \_\_\_\_\_

2. To be transferred to: \_\_\_\_\_  
(give name of appropriation)

3. Present balance in said appropriation: \$ \_\_\_\_\_

4. Certify the Balance: \_\_\_\_\_  
Town Accountant

5. The amount requested will be used for (give specific purpose):

6. This expenditure is extraordinary and / or unforeseen for the following reason:

\_\_\_\_\_  
Office or Department Head

### Action of Advisory Committee

Date of Meeting: \_\_\_\_\_ Number Present and Voting: \_\_\_\_\_

Transfer voted in the sum of \$ \_\_\_\_\_ Transfer disapproved:

\_\_\_\_\_  
Chairman, Advisory Committee

Request must be made and transfer voted before any expenditure in excess of appropriation is incurred.


COMMONWEALTH OF MASSACHUSETTS

# **OPEN MEETING LAW**

(M.G.L. c. 39, Sections 23 A & B)

**District Attorney John J. Conte**

Middle District  
District Attorney  
2 Main Street  
Worcester, MA 01608  
(508) 755-8601

 <p>JOHN J. CONTE DISTRICT ATTORNEY</p> <p>JOHN J. CONTE DISTRICT ATTORNEY</p>	<p>COMMONWEALTH OF MASSACHUSETTS</p> <p>OFFICE OF THE DISTRICT ATTORNEY</p> <p>MIDDLE DISTRICT</p> <p>WORCESTER COUNTY COURTHOUSE WORCESTER, MASSACHUSETTS 01608</p>	<p>TELEPHONE 508-755-8601</p>
---	--	-----------------------------------

## THE OPEN MEETING LAW

MASSACHUSETTS GENERAL LAWS CHAPTER 39, SECTIONS 23 A AND B

### **Section 23A. Definitions**

The following terms as used in sections twenty-three B and twenty-three C shall have the following meanings:

"Deliberation", a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

"Governmental body", every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of a local housing, redevelopment or similar authority; provided, however, that this definition shall not include a town meeting.

"Made public", when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

"Meeting", any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any

public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

"Quorum", a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

### **Section 23B. Open meetings of governmental bodies**

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counselor a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counselor or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) to speak in his own behalf.

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

(4) To discuss the deployment of security personnel or devices.

(5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

(8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.

(9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic

reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A 1/2 of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee

discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.



# **MEETINGS AND MINUTES GUIDE FOR BOARDS, COMMISSIONS AND COMMITTEES**

## **Compliments of the City Solicitors and Town Counsel Association**

Most public business can and should be conducted in Open Session. In addition, accurate records are to be kept of a board's, commission's or committee's meetings. There are instances however where a closed, or Executive Session is appropriate. For a variety of reasons, problems may arise in going into Executive Session. This overview is intended to provide you with a general understanding of the Open Meeting Law and the requirements for maintaining accurate records of your meetings. It is by no means all-inclusive. When problems are anticipated or arise, you should call your municipal legal counsel.

An *Executive Session Quick Index Guide* is attached. It is an excerpt from this memo of the statutory reasons you can go into Executive Session, as well as suggested motions, which have been included in this memo. Note that the *Quick Index Guide* is not a detailed explanation of the terms of the law. It should be used in conjunction with the memo as needed.

All meetings must be in Open Session, unless one or more of the following exceptions apply. To go into Executive Session, you must (a) first meet in Open Session; (b) vote by roll call vote to go into Executive Session by identifying the specific exemption or exemptions applicable; and (c) indicate in the motion whether you intend to reconvene in Open Session after the Executive Session. If you do not intend to go back into Open Session, you need not say so. While in Executive Session, you can only discuss matters coming within the reason (s) stated for the Executive Session.

Unless your meeting is an appropriate emergency meeting (for a "sudden, generally unexpected occurrence or set of circumstances demanding immediate attention", G.L. c. 39, section 23A), the meeting must have been properly posted at least 48 hours in advance. Thus, if your meeting was not properly posted, you could not convene it in open session to go into Executive Session. Many problems arise with the improper posting of meetings. Be sure- to check prior to the meeting.

Note that in some instances there are conditions which must exist to be in Executive Session. These include requirements in some instances to notify the subject of the Executive Session in advance of the meeting, to allow the person to be present and to speak and to have a legal representative present to advise the person. While the law provides that the advisor is not there to speak, common courtesy and issues of fundamental fairness warrant you allowing the

person's attorney to speak. Another condition is that the Open Session may have a detrimental effect on the litigation, negotiating or bargaining position or be detrimental in obtaining qualified candidates if interviews of initial applicants are done in Open Session.

A safe guideline to follow is to treat all persons before you with the same courtesy and fair treatment you would expect and want if you were before a board or committee. This may be difficult at times, as some people may be very disagreeable and in some instances purposely try to make you commit an error upon which they can base an appeal or other legal action. If things start to get too heated, take a break. If necessary call your counsel.

The presiding officer of a meeting has control of the meeting and no one can speak without being first recognized by the presiding officer. While the presiding officer also has the authority to order the police to remove and detain any person who is disruptive, it is urged you never to do so. Such action is bound to lead to complications and possible claims. If someone becomes disruptive and does not heed the presiding officer's directives to stop, the better practice would be to take a recess and even to adjourn the meeting. In almost all such instances, after a recess the person usually stops the disruptive conduct. Ordering people removed from a meeting is fraught with danger.

If there is a violation of the Open Meeting Law, civil action can be taken against the Board of Committee in violation. The result can be a Judge issuing an order against the Board of Committee relative to their conduct, invalidating the action taken and imposing a civil fine against the governmental body of up to \$1,000.00 dollars. Most problems which result in court action can be avoided. When in doubt, or if something does not seem right, call your municipal counsel.

What follows is a listing of the statutory exceptions, together with a suggested motion, which should be modified as appropriate.

**Exception 1. To discuss the reputation, character, physical condition or mental health rather than the professional competence** of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussion or considerations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
- (c) to speak in his own behalf.

***Suggested Motion - Move to go into Executive Session to discuss the reputation, character, physical condition or mental health of an individual, and to reconvene in Open Session.***

Exception 2: **To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual**, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussions or considerations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
- (c) to speak in his own behalf.

***Suggested Motion - Move to go into Executive Session to consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual and to reconvene in Open Session.***

Exception 3. **To discuss strategy with respect to collective bargaining or litigation** if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, **to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.**

**Suggested Motion - Move to go into Executive Session to discuss strategy with respect to collective bargaining, and to reconvene in Open Session.**

***Suggested Motion - Move to go into Executive Session to discuss strategy with respect to litigation, and to reconvene in Open Session.***

***Suggested Motion - Move to go into Executive Session to conduct strategy sessions in preparation for negotiations with nonunion personnel, and to reconvene in Open Session.***

***Suggested Motion - Move to go into Executive Session to conduct collective bargaining sessions, and to reconvene in Open Session.***

***Suggested Motion - Move to go into Executive Session to conduct collective bargaining sessions or contract negotiations with nonunion personnel, and to reconvene in Open Session.***

Exception 4. **To discuss the deployment of security personnel or devices.**

***Suggested Motion - Move to go into Executive Session to discuss the deployment of security personnel or devices, and to reconvene in Open Session.***

Exception 5. **To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.**

***Suggested Motion - Move to go into Executive Session to investigate charges of criminal misconduct or to discuss the filing of criminal complaints, and to reconvene in Open Session.***

Exception 6. **To consider the purchase, exchange, lease or value of real property**, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

***Suggested Motion - Move to go into Executive Session to consider the purchase, exchange, lease or value of real property, and to reconvene in Open Session.***

Exception 7. **To comply with the provisions of any general or special law or federal grant-in-aid requirements.**

***Suggested Motion - Move to go into Executive Session to comply with the provisions of [specify the law or grant-in-aid requirement applicable], and to reconvene in Open Session.***

Exception 8. **To consider and interview applicants for employment by a preliminary screening committee or a subcommittee** appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening. **[Note: The motion for this exemption can only be made by the preliminary screening committee or subcommittee. The preliminary screening committee may wish to go into Executive Session to consider the applications, interview people or both; adapt the motion to serve your needs.]**

***Suggested Motion - Move to go into Executive Session to consider [and if applicable-] and interview applicants for employment, and to reconvene in Open Session.***

Exception 9. To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group, or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice may be required in this section.

***Suggested Motion - Move to go into Executive Session to meet or confer with mediator and to reconvene in Open Session.***

## MINUTES

Accurate minutes are to be kept and maintained of all meetings. The law requires the minutes to set forth: (a) the date; (b) the time; (c) the place; (d) the members present or absent; (e) the actions taken and for Executive Sessions, (f) the votes, by recorded roll call votes.

Minutes need not be transcripts of everything said. They should accurately reflect what business was before the board or committee.

Open Session minutes become public records once made, not necessarily approved. Thus, even if the minutes have not been approved, they are subject to disclosure, unless an exemption applies.

Executive Session minutes remain confidential until the reason for the Executive Session no longer exists. Executive Session minutes should be approved just as Open Session minutes for content. Such approval does not however authorize their release. You need to separately determine that the purpose of the Executive Session no longer exists. At that point, the minutes are public.

The law does not permit secret ballots in voting, nor does it sanction telephone votes or votes by proxy.

Papers presented at a meeting or hearing should be marked as being received on that date and time and initialed. If there is a matter involving a lot of documents coming in, such as a hearing, it is helpful to make a document list and assign each document a number.

Importance of the Record - Many matters before boards and committees are reviewable by a court on an appeal. In many of these matters, the appeal is based on the record developed before the board or committee. Thus it is very

important to adequately develop a record which is going to reflect accurately what went on and most importantly, support your decision. The record can consist of testimony and exhibits. Be sure that the documents which need to be presented to sustain your decision have been introduced into the record. If something is not part of the record, it is not going to go before the judge and that may cause your decision to be reversed. Do not presume that because you may know something that it need not appear in the record as an exhibit.

This memo and the *Quick Index Chart* presents an overview of the law on meetings and minutes. There are many exceptions to the rules and other technical points. However, the above should give you sufficient guidance for most of the matters you are going to deal with. When in doubt or if you are uncertain about anything, call your local municipal legal counsel to discuss it further. An ounce of prevention is worth an avoided lawsuit.

*Provided as a public service by the City Solicitors & Town Counsel Association, the professional bar association of attorneys representing municipalities and related agencies. For more information on the Association, please contact us at 115 North Street, Bingham, KA 02043, 781-749-9922; FAX 781-749-9923. This material is provided as general information. Since laws frequently change and the application of laws to a particular set of circumstances depends on a variety of factors, you should consult with an attorney for specific legal advice and provide the attorney with all the pertinent facts.*

(rev. January 1999)