

# **TOWN OF HARWICH COMMITTEE HANDBOOK**

## **PREFACE**

This handbook has been prepared by the Board of Selectmen as an informational aid to assist all Town committees, commissions and boards. It provides a brief description of elected and appointed officials' duties which may be well known to many, but are less familiar to others. Many citizens have served the Town of Harwich in its 300+ years of history. Their contributions of time and consideration of the many issues and problems confronting the Town are greatly appreciated. Through service to the community you will have a unique opportunity to get to know the workings of the Town from an insider's viewpoint. It will be a rewarding and informative experience.

The Selectmen, in carrying out their duties as prescribed by law and by the votes of Town Meeting, expend considerable time and effort to make logical appointments to the various committees of the Town by appointing qualified and interested Harwich residents who are broadly representative of the Town. During your appointment you will be working with many new people who, like yourself, have volunteered to address specific problems and to bring back to the Selectmen or perhaps Town Meeting your recommendation for a course of action or solution that is best for the Town. State statutes outline the powers and duties of many Boards; the Town's Home Rule Charter and General Bylaws adopted by Town Meeting further define work of some boards and committees.

It is important that you remember the good of the Town, present or future, be considered. Secondly, it is most important to remember that you represent the entire Town, not one segment. Single approach solutions to problems are not always what is best for the Town albeit good for your Committee. All plausible solutions need to be explored with many factors in mind. Your decision may have impact on other programs or plans.

It is imperative that there is no appearance that a committee member is predisposed either positively or negatively towards the matter under consideration due to employment considerations, property ownership, hobbies, sports activities, etc. In all such cases the committee member must recuse himself. If aware of the situation, the Committee Chair must ask the committee member to consider the need to recuse.

The Annual Town Report, Harwich Home Rule Charter and Harwich General Bylaws are excellent sources of information regarding boards and committees. These items are available at the Selectmen's office. In addition, Town Hall staff is a valuable resource and willing to be of assistance.

The Board of Selectmen wishes to thank you for giving of your time and effort in the improvement of our community and we hope you find this handbook informative and useful.

## **I. CODE OF ETHICS AND CONDUCT FOR MEMBERS OF BOARDS, COMMITTEES & COMMISSIONS**

The acceptance of this Code of Ethics implies a basic understanding of it as it relates to the laws of the Commonwealth of Massachusetts, the Charter, General Bylaws and administrative code of the Town.

The oath of office binds individual members to adherence to those state laws that apply to all areas of municipal government that comes under this jurisdiction.

This code of ethics delineates these areas of responsibility to all members of Boards, Committees and Commissions whether elected or appointed "Regular" or "Special Municipal Employees" as defined under Massachusetts General Laws, Chapter 268A (see listing at the back of this pamphlet).

1. Community Responsibility
2. Responsibility to Municipal Administration
3. Relationship to other Board Members
4. Prohibited Conduct

**A. COMMUNITY RESPONSIBILITY.** A member of any Board, Committee or Commission in relation to his/her community, shall:

1. Realize that his/her basic function is to make policy, not administer it, unless otherwise empowered by the laws of the Commonwealth or the Harwich Home Rule Charter.
2. Realize that he/she is one of a team and should abide by, and carry out, all board decisions once they are made.
3. Be well informed concerning the duties of a board member on both local and state levels.
4. Remember that he/she represents the entire community at all times.
5. Accept the appointment as a means of unselfish service, not benefit personally or politically from his/her board activities.
6. In making all decisions relative to individual appointments, he or she shall avoid political patronage by judging all candidates on merit, experience and qualifications only.
7. Before any vote, he/she shall refuse (shall not) vote on any matter involving an immediate family member (spouse, mother, father, sister, brother) in which he/she has a financial interest.

**B. RESPONSIBILITY TO MUNICIPAL ADMINISTRATION.** A member of any Board, Committee or Commission, in his/her relations with administrative officers of the Town, shall:

1. Endeavor to establish sound, clearly defined policies that will direct and support the administration for the benefit of the people in the community.
2. Recognize and support the administrative chain of command and refuse to act on complaints as an individual outside the administration.
3. Give the Town Administrator full responsibility for discharging his/her disposition and solution. Therefore, all Boards, Commissions and Committees shall:
  - a) Direct all problems or conflicts which cannot be solved in-house to the attention of the Town Administrator.
  - b) Direct all legal questions or requests to Town Counsel through the Town Administrator or person designated by the Town Administrator.
  - c) Direct all questions or concerns to the Town Administrator. Letters may also be addressed to the Board of Selectmen. However, an initial letter to the Town Administrator will expedite any necessary action and will deal most directly with an issue, which needs to be clarified, changed or corrected. Please remember, however, that the Town Administrator and Board of Selectmen do not have control over issues dealing with other elected officials or committees/individuals appointed by the Moderator.

**C. RELATIONSHIP TO OTHER BOARD, COMMISSION OR COMMITTEE MEMBERS.** A member of any Board, Commission or Committee, in his/her relations with fellow board members, shall:

1. Recognize that action at official legal meeting is binding and that he/she alone cannot bind the board outside of such meeting.
2. Not make statements or promises of how he/she will vote on matters that come before the Board until he/she has had an opportunity to hear the pros and cons of the issue during a board meeting.
3. Uphold the intent of Executive Session and respect the privileged communication that exists in Executive Session.
4. Make decisions only after all facts on a question have been presented and discussed.
5. Treat with respect the rights of all members of the board, despite differences of opinion.

**D. PROHIBITED CONDUCT.** A member of any Board, Committee or Commission, in accordance with Massachusetts General Law, Chapter 268A, shall:

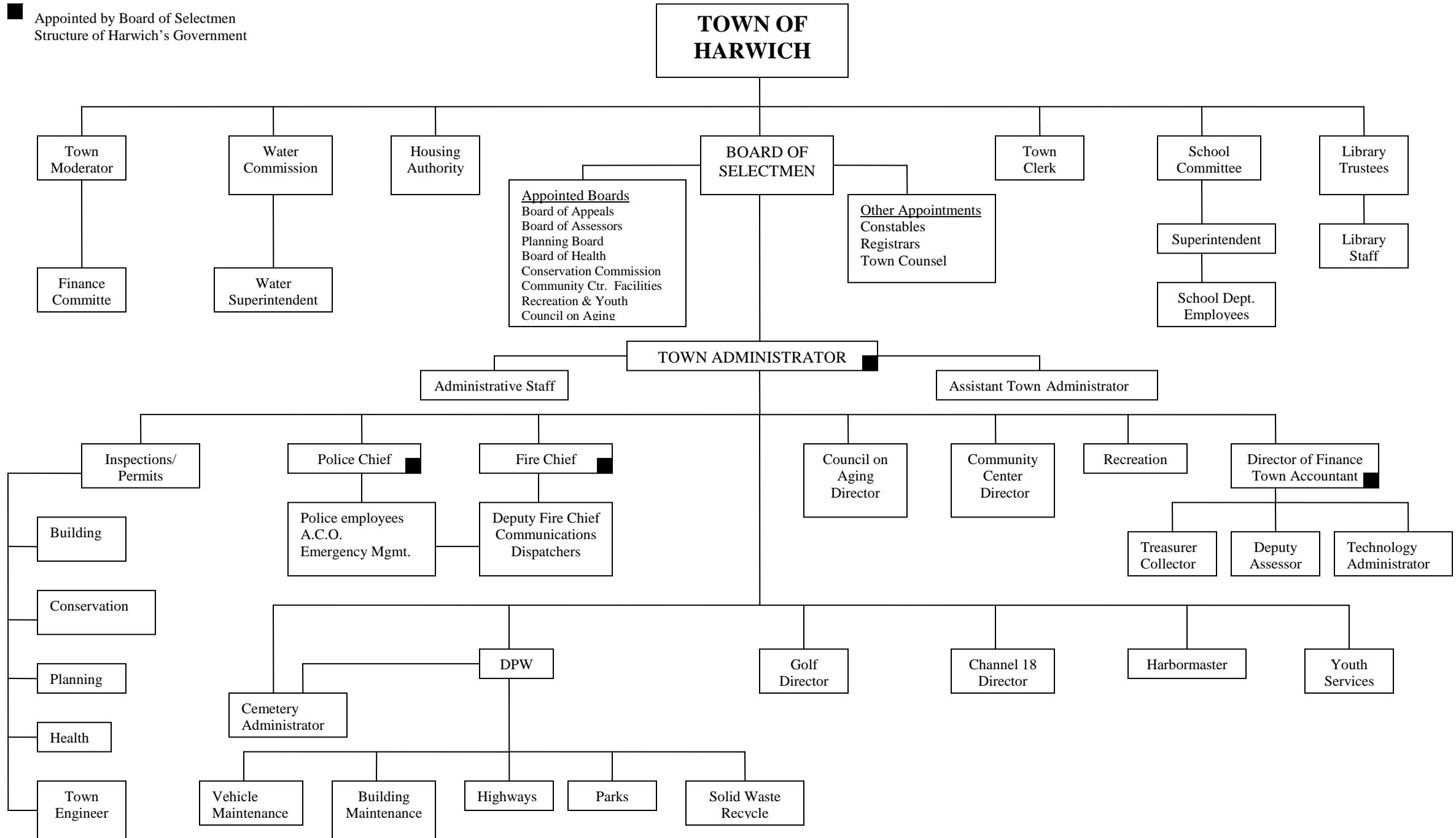
1. Not accept other employment which will impair his/her independence of judgment in the exercise of his/her official duties.
2. Not accept employment or engage in any business or professional activity which will require him/her to disclose confidential information which he/she has gained by reason of his/her official position or authority.
3. Not improperly disclose confidential information acquired by him/her in the course of his/her official duties, nor use such information to further his/her personal interests.
4. Not use or attempt to use his/her official position to secure unwarranted privileges or exemptions for himself/herself or others.
5. Not by his/her conduct give reasonable basis for the impression that any person can improperly influence him/her or unduly enjoy his/her favor in the performance of his/her official duties, or that he/she is unduly affected by the kinship, rank, position or influence of any party or person.
6. Not pursue a course of conduct which will raise suspicion among the public that he/she is likely to be engaged in acts that are in violation of his/her trust.
7. Not be influenced in his/her performance of any official act or any act within his/her official responsibility.
8. Not be influenced to commit, or aid in committing or to collude in, or allow any fraud, or make opportunity for the commission of any fraud on the Commonwealth or on a state, county or municipal agency.
9. Not be induced to do or omit to do any acts in violation of his/her official duty.

In addition, the committee member must treat residents, non-residents, petitioners, other committee members and Town employees with respect while performing the duties of the committee. How a committee member reacts with other members of the community will be given major consideration in the decision of whether the individual should be reappointed.

**MASSACHUSETTS GENERAL LAWS, CHAPTER 268A -  
CONDUCT OF PUBLIC OFFICIALS (CONFLICT OF INTEREST LAW)**

Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person or any other person as a witness upon a trial, or other proceedings before any court, any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the Commonwealth to hear evidence or take testimony, or with intent to influence such witness to absent himself/herself there from; or

Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself/herself or for any other person or entity in return for influence upon the testimony or under oath or affirmation of himself/herself or any other person as a witness upon any such trial, hearing or other proceeding, or in return for the absence of himself/herself or any other person there from; shall be punished by a fine of not more than five thousand dollars or by imprisonment in the state prison for not more than two and one half years, or by both such fine and imprisonment in a jail or house of correction; and in the event of final conviction shall be incapable of holding any officer of honor, trust or profit under the Commonwealth or under any state, county or municipal agency.



### **III. COMMITTEE MEMBERSHIP**

#### **A. APPOINTMENTS**

All appointments made by the Board of Selectmen or other elected boards are made by majority vote in a regular open meeting. All appointments must be residents in the Town unless otherwise exempted. All Ad-Hoc or Ex-Officio appointments are non-voting members. Section 7-3-1 of the Charter requires all appointed boards, committees and commissions to consist of an odd number of members. Initial appointments by the Board of Selectmen are made from a list of volunteers who have filled out a Citizens Activity Record Form (see the sample form at the end of this pamphlet) indicating their areas of interest or expertise, kept on file in the Selectmen's Office. Prior to appointment, appointees will be contacted to discuss interests of the individual in serving on a particular committee. Citizens are encouraged to attend meetings of their committee of interest to learn about the committee and its role in the community. Written notification of an appointment is made by the Board of Selectmen. Acknowledgement of acceptance of the appointment should be made. When you receive notification of an appointment, you must contact the Town Clerk to be sworn in. This must be done before taking a seat on the committee and before voting on committee matters.

#### **B. DURATION OF APPOINTMENTS**

Depending upon the need, vacancy and/or Town Meeting vote, appointment length varies. Some appointments are made for the duration of a project, some yearly, but the most common term for standing committees are terms of three years.

#### **C. REAPPOINTMENT**

Reappointment is based on an evaluation by the appointing authority of the citizen's contribution to the committee, the desirability of widespread involvement and the changing needs of the committee and the Town. A committee member is under no obligation to accept reappointment, nor is the appointing authority obligated to offer reappointment.

#### **D. VACANCIES ON ELECTED BOARDS**

Vacancies on elected boards are filled in accordance with State statute. If information is needed in this area, contact the Town Clerk or Town Administrator for details.

#### **E. DUTIES OF BOARDS, COMMITTEES, COMMISSIONS**

Many committees such as the Conservation Commission, the Historical Commission, Planning Board, Zoning Board of Appeals, Council on Aging, and Board of Health are charged by the applicable laws of the Commonwealth. Upon appointment to one of these committees, you will be given the information about the applicable law by the committee chairman.

## **F. COMMITTEE LEADERSHIP**

Unless otherwise specified by Town Meeting Vote, the Chairman and other (usually Vice Chairman and Clerk) officers of every board, committee or commission are chosen by the voting members of the committee. The name of the Chairman should be made known to the Office of the Selectmen to enhance communication with the group. Some committees have responsibility for financial recommendations and budgets addressed elsewhere in this handbook. Any questions pertaining to budgets or procurement process should be directed to the Town Administrator.

If appointments are made by another elected board other than the Selectmen, the members' names must also be given to the Selectmen's Office so that all members will be acknowledged in the Annual Town Report.

## **G. ADOPTION OF RULES AND REGULATIONS**

When a committee is contemplating adopting or amending Rules and Regulations, there is a need to advertise and hold a Public Hearing relative to the proposal before adoption. All Rules, Regulations and/or Rates: notice of such proposed changes shall be advertised two (2) weeks (14 days) prior to the meeting on the proposed changes. Statute allows some committees to adopt Rules, Regulations and Fees, such as the Board of Health, Conservation Commission, Planning Board and Zoning Board of Appeals. Other Committees' Rules, Regulations and Fees must be adopted by the Board of Selectmen. Please refer to section G., Public Hearings, page 19 & 20, and/or check with the Town Administrator's Office for further details/clarification.

## **H. RESIGNATIONS/NON-ATTENDANCE AT MEETINGS**

A committee member who is no longer able to serve should resign promptly so that the vacancy may be filled as soon as possible. Any resignation must be submitted in writing to the Committee Chairman, Town Clerk and the Board of Selectmen. Without a formal notification, a vacancy cannot exist and a replacement member cannot be appointed. If a vacancy occurs, the remaining committee may recommend individuals who have demonstrated an interest in the work of the committee for consideration as a replacement member. They will be considered along with others who have expressed an interest and have filed a Citizens Activity Form. In accordance with Home Rule Charter section 7-2-7, the unexcused absence, without good cause, of a member from four (4) or more consecutive meetings shall serve to vacate the office. When such a vacancy has been created, it shall be filled within thirty (30) days, in accordance with general law.

## **I. GENERAL PROVISIONS OF HARWICH HOME RULE CHARTER, CHAPTER 7, SECTION 2, WHICH APPLY TO ALL APPOINTED BOARDS**

7-2-1 Multi-member bodies established by this charter shall possess and exercise all powers given to them under the Constitution and laws of the Commonwealth, and shall have and exercise such additional powers and duties as may be authorized by this charter, bylaw or vote of the Town Meeting.

- 7-2-2 All boards, committees and commissions of the Town shall: (a) organize annually; (b) elect necessary officers; (c) establish a quorum requirement (d) adopt rules of procedure and voting; (e) maintain minutes and records of attendance, copies of which shall be public record and regularly filed with the Town Clerk; and (f) nominate prospective employee (s) of their choice who shall then be considered for appointment by the Town Administrator, as provided in clause 4-4-2.
- 7-2-3 All such boards shall meet with the Board of Selectmen at least once in each year.
- 7-2-4 All such boards shall conduct their meetings in accordance with the open meeting provisions of the open meeting law.
- 7-2-5 Members of boards established under this charter may receive such compensation for their services as may be authorized by the Town Meeting, but during the term for which a member is appointed and for one year following expiration of such term, no member of any appointed board shall be eligible to accept any paid position under any such board.
- 7-2-6 Any person duly appointed to any such board shall take up the duties of his/her office immediately.

#### **IV. MEETINGS**

##### **A. OPEN MEETING LAW**

The Massachusetts Open Meeting Law is one of the so-called "Sunshine Laws" enacted throughout the country over the past several years and designed to shed some light on the previously obscure area of government decision making. The law is based on the premise that the public is entitled to see the process of government and not simply its end result. Except on very specific cases spelled out in the law, the public and the press now have the right to attend all meetings of government bodies. Please note the Memoranda at the end of this pamphlet regarding text of the Open Meeting Law, including Executive sessions, Convening Procedures, Rights of Individuals, and Reasons for Convening.

##### **B. WHAT IS A MEETING?**

Basically, a meeting occurs any time a quorum (usually a simple majority) of the members gets together and discusses or considers any public business or policy over which the agency has some jurisdiction or advisory power. A quorum shall not meet in private for purposes of deciding or deliberating toward a decision on public business. A meeting must be held in public even if there will be no vote or decision reached. Polling of Board members for a decision prior to an Open Meeting of the Board is illegal and in violation of the Open Meeting Law.

### **C. LOCATION**

Every committee should establish a regular meeting schedule to suit the needs and convenience of the members; however, they must be scheduled for *public locations* and accessible to the handicapped. Committees are urged to meet in a Town building because meetings in private homes or restaurants may give the appearance of being secret and discourage the public from attending. Space is generally available at Town Hall. If you wish to schedule a meeting for Town Hall it must be done through the Selectmen's office by calling 430-7513. Some coordination with other boards and committees for space may be necessary.

### **D. POSTING OF MEETING NOTICES**

By law, it is the responsibility of the committee to give notice to the Town Clerk at least forty-eight hours prior to the committee's meeting with time, date and place. All meetings should be posted in compliance with the Open Meeting Law. The Town Clerk is responsible for maintaining a current listing of all posted meetings on the bulletin board at Town Hall.

### **E. AGENDAS**

Meetings, which are most productive, follow an established order of business. A general order of business might be:

1. Roll Call or attendance.
2. Approval of minutes.
3. Correspondence.
4. Scheduled agenda items.
5. Reports of Town officials.
6. Old business.
7. New business.
8. Adjournment.

Agendas should be circulated to all board members well in advance of the meeting (at least two or three days, if possible). It is important to include with the agenda, minutes of the last meeting and any supporting documents or information relating to agenda items.

**ROBERTS RULES OF ORDER, NEWLY REVISED**, shall generally prevail in conducting all meetings. Copies are available in local bookstores or may be viewed in the Selectmen's office.

**VERBAL AND WRITTEN PUBLIC INPUT** shall be a part of each business agenda for every committee

### **F. RECORD KEEPING**

1. State law requires that a committee keep accurate records of its public meeting. The committee must vote to accept all minutes. The records of each regular meeting are public information, and chairs or their designees must

maintain a copy of all approved minutes for public inspection. In addition, by law, all approved minutes must be filed with the Town Clerk's office and a copy provided to the appointing authority, (Selectmen).

*Minutes must include:*

- the names of committee members present and absent at the meeting.
- the names of others present, if Executive Session.
- date, place, time 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:*

- summaries of discussion.
- schedule of future meetings

2. Staff Support. Minutes of meetings are usually done by the clerk of the committee. Some committees may have their members take turns taking the minutes, so that one member is not overly taxed with the responsibility. We realize that occasionally there are some larger projects or Regulatory Boards that would require outside assistance. A committee should not rely on the Town staff to accomplish minute taking. Some standard office supplies and use of the photocopier may be available. Please check with the Town Administrator's office. Some committees may have a budget and paid employees to do the clerical work. Committees appointed by the Selectmen do not have the power of appointment of personnel. Please contact the Town Administrator on all matters relating to personnel.
3. Public Records Law. The Massachusetts Public Records Law (MGL Chapter 4, Section 7, cl 26) provides right of access to public records, broadly defined to include all documentary materials (except eleven specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property). All minutes, informational data, memoranda and circulating materials of any Town board or committee are usually public information. The committee should consult the Town Administrator's office if questions arise concerning freedom of information.

## **G. PUBLIC HEARINGS**

Those serving on the Board of Selectmen, Planning Board, Zoning Board of Appeals, Conservation Commission, or the Board of Health, occasionally will be required to hold a public hearing in accordance with Massachusetts General Laws.

Hearings are held for the purpose of gathering information from which to draw a conclusion and a decision reached.

Written notices, the initiation of the hearing, and the written conclusions of a hearing may have strict legal time limitations that vary with the nature of the hearing and the Board. Several procedures are common to all hearings. The chairman or other designated person should run the hearing, and state the guidelines and time allowance if restricted before any testimony is given. All questions should be directed to the chair who, in turn, may ask for a response from the floor. An important aspect of the hearing process is that a decision must be based on the testimony and evidence submitted at the hearing or, if written, entered into the record at the hearing. The decision must be based on facts and cannot be arbitrary. Hearsay and emotions are not evidential.

## **H. RECORDINGS**

Any person may record a meeting (with the exception of Executive Session) with a tape recorder or any other means of sonic reproduction and/or videotape equipment, provided there is not active interference with the conduct of the meeting. The manner in which this right is exercised is subject to the reasonable direction of the chairman.

## **I. EXECUTIVE SESSION**

Deliberations and votes held in private, commonly called Executive Session are allowed only under strict circumstances as outlined in the Open Meeting Law. Executive Sessions may only be held after convening in an open, public session. Executive Sessions are allowed for discussions and negotiations of a land purchase by the Town; pending litigation; union negotiations; deployment of security measures, personnel or equipment; and certain actions of employees.

## **V. FINANCIAL MATTERS AND YOUR COMMITTEE**

In general, an individual committee does not have a budget unless one is authorized by Town Meeting or at the time of its formation. If a committee anticipates a need to expend funds, it can request a budget for the next fiscal year through the Town Administrator, or if funds are needed during the fiscal year the Town Administrator should also be contacted. Unless a committee has funds specifically appropriated to it, the committee should not spend or commit to the spending of any funds without first obtaining guidance from the Town Administrator and the Town Accountant.

### **A. BUDGET**

If your board or committee already has an established budget, prior to November 1, you will receive a budget package from the Town Administrator. The budget package will include directions for filing, time the budget forms must be filed, and other pertinent information. Your committee's annual operating budget form should be filled out and returned to the Town Administrator as instructed in the

budget package. Your board or committee will be asked to meet with the Town Administrator, Finance Committee and Board of Selectmen to discuss your budget request before the warrant for the Annual Town Meeting goes to press. These meetings usually take place during the months of January and February. The Finance Committee is required by law to comment on each article in the warrant.

## **B. SUBMISSION AND PAYMENT OF BILLS**

All requests for payment of bills must be given to the Town Accountant on a bill schedule provided by the Accountant and all appropriate receipts must be attached. The bill schedule must be approved and signed by a majority of committee members before the Accountant can process any bill for payment. There are very strict laws for collecting, accounting and expending public money. Any questions regarding expenditures should be directed to the Town Accountant or Town Administrator.

## **C. TURNING IN RECEIPTS**

If your board or committee charges a fee for any of your services or programs, that money must be kept in a secure place and then turned over to the Town Treasurer with a duplicate accounting of the receipts given to the Town Accountant. To eliminate security problems and facilitate a positive cash flow, plan to turn in whatever money you have on a weekly basis or sooner if the amount exceeds \$100.00. Please keep in mind that unauthorized expenditures of public money for goods or services are illegal.

## **D. PURCHASES/PUBLIC BIDDING REQUIREMENTS**

All purchasing must be done in compliance with Massachusetts Public Procurement Law (MGL C30B). In general, committee expenditures will not be large enough to require formal bidding.

Purchases for amounts less than \$1,000.00 do not require formal bids. Good business practices should be followed

Purchases for amounts between \$1,000.00 and \$10,000.00 require three price quotes and the lowest price accepted. The quotes can either be telephone or written quotes.

Purchases/services repair or construction of buildings estimated to cost in excess of \$10,000.00 require formal bidding procedures.

The Town Administrator's office should be contacted for assistance and guidance for all purchasing and bidding.

## **E. CONTRACTS**

The Board of Selectmen is required to award all contracts for the Town (excluding School, Water, or Library). Recommendation for award should be made by the Committee and award should be made to the lowest responsible bidder. If necessary, the Town Administrator or his designee can provide detailed information relative to award of contracts.

## **F. FUND RAISING**

1. *Background Information.* The provisions of MGL Chapter 44, Section 53A enable a Town committee to raise and disburse funds according to specific procedures.
2. *Procedures.* All funds received by the committee go into the Town's General Fund and may not be dispersed by the committee on its own without special arrangements. Arrangements can be made through the Town Administrator and Town Treasurer to establish a special fund or gift account for some purposes which allow a committee to retain control of its funds. The Town Administrator should be contacted by the committee for guidelines prior to commencing a special project.

## **VI. REPORTING PROCEDURES AND TOWN MEETING**

### **A. APPOINTING AUTHORITY**

The Town Charter requires that the committee report annually to the Board of Selectmen about the committee's actions, progress and goals. If needed, the committee may also request a meeting with the Selectmen to resolve problems.

### **B. 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 needed both to inform citizens of work in progress and to gain public reaction and response.

### **C. TOWN MEETING**

If a relevant article is on the warrant or if the committee's charge specifies a report to Town Meeting, the committee should prepare information for Town Meeting. The committee should make these reports clear, concise and brief, keeping in mind the large number of articles Town Meeting deals with.

A committee may request inclusion of an article in the Town Meeting Warrant by petition to the Selectmen if a majority of the committee consents to the submission. However, if there is a proposed article that might affect another Board, Committee or Commission, the two bodies should meet and be in agreement with the proposed article before submission for inclusion in the

Warrant. Articles may be reworded upon advice of Town Counsel. All articles should be submitted in accordance with established deadlines and on proper forms available in the Selectmen's Office. The committee or its chair will be asked to meet with the Town Administrator, Board of Selectmen and Finance Committee prior to Town Meeting to discuss the proposed article. Justification, background information and estimated cost should be submitted with the article when presented. Articles for a Special Town Meeting are to be submitted in the same manner *immediately* after a Special Town Meeting is called. Early submission of *all* articles is desired.

#### **D. ANNUAL TOWN REPORT**

All appointed committees should file an annual report of committee activities for the Annual Town Report. The chair or other designated member should detail committee membership, including changes, and a one-to-three paragraph explanation of major accomplishments and future plans of the committee. A request for committee reports is issued each year, but are due in the Selectmen's Office no later than the first Friday in January for inclusion in the Annual Town Report.

#### **VII. ACCESS TO TOWN COUNSEL**

Department Heads, Committee Chairmen and/or designees shall have access to Town Counsel for business requiring legal assistance. Request for information from Town Counsel should be cleared with the Town Administrator. Normally, the requests will be in written form, indicate the need for the information and also pose the question. The Town Administrator will review the question and its wording to determine if it is appropriate or designate the appropriate Department Head to do so. The Town Administrator or appropriate Department Head would submit the question to Town Counsel and report the answer back to the committee.

#### **VIII. GOVERNMENTAL CALENDAR**

Massachusetts General Laws, Harwich Home Rule Charter, Harwich By-Laws and tradition are all factors in the fiscal calendar of governmental events in Harwich. The following is a guideline for your committee and its plans.

##### OCTOBER

1

Town Administrator presents Board of Selectmen with the current financial assessment of the Town including the latest estimated revenues for the ensuing year.

1<sup>st</sup> Tuesday

Board of Selectmen, after consulting with the Town Administrator, issues a general policy statement to guide the Town Administrator in developing budget requests for the ensuing year.

##### NOVEMBER

1

Capital Outlay Committee submits 5-year capital plan to Town Administrator.

	1 <sup>st</sup> Friday	All departments, committees, commissions and boards shall submit budget requests for the ensuing year to the Town Administrator.
<u>DECEMBER</u>	1 <sup>ST</sup> Monday	Town Administrator submits Capital Plan to the Board of Selectmen/Finance Committee.
<u>JANUARY</u>		Board of Selectmen submits Capital Outlay Plan to Finance Committee.
	1 <sup>st</sup> Friday	Yearly departmental reports are due in the Selectmen's Office for inclusion in the Annual Town Report. All reports submitted should be typewritten and ready for printer for publication and distribution at the end of April.
	2 <sup>nd</sup> Friday	Board of Selectmen and Finance Committee meet jointly on Capital Plan.
	2 <sup>nd</sup> Tuesday	Town Administrator submits to Board of Selectmen a comprehensive budget for all Town functions for the ensuing fiscal year and shall submit a budget message.
	3 <sup>rd</sup> Friday	Deadline for submission of Warrant articles. Submission forms available at the Selectmen's Office. Exact verbiage and estimated cost, if any, should be submitted at this time. All items to be bid must have specifications in Town Administrator's Office no later than February 15 <sup>th</sup> to be assured of bid figures for Town Meeting.
<u>JANUARY &amp; FEBRUARY</u>		Departmental budget hearings with Board of Selectmen and Finance Committee.
<u>MARCH</u>	1 <sup>st</sup> Tuesday	Selectmen submit to Finance Committee a budget which has been approved with or without amendments to the Town Administrator's proposed budget.
		During March, Finance Committee conducts hearing on budget and issues written recommendation on warrant/budget.
<u>APRIL</u>	Last Week	Annual Town Reports and Warrants available in Town Administrator's Office.
<u>MAY</u>	1 <sup>st</sup> Week	Annual Town Meeting
	3 <sup>rd</sup> Week	Annual Town Election
<u>JUNE</u>		Annual appointments/re-appointments for most Committees begins.

## **IX. SPECIAL MUNICIPAL EMPLOYEE**

State law gives broad discretion to municipalities to determine which positions should be designated as special municipal employees. The Massachusetts State Ethics Commission advises municipalities to carefully consider this decision which balances the municipality's interest in obtaining the expertise needed for its boards, commissions and other part-time or unpaid positions with the lesser restrictions that apply to special municipal employees.

“Special municipal employee” status can be assigned to certain municipal positions by a vote of the Board of Selectmen, board of aldermen, town council or city council. The designation may be made by a formal vote at any time. Votes should be taken individually for each board or position being designated – expressly naming the position being designated. Once a position is designated as having “special” status, it remains a “special municipal employee” position unless and until the classification is rescinded.

A position is eligible to be designated as a “special municipal employee” position provided that the municipal employee:

- Is not paid; or
- holds a part-time position that allows him or her to work at another job during normal working hours; or
- Was not paid by the city or town for more than 800 working hours (approximately twenty weeks full-time) during the preceding 365 days.

It is the municipal position that is designated as having “special” status, not the person holding the position. Therefore, all employees holding the same office or position must have the same classification as “special municipal employees”. For instance, one member of a school committee cannot be classified as a “special” unless all members are similarly classified.

Under no circumstances may a mayor, city councilor, town councilor, alderman or selectman in a town with a population of more than 10,000 be designated as a “special.” In towns of 10,000 or less, however, the selectmen are automatically considered “special” employees.

The legislature may also designate certain positions to have “special municipal employee” status. For example, board members and certain part-time employees of local housing and redevelopment authorities are defined by law as “special municipal employees” and do not need to have local authorities approve their designation as “specials” (see M.G.L. Ch. 121B, Sect. 7).

A list of all “special municipal employee” positions in a municipality should be on file at the town or city clerk's office. This list should also be filed with the Ethics Commission.

The conflict of interest law (M.G.L. Ch. 268A) covers all municipal officials and employees, whether elected or appointed, paid or unpaid, full-time or part-time, but two sections of the conflict of interest law apply less restrictively to those part-time or unpaid municipal officials who have been designated as “special municipal employees”.

Chapter 268A, Section 17, generally prohibits employees from representing a private party before any municipal boards or departments. It also prohibits municipal employees from acting as agent (or attorney) for a private party in connection with any matter of direct and substantial interest to their city or town. Finally, it prohibits municipal employees from accepting pay or other compensation in connection with any matter of direct and substantial interest to their municipality.

The prohibitions of Section 17 for special municipal employees are less restrictive and only apply to matters that are before their own board or agency or are subject to their official responsibility. For example, a full-time school department employee would be prohibited from representing anyone before any town board or agency; in contrast, a school committee member who qualifies as and is designated a special municipal employee would be able to represent clients before boards other than the school department or any agency that falls under the responsibility of the school department.

Chapter 268A, Section 20, generally prohibits municipal employees from having a direct or indirect financial interest in a contract with their city or town. There are, however, many exemptions in this section, and the prohibitions for special municipal employees are less restrictive. For example, a special municipal employee may have a financial interest in a contract with a department which is completely independent of the one where she works, provided that she files a disclosure of her interest in the contract with the city or town clerk. A special municipal employee may even have a financial interest in a contract with her own department (or with a department that has overlapping jurisdiction with her department), provided that she files a disclosure of her interest in the contract with the city or town clerk and the Board of Selectmen, board of aldermen, town council, or city council vote to grant her an exemption to Section 20.

**X. REASONS FOR CONVENING EXECUTIVE SESSION  
(M.G.L. CHAPTER 39 S.23B)**

1. To discuss the reputation, character, physical condition or mental health – rather than professional competence – of an individual. (See Rights of Individuals).
2. To consider the discipline or dismissal of, or to hear complaints or charges brought against a public officer, employee, staff member or individual. (See Rights of Individuals).
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the government’s bargaining or litigating position. Also, to conduct strategy sessions in preparation for negotiations with non-

union personnel; to actually conduct collective bargaining and contract negotiations with non-union personnel.

4. To discuss the deployment of security personnel or devices, e.g., a sting operation.
5. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
6. To consider the purchase, exchange, taking, lease, or value of real property if such discussion may have a detrimental effect on the negotiating position of the governmental body.
7. To comply with the provisions of any general or special law or federal grant-in-aid requirements (generally privacy).
8. To hold an initial screening, (including interviews if they are part of the initial screening process) of candidates for employment if an open meeting would have a detrimental effect in obtaining qualified candidates.

#### **PROCEDURES FOR CONVENING EXECUTIVE SESSION**

1. The Session must be convened in open meeting and notice given.
2. Chairperson announces the purpose of the Executive Session.
3. Majority must vote in recorded roll call for Executive Session.
4. Chairperson announces whether the meeting will reconvene in open.
5. Votes taken in Executive Session must be recorded roll call votes.

#### **RIGHTS OF INDIVIDUALS**

1. When a governmental body wishes to discuss the reputation, discipline or dismissal of an individual, it must notify that person in writing at least 48 hours in advance of meeting.
2. The individual may request that the meeting be held in the open.
3. If an Executive Session is held, the individual has the right to be present during discussion that pertains to him or her, to have counsel or a representative of choice present, and to speak on his or her own behalf.
4. Any individual may tape-record, or videotape from one or more designated locations determined by the governmental body, as long as there is no active interference with the meeting. This right does not apply to Executive Sessions.

## XI. THE OPEN MEETING LAW'

### THE COMMONWEALTH OF MASSACHUSETTS OPEN MEETING LAW, G.L. c. 30A, §§ 18-25

\* \* \*

*Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.*

\* \* \*

#### **SECTION 18: [DEFINITIONS]**

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“**Deliberation**”, an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“**Emergency**”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“**Executive session**”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“**Intentional violation**”, an act or omission by a public body or a member thereof, in knowing by violating the open meeting law.

“**Meeting**”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include: (a) an on-site inspection of a project or program, so long as the members do not deliberate; (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate; (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate; (d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or (e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

“**Minutes**”, the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

“**Open meeting law**”, sections 18 to 25, inclusive.

“**Post notice**”, to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

“**Preliminary screening**”, the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

“**Public body**”, a multiple-member board, commission, committee or subcommittee

within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body. “**Quorum**”, a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

### **SECTION 19. [DIVISION OF OPEN GOVERNMENT AND ADVISORY COMMISSION]**

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor. (b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in: (1) the general background of the legal requirements for the open meeting law; (2) applicability of sections 18 to 25, inclusive, to governmental bodies; (3) the role of the attorney general in enforcing the open meeting law; and (4) penalties and other consequences for failure to comply with this chapter. (c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee. The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate. (d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney

general; (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general; (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions; (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

**SECTION 20. [NOTICE, REMOTE PARTICIPATION, PUBLIC PARTICIPATION, CERTIFICATION]**

(a) Except as provided in section 21, all meetings of a public body shall be open to the public. (b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. (c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose. For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose. The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public. (d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39. (e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings. (f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting. (g) Within 2 weeks of qualification for office, all persons

serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

## **SECTION 21. [EXECUTIVE SESSIONS]**

(a) A public body may meet in executive session only for the following purposes: (1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights: i. to be present at such executive session during deliberations which involve that individual; ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session; iii. to speak on his own behalf; and iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense. The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual. 2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel; 3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares; 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto; 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints; 6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body; 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements; 8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that 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, to consider and interview applicants who have passed a prior preliminary screening; 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or

entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or 10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy. (b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that: 1. the body has first convened in an open session pursuant to section 21; 2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes; 3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called; 4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and 5. accurate records of the executive session shall be maintained pursuant to section 23.

## **SECTION 22. [MINUTES, RECORDS]**

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes. (b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes. (c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days. (d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session. (e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4.

Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt. (f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may

defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21. When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure. For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure. (g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting. (2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

### **SECTION 23. [COMPLAINTS, REMEDIES]**

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law. (b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension. (c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to: (1) compel immediate and future compliance with the open meeting law; (2) compel attendance at a training session authorized by the attorney general; (3) nullify in whole or

in part any action taken at the meeting; (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation; (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits; (6) compel that minutes, records or other materials be made public; or (7) prescribe other appropriate action. (d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review. (e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance. (f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law. Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b). In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day 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 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 the open meeting law. In the hearing of any action under this subsection, 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 the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law. (g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel. (h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

#### **SECTION 24. [INVESTIGATIONS, HEARINGS]**

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any

other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county. (b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination. (c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business. (d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying. (e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth. (f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court. (g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his

usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

## **SECTION 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]**

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law. (b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

## **XII CONFLICT OF INTEREST - M. G. L. Chapter 268A**

### In General:

- You may *not* ask for anything or accept anything (regardless of its value), if it is offered in exchange for your agreeing to perform or *not* perform an official act.
- You may *not* ask for or accept anything worth \$50 or more from anyone with whom you have official dealings. Examples of regulated “gifts” include: sports tickets, costs of drinks and meals, travel expenses, conference fees, gifts of appreciation, entertainment expenses, free use of vacation homes and complimentary tickets to charitable events. If a prohibited gift is offered: you may refuse or return it; you may donate it to a non-profit organization, provided you do *not* take the tax write-off; you may pay the giver the full value of the gift; or in the case of certain types of gifts, it may be considered a “gift to your public employer”, provided it remains in the office and does *not* ever go home with you. You may *not* accept honoraria for a speech that is in any way related to your official duties, unless you are a state legislator.
- You may *not* hire, promote, supervise or otherwise participate in the employment of your immediate family or your spouse’s immediate family.
- You may *not* take any type of official action which will affect the financial interests of your immediate family or your spouse’s immediate family. For instance: you may *not* participate in licensing or inspection processes involving a family member’s business.
- You may *not* take any official action affecting your own financial interest, or the financial interest of a business partner, private employer, or any organization for which you serve as an officer, director or trustee. For instance: you may *not* take any official action regarding an “after hours” employer, or its geographic competitors; you may *not* participate in licensing, inspection, zoning or other issues that affect a company you own, or its competitors; if you serve on the Board of a non-profit organization, you may *not* take any official action which would impact that organization, or its competitors.
- Unless you qualify for an exemption, you may *not* have more than one job with the same municipality or county, or more than one job with the state.

- Except under special circumstances, you may *not* have a financial interest in a contract with your public employer. For instance: if you are a town employee, a company you own may *not* be a vendor to that town unless you meet specific criteria, the contract is awarded by a bid process, and you publicly disclose your financial interest.
- You may *not* represent anyone but your public employer in any matter in which your public employer has an interest. For instance: you may *not* contact other government agencies on behalf of a company, an association, a friend, or even a charitable organization.
- You may *not* ever disclose confidential information, data or material which you gained or learned as a public employee.
- Unless you make a proper, public disclosure – including all the relevant facts – you may *not* take any action that could create an appearance of impropriety, or could cause an impartial observer to believe your official actions are tainted with bias or favoritism.
- You may *not* use your official position to obtain unwarranted privileges, or any type of special treatment, for yourself or anyone else. For instance: you may *not* approach your subordinates, vendors whose contracts you oversee, or people who are subject to your official authority to propose private business dealings.
- You may *not* use public resources for political or private purposes. Examples of “public resources” include: office computers, phones, fax machines, postage machines, copiers, official cars, staff time, sick time, uniforms, and official seals.
- You may *not*, after leaving public service, take a job involving public contracts or any other particular matter in which you participated as a public employee.

### **XIII MANDATORY TRAINING REQUIREMENTS**

#### **Mandatory educational requirements under the Ethics Reform Bill**

- **Summary of the Conflict of Interest Law for Municipal Employees**

By December 28, 2009, and on an annual basis thereafter, all current municipal employees must be provided with this summary of the conflict of interest law. Municipal employees hired after December 28, 2009, should be provided with the summary within 30 days of the date on which they commence employment, and on an annual basis thereafter. Every municipal employee is required to sign a written acknowledgment that he has been provided with the summary.

- **Online Training Program**

#### **[www.mass.gov/ethics](http://www.mass.gov/ethics) - Under Education & Training Resources**

By 12/28/09, and every 2 years thereafter, all current state, county and municipal employees must complete this training. Public employees hired after 12/28/09 must complete this training within 30 days of beginning public service, and every 2 years thereafter. This training is designed primarily for state employees. County and municipal employees should also use this training until it is revised with one tailored to them. Upon completing the program, employees should print out the completion certificate and keep a copy for themselves. Employees will be required to provide a copy of the completion certificate to the Town or City Clerk (municipal employees), their employing agency (appointed state and county employees), or to the Ethics Commission (elected state and county employees). Completing the single program will be considered by the Commission as meeting the Bill's training requirements until a second program is added. When multiple users attempt to complete the current training program using the same computer they may experience a problem accessing the beginning of the program. The user will need to open their internet browser, click on "Tools", then "Internet Options", select "Delete Cookies", then click "OK". The user will be able to click back on the Online Training module on the Commission's website and start at the beginning.

**After you have completed the Online Training PRINT OUT the “State Ethics Commission Receipt”, and return with the receipt to the Town Clerk as proof that you have participated in the training**