

Town of Provincetown

MASSACHUSETTS



Handbook For Members of Town Boards

*A town board acts
only by a majority
vote of its members*

Introduction

The purpose of this handbook is to assist the members of appointed boards, committees, and commissions to easily understand the variety of laws, procedures and traditions in participating in municipal government. This handbook blends the directions and requirements that are found in state and local laws, town charter and administrative directives. Throughout this handbook the term “Town board” applies to every board, committee, commission, or subcommittee that is represented as a governing body.

Cover Quote: “A town board acts only by a majority vote of the members” is further defined by the Provincetown Charter: *No action of a town board shall be valid and binding unless taken or ratified by an affirmative vote of the majority of the members attending the meeting, unless another quantum of vote is allowed or required by the Massachusetts General Laws. A quorum for a meeting of any town board shall be a majority of the maximum complement of the town board.*

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Town Board Membership

Membership on Town Boards (c.5-4)

- a. Unless otherwise specified in Massachusetts General Laws or the Charter, each Town Board consists of five regular members and two alternate members. New members shall not participate in a Board meeting until they have been sworn in by the Town Clerk. Alternate members shall have the right in order of seniority on the Board to vote at a Board meeting in place of a regular member who is absent.
- b. A paid Town Employee may not be a member of any Town Board that oversees matters in any way related to his or her employment, during the time of his or her employment. Potential responsibility to review actions or decisions by one's supervisor is considered to be "related to employment". In addition, a paid Town Employee with supervisory duties may not be a member of any Town Board in any way related to his or her employment for at least one year after leaving that employment.
- c. Members of a Town Board may not receive compensation for service on the Board except reimbursement for expenses pertaining to Town business. A voucher must be submitted for such expenses. By majority vote of Town Meeting and under authority of this Charter, the Town may establish or suspend an annual stipend for members of the Board of Selectmen, the amount of which shall be specified in the Bylaws.
- d. Members of Town Boards shall be governed by the ethical standards set forth in the Massachusetts General Laws Chapter 268A, as supplemented by this Charter. In general, a member of a Town Board may not serve as a paid consultant or contractor for the Town for work which is in any way related to the Board on which they serve or on which they have served within the past year.
- e. Members of the Town Boards listed below may not serve as a paid consultant or contractor for the Town while serving on the Board and for one year after serving, even if the work is not related to the Board on which they serve or have served:
- 1) the Board of Assessors,
 - 2) the Charter Compliance Commission,
 - 3) the Finance Committee,
 - 4) the Personnel Board, or
 - 5) the School Committee.
- f. Members of Town Boards, including the Officers, have no authority in their individual capacities except as delegated by majority vote of the Board, except that administrative matters, such as the posting of Agendas, may be handled by Officers without prior approval.

“There are many ways of going forward, but only one way of standing still.”

**-Franklin
Roosevelt**

Rules Specific to the Regulatory Town Boards (c.5-6)

a. Regulatory Town Boards are those Boards authorized by Massachusetts General Laws to establish regulations applicable to activities within their authority. The following are identified as the Regulatory Town Boards for the Town of Provincetown:

- 1) the Conservation Commission,
- 2) the Board of Health,
- 3) the Historic District Commission,
- 4) the Licensing Board,
- 5) the Planning Board,
- 6) the Water and Sewer Board, and
- 7) the Zoning Board of Appeals.

b. Members of Regulatory Town Boards must be registered voters in the Town of Provincetown, unless otherwise allowed or directed by State law.

c. Members of Regulatory Town Boards may serve for only three three-year overlapping full terms. When a member is appointed to complete the term of another, it shall count as a full term if it exceeds 18 months. Members may be re-appointed after an absence of one year.

d. No person shall serve as a member/alternate member of more than one of the Regulatory Town Boards simultaneously.

e. Since failure of a Regulatory Town Board to act is an abdication of responsibility under the Home Rule laws, in the event that there are an inadequate number of members appointed to provide quorum for any Regulatory Town Board, the responsibilities of that Board shall fall to the Board of Selectmen.

Rules Specific to Appointed Town Boards (c.5-7)

a. The Moderator is the Appointing Authority for the Finance Committee and the Personnel Committee. The Town Manager is the Appointing Authority for the Conservation Commission and the Historical Commission. The Board of Selectmen is the Appointing Authority for all other appointed Town Boards. Appointment by the Board of Selectmen shall be by majority vote.

b. No person shall be appointed to a Town Board:

- 1) unless determined to be qualified by the Appointing Authority, or able to become qualified by serving and there are sufficient number of members already serving on the Board who are qualified to carry out the responsibilities of the Board,
- 2) if appointment would be contrary to the Conflict of Interest laws, or
- 3) based on political party consideration, with the exception of the Board of Registrars or as otherwise provided by State law.

c. If the Appointing Authority determines that there are an inadequate number of registered voters who are willing to serve as members or alternates on appointed non-regulatory Boards, then the Appointing Authority may appoint part-time residents to serve as alternates, as long as the majority of members are registered voters. Individuals who are not registered voters shall be appointed to a non-regulatory Town Board only if they can commit to being present for a majority of the meetings of the Board.

- d. A member or alternate member of any Town Board who is absent from three consecutive meetings without informing the Chair shall automatically cease to be a member of the Board. The Chair shall notify the Appointing Authority and the Town Clerk in writing. The Appointing Authority shall then follow the procedure below for filling vacancies on Appointed Town Boards.
- e. Vacancies on appointed Boards shall be filled as follows:
- 1) The Appointing Authority shall fill the vacancy within sixty days of the receipt of the notice of vacancy.
 - 2) In the event of the failure of the Appointing Authority to fill the vacancy within the allotted time, and when the Moderator is not the Appointing Authority, the Moderator shall fill the vacancy within thirty days.
 - 3) In the event of the failure of the Appointing Authority/Moderator to fill the vacancy within the allotted time, the Board may fill the vacancy, unless the Board lacks the quorum to act.
- f. There is no time limit for service on an appointed, non-regulatory Board.
- g. An appointed member of a Town Board may be removed for Good Cause as outlined below:
- 1) A written notice to remove shall be sent by the Town Clerk by registered mail to the last known address of the member who is proposed to be removed. The notice shall include a statement by the Appointing Authority of the reasons for the removal which must be based on a finding of Good Cause.
 - 2) Within one week of receiving the written notice, the member may resign or may request a closed meeting with the Appointing Authority by delivering written notice to the Town Clerk. If the member does neither, the Town Clerk shall send out a written notice identifying a date and time within fourteen (14) days for a Public Hearing on the proposed removal.
 - 3) If the closed meeting takes place, within seven (7) days following adjournment of the closed meeting, the member may resign or may request a Public Hearing by delivering notice to the Town Clerk. The Public Hearing shall be held within fourteen (14) days of the request. If the member fails to resign or to request a Public Hearing, the Appointing Authority shall decide whether to remove the member for Good Cause. The decision shall be by a majority vote if the Appointing Authority is a multi-member body.
 - 4) The member who is proposed to be removed may be represented by counsel at his or her own expense at the closed meeting as well as at the Public Hearing. The member and the Appointing Authority shall be entitled to present evidence, call witnesses, and examine any witness at the Public Hearing.
 - 5) Within ten days after the Public Hearing is adjourned, the Appointing Authority shall decide whether to remove the member for Good Cause. The decision shall be by a majority vote if the Appointing Authority is a multi-member body.
 - 6) A notice of the decision whether or not to remove the member and the reasons therefor shall be sent by the Town Clerk by registered mail to the last known address of the member.
 - 7) This procedure does not grant any rights when a member who has been appointed to a fixed term is not reappointed when the term expires.
- h. The Appointing Authority shall file a copy with the Town Clerk of each notice of appointment or rescission of an appointment to a Town Board, and the same shall be a public record.

Rules Specific to Elected Town Boards (c.5-8)

- a. Elected members of Town Boards serve for three-year overlapping terms, each term beginning the day after the member is elected and ending at the close of the Town Election day three years later.
- b. Vacancies on elected Town Boards shall be filled in accordance with Massachusetts General Law Chapter 41, Section 11.
- c. Members of elected Town Boards shall be registered voters in the Town throughout their terms. Failure to remain a registered voter shall result in the automatic removal of the member.
- d. No paid Town Employee may simultaneously serve as a paid Town Employee and on an elected Town Board. No member of an elected Town Board may become a paid Town Employee while serving on the Board.
- e. Members of elected Town Boards and elected individuals, such as the Moderator, can be removed from service on such Boards only by the recall process delineated below:
 - 1) Any fifty (50) registered voters of the Town may file with the Town Clerk an affidavit naming an elected Official sought to be recalled along with a list of the specific grounds for recall.
 - 2) No recall petition can be issued against an Official within three (3) months after that Official takes office, nor within six (6) months of the end of their term. In the case of an Official subjected to a Recall Election but not recalled, no further Recall Petition shall be accepted within the six (6) months following the Recall Election.
 - 3) After confirming that the affidavit meets the requirements above, the Town Clerk shall issue dated Recall Petition blanks bearing the Town Clerk's signature and official seal, addressed to the voters who swore to the affidavit, in a manner consistent with the requirements of the Commonwealth. The Recall Petitions shall state the name of the Official sought to be recalled, the specific grounds for recall, and the demand for Election of a successor. Upon request, the Town Clerk may issue any reasonably required number of Recall Petition blanks but no fewer than enough to collect the signatures of at least ten percent (10%) of the registered voters. Additional Recall Petition blanks may be issued when all of those originally issued have been filled with voters' signatures. A copy of the Recall Petition shall be kept by the Town Clerk.
 - 4) Unless otherwise permitted by the Commonwealth, signatures must be obtained on the issued Recall Petition blanks, not copies. The Recall Petitions must be signed by no fewer than ten percent (10%) of the registered voters, and must legibly state the home street address and the house or unit number of the residence of each signer. The signed Recall Petitions must be returned to the Town Clerk within twenty (20) days after the initial issuance of the Recall Petition blanks.
 - 5) Within twenty-four (24) hours of receipt, the Town Clerk shall confirm the authenticity of each signature on the Recall Petitions and refer the Recall Petitions to the Board of Registrars of Voters to certify the signatures. Then the Town Clerk shall submit the Recall Petitions to the Board of Selectmen.
 - 6) The Board of Selectmen shall give written notice of receipt of the certificate to the Official identified in the Recall Petition. The Official may choose to resign by submitting a written resignation to the Town Clerk. Resignation shall be effective at 11:59 p.m. of the fifth (5th) calendar day following receipt by the Town Clerk of the written resignation.
 - 7) If the Official has not submitted a written resignation within five (5) days, the Selectmen shall order a Recall Election to be held on a date not less than seventy-five (75) or more than eighty-five (85) calendar days after the date of the Town Clerk's certificate. However, if any other Election is

scheduled to occur within one hundred (100) calendar days after the date of the certificate, the Selectmen shall postpone the Recall Election to the date of the pending Election. The Incumbent who has not resigned as described above, shall continue to perform the duties of the Office until the Recall Election.

- 8) If after a Recall Election has been ordered, the Official resigns or a vacancy otherwise occurs because the individual has died or no longer qualifies as a registered voter of the Town, the Recall Election shall proceed solely for the purpose of electing a successor. Candidates shall be nominated in the same manner as for an Annual Election.
- 9) Ballots used in a Recall Election shall state the following in the order indicated:
 - For the Recall of [name of Official]
 - Against the Recall of [name of Official]
- 10) Immediately at the right of each proposition there shall be a square in which the voter may vote for or against recall by making a mark. Under the propositions shall appear the word "Candidates", the directions to voters required by Massachusetts General Laws Chapter 54, Section 42, and beneath this the names of the candidates nominated. The nomination of candidates, the publication of the Warrant for the Recall Election, and the conduct of the Recall Election, shall comply with the laws governing elections.
- 11) A majority vote of at least twenty-five percent (25%) of registered voters is required to recall an elected Official. If fewer than twenty-five percent (25%) of registered voters cast a ballot, the ballots regarding the Recall shall not be counted.
- 12) If the Recall Election fails, the Official shall continue in Office for the remainder of his/her term, and is subject to Recall as before, except as provided above.

Meetings and Officers of Town Boards (c.5-5)

- a. A quorum for a meeting of a Town Board shall be a majority of the number of positions available to the Board, not including Alternates. If State law allows for a larger number of positions, but the Town has chosen to designate a smaller number, it is the number of positions that the Town has chosen which shall be the basis for determining quorum. Vacancies shall not affect the number required for a quorum. Alternates count toward quorum only if they are taking the place of an absent Member.
- b. Unless another number is required by the Massachusetts General Laws or this Charter, no action of a Town Board shall be valid and binding unless ratified by an affirmative vote of the majority of the Members present, not including Alternates unless they are taking the place of an absent Member.
- c. At its first meeting after the Annual Town Election, and any time a position is open, each Town Board shall elect a Chair, a Vice Chair and other necessary officers. Since the term of the Finance Committee continues until July 15th to cover to the end of the fiscal year, their election would occur at that time. The names of the elected Officers shall be reported to the Town Clerk whenever an election takes place.
- d. It is the responsibility of the Officers of a Board to educate their Members about the authority and responsibility of the Board.
- e. No member of a Town Board may serve as Chair for more than six consecutive years, unless at the end of the sixth year (and each successive year) no other member is willing to serve as Chair.
- f. All Town Boards have the authority to conduct Public Hearings after adopting appropriate procedures.

OFFICERS

CHAIR

The Chair presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the Chair's signature. The Chair has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon. The Chair is also responsible for ensuring that the provisions of the open meeting law are met. A Town board, through a vote of the majority, may extend additional authority to the Chair.

VICE-CHAIR

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

CLERK

The Clerk is responsible for the following duties of the Town board:

1. Take and prepare the minutes for the Town board.
2. Prepare agendas and any other materials. The tentative agenda for the next meeting and minutes of the previous meeting should be prepared and available to each board member prior to each meeting.
3. Schedule meeting location through the Town Clerk's office.
4. Where applicable, process the accounts payable and turnovers for the board to the Accountant's Office.

ROTATING CLERK

A Town board may choose to have a rotating Clerk. The responsibilities of the rotating Clerk are identical to those of a Clerk. At the beginning of the next meeting, the rotating Clerk should request that the Chair designate a successor. If one is not designated, the previously appointed Clerk continues in that capacity.

PAID SECRETARY

If a Town board determines that its workload or meeting schedule is such that the Clerk's responsibilities will have an adverse impact on the board's operation, the board may submit a budget request for an on-call secretary through the standard annual budget process. If immediate assistance is required, a written request should be made to the Town Manager that outlines the amount, type and frequency of need.

Pre-Meeting Requirements

Unless otherwise stated, the requirements and procedures identified in this handbook apply to all types of meetings including: special meetings, workshops, emergency meetings, sub-committee meetings, and public hearings. A public meeting occurs at any time a quorum of the Town board (or subcommittee) members get

“Bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression.”

-Thomas Jefferson

together to discuss or consider any public business or policy over which the board has some jurisdiction or advisory power.

POSTING PUBLIC MEETING NOTICE & RESERVING MEETING ROOM SPACE

At least forty-eight hours before any meeting of a Town board is to be held, an agenda containing all items which are scheduled to come before the Town board at the meeting shall be posted on the Town bulletin board.

It shall be the responsibility of the person calling a meeting of a Town board to first ascertain from the applicable building supervisor the specific availability of any meeting space listed on the inventory for a particular day and time. (BOS Administrative Directive)

The Town Clerk shall maintain a log book, to provide a record of which accessible meeting spaces are assigned to which Town boards for particular periods of time. Such log book shall be available for public inspection, and may be used by Town board Chair in selecting times and locations for their board meetings.

For each meeting of a Town board, the Chair or other authorized member of such board shall submit to the Town Clerk:

- (1) a notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meetings and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. (MGL c.30A §20(b))

The Town Clerk shall promptly post in the Town board meeting notebook at Town Hall a copy of the approved agenda.

AVAILABLE MEETING ROOMS

Meetings must be held in approved meeting rooms within Town-owned buildings, or in buildings that are ADA approved handicapped accessible. This provision shall not prohibit on-site inspection when necessary for the proper conduct of Town business. (GBL.5-6)

Provincetown Town Hall, 260 Commercial Street, Contact: Town Clerk 487-7013

Judge Welsh Hearing, Room Occupancy Limit: 82

Caucus Hall Meeting Room, Room Occupancy Limit: 25

Auditorium, Room Occupancy: 708

Provincetown Veterans Memorial Community Center, 2 Mayflower Street: Contact: COA 487-7080

Provincetown Public Library, 356 Commercial Street: Contact: Library Director 487-7095

Conducting A Meeting

OPEN MEETING LAW

The Massachusetts Open Meeting Law requires that all meetings of elected or appointed boards, committees or subcommittees be open to the public except for the ten specific situations (listed below) where Executive Session is required. The law does not apply to chance meetings or social occasions;

however, such meeting cannot be used to circumvent the requirement of discussing and deliberating at public meetings. The law does not apply to administrative meetings or to advice on administrative matters. Please refer to Appendix B for a complete reading of the Open Meeting Law.

Basic Requirements:

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 the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format and **shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.**

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.

New Business: Notices are required to include those matters that the Chair reasonably anticipates will be discussed at the upcoming meeting. If something else comes to the attention of the Chair after the posting deadline but before the meeting, **and** that matter was not something the Chair should have reasonably anticipated, then the matter can be included under “New Business.” It is advisable to include “Any new business that could not reasonably be anticipated” on meeting notices to cover this possibility.

EXECUTIVE SESSION MGL c.30A §21

While all meetings of public bodies must be open to the public, a public body may meet in closed session for 1 or more of the purposes provided that:

- the body has first convened in an open session;
- 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;
- 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;
- the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
- accurate records of the executive session shall be maintained

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant’s location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was

called.

Example: For an Executive Session on Item #3 on the list below (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...), in the notice substitute the name of the litigation if doing so would not negatively impact the Town's negotiation position. So the notice would read as follows:

Executive session under GL c.30A, §21(a)(3) to discuss strategy with respect to litigation (name the litigation if appropriate); votes may be taken.

Example: For an Executive Session on Item #6 on the list below (To consider the purchase, exchange, lease or value of the real estate if the chair declares...), in the notice substitute the description of the location of the real property at issue, if doing so would not negatively impact the Town's negotiation position. So the notice would read as follows:

Executive session under GL c.30A, §21(a)(6) to consider the (insert as appropriate, purchase, exchange, lease or value of) real estate (location if appropriate); votes may be taken.

See boxes with **Reasons for Convening an Executive Session** on the following pages.

All votes taken in Executive Sessions shall be recorded roll call votes and shall become a part of the record of said executive session.

Reasons for Convening Executive Session: (Please refer to Appendix B for a complete description.)

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.**

This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. **To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.**

bargaining process; the body is not required to demonstrate a definite harm would have arisen. At the time the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

4. **To discuss the deployment of security personnel or devices, or strategies with respect thereto.**

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

This Purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

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.**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

7. **To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.**

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable

basis for that claim if challenged.

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 detrimental effect in obtaining qualified applicants; provided, however, that this clauses shall not apply to any meeting, including meetings of a preliminary screening.**

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body.

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.

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 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 affects its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

MINUTES AND RECORDS OF TOWN BOARDS M.G.L. c.30A, §22

(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.

The minutes need not be a verbatim transcript of all that was said at the meeting. Many boards tape their meetings and prepare written minutes at a later date. Tape recordings may *not* be used as a permanent record of meetings. Written minutes must be prepared with the information outlined above. Until the minutes are prepared and approved on paper the tapes are a public record of the proceedings and must be available for public inspection in the Town Clerk's office. In addition, until the minutes are approved, the notes of the Clerk and the draft of the minutes are public records, and must be made available for inspection and copying if requested.

ADOPTION OF RULES & REGULATIONS (C.5-3-B)

A copy of all rules and regulations adopted by a Town board – including procedures for Public Hearing - shall be filed with the Town Clerk and posted on the Town Website.

TAPE RECORDING BY OBSERVERS (MGL 30A §20(F))

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 recordings.

REMOTE PARTICIPATION

The Board of Selectmen authorizes remote participation for all appointed and elected Town Boards in accordance with the requirements of Massachusetts Open Meeting Law 940 CMR 29.00, section 29.10: Remote Participation (See Appendix F – Board of Selectmen Policy Statement 2012-01-09). The Statement outlines the requirements and procedure for allowing remote participation by members who cannot be physically present, but here some important highlights:

- A quorum of the board still needs to be present in order for the meeting to be held.
- The Chair cannot participate remotely and still chair the meeting – a vice chair or a designee would need to act as Chair.
- If a member wished to participate remotely, they would need to contact the Chair with as much notice as possible and the Chair would then notify the Town Clerk, who would set up the conference call function and issue pass codes that both the Chair and the remote participant would enter in order to join the meeting.
- Remote participation via phone conference is only available to our non-regulatory boards. Regulatory boards require the use additional video/web technology which has yet to be determined and regulatory boards will be notified when a procedure can be implemented.

For those boards meeting in locations other than the Judge Welsh Meeting Room or Caucus Hall in Town Hall, determine if your meeting room has a telephone with speaker function which allows the speaker and anyone in the room to be clearly heard. If not meeting in the meeting rooms in Town Hall, and the meeting space is equipped to receive calls and clearly audible to all, then there is no need to contact the Town Clerk in advance. Simply provide the telephone number to the board member and have them call in to the meeting at the appropriate time.

Voting

**“It is better to debate a question without settling it than to settle a question without debating it.”
-Joseph Joubert**

CALCULATION OF MAJORITY VOTE (K&P MARCH 18, 1996)

The general common law rule is that, in the absence of an express statute or regulation to the contrary, a simple majority vote (i.e., one vote more than fifty percent) will prevail. When a quorum is present, a majority of that quorum has the right to take action which is within the power of the entire body.

A requisite majority vote is calculated based on the number of members present, not on the entire membership, present or absent. When a statute states that a valid vote requires “a majority of the Board,” a municipality should not read this as requiring that a majority of the full membership must vote in favor. Instead, as long as a quorum is present, the calculation of a “majority” should be based on only those members present. Absent members of the board do not affect the vote.

Example using a five member board: If three members are present (which is a quorum), then a 2-1 vote is a valid, majority vote of the board.

Abstentions are not counted. Given the presence of a quorum, a majority of the votes actually cast is sufficient. It is not essential that at least a quorum should actually vote. Nor is it required that the action receive the favorable votes of a majority of all members present. A board member who is present for the vote may abstain from voting and not affect the outcome.

Tie Vote - A tie vote of a motion is to defeat the motion since an approved vote requires a majority vote, one vote more than fifty percent.

QUORUM

A quorum for a meeting of any Town board shall be a majority of the maximum complement of the board. No action of a Town board shall be valid and binding unless taken or ratified by an affirmative vote of the majority of the members attending the meeting, unless another quantum of vote is allowed or required by the Massachusetts General Laws. (c.3-2-2) If a member of a Town board is absent or excuses him/herself from voting on a certain issue, an alternate shall assume the powers of a member. If two alternates are present but only one is needed, the one shall be selected by lot. (c.3-2-3)

RULE OF NECESSITY (K&P JUNE 1993)

Under certain circumstances, the members of the board may invoke the “Rule of Necessity” to allow disqualified members to act. The Rule of Necessity provides that a board may invoke this rule for a member(s) who would be disqualified from participating on a specific Town board action, (e.g. because of a conflict of interest) to participate because of a lack of a quorum needed to take action.

The Rule of Necessity may be invoked should the following three conditions exist:

- a. one or more members of a town board or commission are disqualified from acting on a matter before the board due to a conflict of interest, and
- b. thereby the disqualified member(s) would deprive the board of the number of members required to take an affirmative vote; and
- c. that there is no other board empowered to hear the matter.

Hearings

ADJUDICATORY HEARING

The Board of Selectmen, the Charter Compliance Commission, the Conservation Commission, the Board of Health, the Licensing Board, the Personnel Board, the Planning Board, and the Zoning Board of Appeals shall adopt rules and regulations governing the conduct of adjudicatory hearings. An adjudicatory hearing is a hearing in which the legal rights, duties or privileges of specifically named persons are required by law to be determined after an opportunity for a hearing. (c.3-3-2)

“The right to be heard does not automatically include the right to be taken seriously.”

-Hubert Humphrey

Each member who participates in the decision of an adjudicatory hearing must have heard all of the evidence first hand, reading a transcript of the hearing or viewing a tape later is not sufficient (See Appendix D: Mullin V. Planning Board of Brewster)

PUBLIC HEARING

A Public Hearing is a process of collecting information that pertains to the pros and cons of an idea, motion, or proposed action from individuals. It is a tradition that Public Hearings provide each individual who desires to speak an opportunity to voice his/her opinions. It is important that the Chair of the Town board state clearly how the public hearing will be conducted and stay with the described process. Also, no Town board shall accept as testimony, evidence or attestation, nor cause to be read into the public record or minutes of any meeting, any correspondence in which an author fails to self-identify him/herself or list his/her place of residence. This is not to exclude the right of the author to have the board withhold the name and/or address upon request. (GBL.5-13)

Public Hearings on proposed rules and regulations.

Unless otherwise specified by the General Laws, the Town Charter or a By-Law, any new or revised rule or regulation proposed by a Town Authority shall not be put into effect until the following actions have been taken:

- a. Notification of Public Hearing. A Public Hearing shall have been held. At least fourteen (14) days in advance of the hearing, the text of proposed new or revised rule(s) or regulation(s) and the date, time and place of the Hearing shall have been published in a newspaper of general circulation in the Town and posted on the bulletin board in Town Hall; and
- b. Determination and advertisement of final text. The Town Authority shall have determined the final text of the new or revised rule or regulation, shall have recorded the fact of such determination, and shall have published the text and effective date thereof in a newspaper of general circulation in the Town. (GBL.5-12)

Suggested Public Hearing Procedures

1. The Chair will open the hearing by identifying the purpose of the Hearing, reading the Hearing notice aloud, and explaining the rules to be followed during the Hearing.
2. If testimony at the hearing must be given under oath, a five-minute recess will be taken to permit speakers to register with the Clerk of the town board. When the Hearing is reconvened, the Chair will render the oath in front of all present.

3. Hearing Format:
 - a. Arguments: Proponents
 Questions: Members of the Town Board
 Questions: Public
 - b. Arguments: Opponents
 Questions: Members of the Town Board
 Questions: Public
 - c. Recess:
 - d. Proponents: Concluding Statements/Rebuttal
 - e. Opponents: Concluding Statements/Rebuttal

4. No questions will be permitted until after the speaker has finished the presentation. Questions will be accepted first from board members and then from the public. All public questions will be addressed through the Chair. Questioners will identify themselves to the Chair, state their questions, and specify to whom they are addressed. Any disagreement with answers is restricted to rebuttal statements.

5. At the completion of arguments, citizens may record themselves in agreement with the speaking side without making another presentation. (This provision is designed to reduce repetition.)

Reports

Board reports. All Town Boards shall report as directed by the Town. If no report is made within one year after its appointment, the board shall be discharged unless the Town shall have granted an extension of time. (GBL.5-9)

Annual reports and recommendations. Each Town Board shall submit to the Board of Selectmen, an annual report of activities, together with any recommendation relative to those activities, for inclusion in the Annual Reports of the Town. The report shall be submitted on or before a date specified by the Board of Selectmen.(GBL.5-10)

Official Files & Records

RECORDS OF DOINGS AND ACCOUNTS

Records of the official activities and accounts of all Town boards shall be kept in the manner and form as shall be prescribed by the General Laws, the Town Charter or a By-Law, or, as may be authorized thereby, the Board of Selectmen or the Town Manager.

- a. Records to be open to public inspection. Records shall be open to public inspection under the supervision of the custodian of the records.

- b. Security of records. Records shall be kept secure in Town Hall or other authorized locations and shall not be removed without proper authorization and custodianship. (GBL.5-8)

Absolutely no official files are to leave Town Hall. Town staff members who become aware of files

leaving the building are directed to notify the Town Manager or Assistant Town Manager. (BOS directive August 1997). Town Boards should arrange with the Town Clerk for on-site storage of their files.

The Massachusetts Public Records Law (MGL.C4§7(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. The minutes, informational data, memoranda and circulating materials of any town board are mostly all public information. Appendix B of this handbook contains the text of the Massachusetts Public Record Law. The Town board should consult with the Town Clerk if questions arise or a request made under the freedom of information occurs.

Every person having custody of any public record shall at reasonable times and without unreasonable delay, permit the requested record to be inspected and examined by any person. A custodian of a public record shall within 10 days following receipt of a request for inspection or a copy of a public record shall comply with such request. Please know that the law requires acting on a request within a reasonable time within a maximum of 10 days.

To meet the intent of the Public Records Law the following set of protocols are designed to guide Town Boards and Departments in providing public access to municipal records. The Town Clerk is available to answer any questions regarding the Public Records Law.

1. Public Records of Town Boards

- 1.1. The individual seeking a public record relating to Town Boards shall make the request to the Town Clerk.
- 1.2. The Town Clerk will identify the custodian of the record being requested.
 - 1.2.1. If the “public record” has not been filed with the Town Clerk’s office, the Town Clerk will forward the request to the appropriate Town Board. The Chair of the Town Board will be contacted first. If there is no response within 24 hours then the Town Clerk shall contact the Vice Chair. Again, if there is no response within 24 hours the Town Clerk shall contact the Secretary of the Town Board.
 - 1.2.2. If the public record is filed with the Town Clerk’s office, the Town Clerk will then be the responsible custodian.
- 1.3. The custodian of the public record shall make arrangements with the requester for the opportunity to inspect and/or receive copies of the requested materials as described in Section 4 of this memo.

2. “Active” Public Records of Town Departments

- 2.1. The individual seeking a public record relating to a Town Department shall make a request to the appropriate custodian as identified in 2.3.
- 2.2. The custodian of the public record shall make arrangements with the requester for the opportunity to inspect and/or receive copies of the requested materials as described in Section 4 of this memo.
- 2.3. Custodian of Town Department’s Public Records:

| Public Records Relating To: | Contact | Location | Telephone |
|--|-----------------------|------------------------------|-----------|
| Board of Selectmen | Secretary of the BOS | Town Hall, 260 Commercial St | 487-7003 |
| Town Manager | Town Manager | Town Hall, 260 Commercial St | 487-7002 |
| Department of Regulatory Mgmt | | | |
| Licensing Records | Licensing Agent | Town Hall, 260 Commercial St | 487-7020 |
| Building Records | Building Commissioner | Town Hall, 260 Commercial St | 487-7020 |
| Health Department Records | Health Inspector | Town Hall, 260 Commercial St | 487-7020 |
| Department of Municipal Finance | | | |
| Assessor | Principal Assessor | Town Hall, 260 Commercial St | 487-7017 |
| Accounting | Town Accountant | Town Hall, 260 Commercial St | 487-7010 |

| | | | |
|-----------------------------------|----------------------------|------------------------------|----------|
| Treasurer | Dir. Of Municipal Finance | Town Hall, 260 Commercial St | 487-7015 |
| Human Services | | | |
| Public Health & Counsel on Aging | Public Health/COA Director | VMCC 2 Mayflower St | 487-7080 |
| Recreation | Recreation Director | VMCC 2 Mayflower St | 487-7097 |
| Library | Library Director | 356 Commercial St | 487-7094 |
| Provincetown Schools | | | |
| Superintendent of Schools | Superintendent | Prince St | 487-5000 |
| Public Safety | | | |
| Police Department | Chief of Police | 26 Shank Painter Rd | 487-1212 |
| Fire Department | Fire Chief | 25 Shank Painter Rd | 487-7023 |
| Marine Department | Marine Superintendent | McMillan Pier | 487-7030 |
| Department of Public Works | | | |
| Public Works | Dir. of Public Works | VMCC 2 Mayflower St | 487-7060 |
| Water Department | Water Superintendent | VMCC 2 Mayflower St | 487-7064 |
| Cemetery Department | Cemetery Superintendent | VMCC 2 Mayflower St | 487-7008 |

3. “Inactive” Public Records

- 3.1. An individual seeking a public record that is stored in the Municipal Archives or filed with the Town Clerk’s Office shall make a request to the Town Clerk.
- 3.2. The Town Clerk shall make arrangements with the requester for the opportunity to inspect and/or receive copies of the requested materials as described in Section 4 of this memo.

4. Requirements and Summary of the Public Records Law

- 4.1. Access to Public Records: The Massachusetts Public Records Law provides that any person has an absolute right of access to public information. This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.
- 4.2. Public Records Defined: The Massachusetts General Laws broadly define “public records” to include all documentary materials or data, regardless of physical form or characteristics, which are made or received by any officer or employee of any Massachusetts governmental entity. As a result, all photographs, papers and electronic storage media of which a governmental officer and employee is the “custodian” constitute “public record”. There are eleven narrowly construed exemptions to this broad definition of “public record”, please review Section 4.5 Exemptions.

4.3. Requesting a Public Record

Requests for public records may be made oral or written and may be made in person or through the mail, FAX, E-mail, and other means of communication. A requester is not required to specifically identify a particular record. Any request that provides the custodian with a reasonable description of the desired information is sufficient. The custodians are expected to use their superior knowledge of the records within their custody to assist the requester in obtaining the desired information.

4.4. Responding to a Public Record Request

All requests must receive a response as soon as practicable, without unreasonable delay and always within ten days. The response must be either an offer to provide the requested materials or a written denial. A denial must detail the specific legal basis for the withholding of the requested materials. The legal basis must include a citation to the statutory exemption upon which the custodian relies and must also explain why the exemption applies. A denial must also advise the

requester of their rights to seek redress through the administrative process provided by the Office of the Supervisor of Public Records.

The Public Records Law only applies to information that is in the custody of a governmental entity at the time the request is received. There is no obligation to create a record for a requester.

Inquiries into a requester's status or motivation for seeking information are expressly prohibited. Consequently, all requests for public records, even if made for a commercial purpose or to assist the requester in a lawsuit against the holder of the records, must be honored in accordance with the Public Records Law.

4.5. Exemptions to the Public Record Law Requirements

Summary of "public records" that are exempted from the requirements of the Public Records Law: (Contact the Town Clerk for detailed description of each exemption.)

- a) Withholding from disclosure those documents which are specifically or by implication exempted from disclosure by statute.
- b) Related solely to internal personnel rules and practices of the government unit, provided, however that such records shall be withheld only to the extent that the proper performance of necessary governmental functions requires such withholding.
- c) Personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.
- d) Inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this clause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.
- e) Allows the withholding of "notebooks and other materials prepared by an employee of the Commonwealth which are personal to him/her and not maintained as part of the files of the government unit. (The application of this exemption is limited to records that are work-related but can be characterized as personal to an employee.)
- f) Investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.
- g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing government policy and upon a promise of confidentiality; but this clause shall not apply to information submitted as required by law or as a condition of receiving a government contract or other benefit.
- h) Proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of bids or proposals to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or award a contract to, a particular person.
- i) Appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisals has been terminated; or (3) the time within which to commence such litigation has expired.
- j) The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns, or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.
- k) (This exemption was repealed by the legislature.)
- l) Withholding from disclosure test questions and answers, scoring keys and sheets, and examination data used to administer a licensing examination; provided, however, that such materials are used to administer another examination.

Budgeting & Procurement

BUDGETING

In general, a Town Board does not have a budget unless one is authorized by Town Meeting. If a board anticipates a need to expend funds, it can request a budget for the next fiscal year.

For the purpose of enabling the Town Manager to make up the annual estimate of expenditures, all boards shall, upon his/her written request, furnish all information in his/her possession and submit to the Town Manager, in writing, a detailed estimate of the appropriations required for the efficient and proper conduct of the board during the next fiscal year. (c.9-1-1)

PROCUREMENT

The ability of a Town board to spend public funds is dependent upon the authority that is approved by Town Meeting. Any expenditures that exceed \$25,000 will require issuing a *Request-for-Proposals*. For boards that allocate money from any of the gift funds, a request must be sent to the Town Treasurer. The Treasurer will then forward the request for approval to the Board of Selectmen.

DISBURSEMENTS

As bills are incurred by the Town board, the Clerk shall:

1. Obtain a payment voucher from the Accountant's office.
2. Complete the payment voucher and attach all receipts and supporting paperwork.
3. Submit the voucher for approval by the Town board and obtain the Chair's signature.
4. Present the packet to the Town Accountant's office for payment.

Support Services

PARKING

Discounted resident parking permits shall be issued to Town board members who serve on standing Town boards which meet a minimum of 12 times per year.

PHOTOCOPYING

POSTAGE

Each Town board is assigned a postage account number for access to the Town Hall postage machine. (Account numbers are available through the Secretary to the Town Manager.) The postage machine is located across from Caucus Hall and is only available for official town business. A Town Hall staff person will demonstrate how to operate the postage machine.

STAFF SUPPORT

Fundamentally, staff support for Town boards is a matter that is addressed by the Town Manager and the Board of Selectmen during the annual budget process. When special circumstances arise thereafter, a Town board which identifies a need for assistance by Town staff is required to make a formal request through the Town Manager. In the request, the Town board must include the description of the need and issue. The Town Manager will take one of two actions:

- 1) Approve the request and makes assignment to the appropriate employee(s);
- 2) Return the request with an explanation.

TOWN COUNSEL (TM MEMO 9-18-1992)

All Town boards are required to go through the Town Manager, and obtain permission therefrom, in order to use Town Counsel's services. The firm of Kopelman & Paige has standing instructions *not* to respond to questions posed by a Town board unless approval of the Town Manager can be evidenced.

Procedure:

1. Complete the standard form titled "**Request for Legal Service**" that is available in the Town Manager's office.
2. Frame question(s) in writing and provide all supporting documentation.
3. Submit this form to the Secretary to the Town Manager.
4. The Town Manager will take one of three (3) actions to the Town board's request:
 - a) Forward the request to Town Counsel;
 - b) Forward the request to Labor Counsel; or
 - c) Return to requester with an explanation.

Conflicts-of-Interest

The purpose of the conflict-of-interest law is to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations. The conflict-of-interest law applies

To town officials and employees – all elected and appointed, full- and part-time, paid and unpaid positions.

OBTAINING LEGAL ADVICE

At any time, a Town board member can contact the State Ethic Commission and receive informal legal advice or request an advisory opinion. A member may call the State Ethics Commission's Legal Division at (617) 727-0060 for informal, confidential advice on the conflict law, or seek a written advisory opinion from the Ethics Commission. If a member has a question about his/her own activities, he/she should request an opinion *prior to* engaging in the activity in question. Requests to the Commission for an advisory opinion must be in writing and must be about a real, not hypothetical, situation which presents a problem under the conflict-of-interest law.

FILING A COMPLAINT

Anyone can file a complaint concerning a conflict-of-interest – in person, over the phone or by letter. The law requires the Ethics Commission to keep the identity of all complaints *confidential* and the Commission's enabling statute (MGL.c.268B§8) protects a complainant from retribution for filing a complaint with the Commission. If a member believes that a violation of the conflict-of-interest law has occurred or is occurring, he/she may call or visit the: State Ethics Commission, One Ashburton Place, Room 619, Boston, MA (617) 727-0060.

CONFLICT-OF-INTEREST DISCLOSURE (ADMIN DIR 97-3)

1. Purpose

1.1 This directive is issued for the purpose of ensuring that all Town board members and Town representatives appointed by the Board of Selectmen and Town Manager comply with the provisions of MGL Chapter 268A, the Conflict-of-Interest Law, including disclosures made under sections 19 and 23 thereof.

2. Policy

2.1 Ethical Standards. As set forth in §3-4-8 of the Provincetown Charter, "Town employees and members of town boards shall be governed by the ethical standards set forth in Chapter 268A of the Massachusetts General Laws, the Provincetown General By-Laws, and this charter."

2.2 Actual Conflicts-of-Interest: Do Not Participate; Do Leave the Room. A town board member or representative shall not participate in his/her official capacity in matters in which such participation is prohibited by the Conflict-of-Interest Law. The Town board member or representative shall, at any meeting where the particular matter is discussed, disclose orally the existence of the conflict-of-interest, remove himself/herself from the meeting at that time, and leave the meeting room during all times that particular matter is being discussed.

2.3 Financial Interest in Particular Matters (MGL C.268A,§19): Make Disclosure to Appointing Authority and Obtain Permission to Participate.

2.3.1 No town board member or representative shall, without obtaining the prior written approval of their appointing authority, participate in their official capacity in any particular matter involving a financial interest involving the appointee, his/her immediate family or partner, a business organization in which he/she serves as officer, director, trustee, partner or employee, or any person or organization with whom the appointee is negotiating or has any arrangement concerning prospective employment.

2.3.2 In requesting permission of the appointing authority, the appointee shall advise his/her appointing authority of the nature and circumstances of the particular matter and make a full disclosure of the financial interest.

2.3.3 The appointee may participate on said particular matter only after the appointing authority makes a written determination that said financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the appointee.

2.4 Appearance of Conflict (MGL C.268A,§23): Make Disclosure to Appointing Authority Prior to Official Action.

2.4.1 The Conflict-of-Interest Law provides that public officials and employees must avoid conduct that creates a reasonable impression that any person can improperly influence or unduly enjoy their official favor, or that they are likely to act (or fail to act) because of kinship, rank, position or undue influence by any party or person. A reasonable impression of favoritism or bias may arise when a public official acts on matters affecting a friend's, a business associate's or a relative's financial interest.

2.4.2 Notwithstanding, MGL C.268A,§23 allows public officials to act on matters, even if it creates the appearance of a conflict, if they openly admit all the facts surrounding the appearance of bias *prior to any official action*.

2.4.3 Appointed officials must make such disclosures in writing to their appointing authority, and the disclosure must be kept available for public inspection.

2.5 Applicability of Policy. This policy shall apply to appointments made by the Board of Selectmen, Town Manager, and by those town boards appointed by the Board of Selectmen and Town Manager to which an appointment has devolved under Charter §3-1-2, and to appointed representatives.

2.6 Responsibility of Appointee. It is the responsibility of each Town board member or appointed representative to determine for themselves whether or not to make disclosures prior to acting on a

particular matter where a conflict exists or may exist.

2.7 Failure to Comply as Basis for Removal from or Non-Reappointment to Office. In addition to any sanctions which may be imposed by the State Ethics Commission, failure to comply with this directive may be the basis for the appointee's removal by the appointing authority under Charter §10-2-1, or for his/her non-reappointment upon term expiration.

3. Procedures

3.1 When an appointee makes a disclosure to the appointing authority under MGL C.268A, §19 or §23, he/she shall first obtain the appropriate disclosure form from the Town Clerk, copies of which are attached hereto and made a part hereof.

3.2.1 Once filled out by the appointee and approved by the appointing authority, a disclosure form under MGL C.268A, §19 shall be filed by the appointing authority with the Town Clerk. The appointee shall not participate in the particular matter until and unless the appointing authority has granted written permission for the appointee to do so, and has filed a copy of such written permission with the Town Clerk.

3.2.2 Once filled out by the appointee, a disclosure form under MGL C.268A, §23 shall be filed in duplicate with the Town Clerk and with the appointing authority.

3.3 The Town Clerk shall maintain a separate file of disclosure statements which shall be kept available for public inspection.

3.4 In the public meeting at which the appearance of conflict arises, the appointee shall make an oral disclosure for inclusion in meeting minutes.

4. Distribution and Education

4.1 The Town Clerk shall provide a copy of this directive to all Town board members and appointed representatives upon its issuance, and upon the subsequent appointment or reappointment of any board member or representative.

4.2 The Town Clerk shall also maintain and distribute educational materials from the State Ethics Commission to appointees and the general public.

4.3 The Town Clerk shall develop a schedule of training programs to educate board members and representatives on the Conflict-of-Interest Law and this directive, which training programs should be conducted in both formal and informal settings.

STATE ETHICS COMMISSIONS

The Massachusetts Conflict-of-Interest Law (Chapter 268A of the General Laws) sets a minimum standard of ethical conduct for all municipal employees and officials. Enacted in 1962, the conflict law's goal is to promote confidence in our government and in the integrity of its officials.

The Massachusetts State Ethics Commission was established in 1978 by the Legislature as an independent civil enforcement agency to enforce the conflict of interest and financial disclosure (Chapter 268B) laws. The Commission is a bipartisan, five-member board appointed by the Governor, the Secretary of State and the Attorney General. The Commissioners appoint an Executive Director who heads a full-time staff employed in four (4) divisions: Enforcement, Legal, Financial Disclosure, and Public Education.

AVAILABLE BULLETINS

The following list of bulletins are available through the Provincetown Town Clerk's office.

- o A Practical Guide to the Conflict-of-Interest Law for Municipal Employees (this includes board

members).

o **Fact Sheets**

1. Avoiding “Appearances” of Conflicts-of-Interests
2. Liquor Licenses and the Conflict Law
3. Guidelines for Municipal Officials Voting on Budgets
4. “Special” Municipal Employees
5. The Rule of Necessity
6. Municipal Officials: Don’t Vote on Matters Affecting Abutting or Nearby Property
7. Board of Health Members Installing Local Septic Systems
8. Nepotism
9. Agency
10. Business and Entertainment Expenses for Public Officials

o **Advisories**

1. Political Advisory
2. Municipal Districts and Authorities and Their Special Municipal Employees
3. Municipal Lawyers Representing Both a Municipal Employee and a Municipality in the Same Suit
4. Free Passes
5. Nepotism
6. Municipal Employees Acting as Agents

Definitions

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.(MGL.c.39§23A)

EMERGENCY:

A sudden, generally unexpected occurrence or set of circumstances demanding immediate action. (MGL.c.39§23A)

EXECUTIVE SESSION:

Any meeting of a governmental body which is closed to certain persons for deliberation on certain matters.(MGL.c.39§23A)

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. (MGL.c.39§23A)

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. (MGL.c.39§23A)

QUORUM:

A simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body. (MGL.c.39§23A)

TOWN EMPLOYEE:

A person performing services for or holding an office, position, employment or membership in a municipal agency of the town of Provincetown, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis. (C.1-2-2)

TOWN BOARD:

A Town board, committee, commission or Counsel, including the Board of Selectmen, but not including the Board of Fire Engineers, created by the Massachusetts General By-Laws, a vote of the Town Meeting, the Board of Selectmen, or this Charter.(C.1-2-2)

TOWN AUTHORITY:

Any person or group of persons, whether elected or appointed, authorized to bind the Town in contract, or to enforce on behalf of the Town the General Laws of the Commonwealth, the Town Charter, the Town By-Laws, or any rule or regulation duly promulgated by the Board of Selectmen, a Town Board, or any agent or delegate thereof.(GBL.1-2-3)

Appendix A

MUNICIPAL RESSOURCES AVAILABLE FROM THE TOWN CLERK'S OFFICE

- Acts & Resolves of Massachusetts
- Massachusetts Appeals Court Report
- Massachusetts General Laws
- Massachusetts Reports

- Provincetown Annual Town Report 1869 to Present
- Provincetown Board of Health Regulations
- Provincetown Board of Selectmen Rules of Procedures
- Provincetown Cemeteries Rules & Regulations
- Provincetown Charter
- Provincetown Charter Compliance Commission Procedures
- Provincetown Committee Roster
- Provincetown General By-laws
- Provincetown Harbor Regulations
- Provincetown Historical Commission Rules of Procedure
- Provincetown Licensing Regulations
- Provincetown Parking Regulations
- Provincetown Personnel Rules
- Provincetown Shellfish Regulations
- Provincetown Town Meeting Decisions
- Provincetown Town Reports 1889 to Present
- Provincetown Zoning By-laws

- Provincetown Municipal Archive

Appendix B

MASSACHUSETTS OPEN MEETING LAW

CHAPTER 39. MUNICIPAL GOVERNMENT

Chapter 39: Section 23B. Open meetings of governmental bodies

Section 23B. 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 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 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 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.

(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.

[Clause (10) of the fourth paragraph added by 2008, 445, Sec. 4 effective March 30, 2009.]

(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.

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 non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

Appendix C

MASSACHUSETTS PUBLIC RECORD LAW

Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental Functions requires such withholding;
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;
- (f) investigatory materials necessarily compiled out of the public view by law enforcement or Other investigatory officials the disclosure of which materials would Probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;
- (g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this sub clause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;
- (h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;
- (i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards; (j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

(k) Deleted by St.1988, c. 180, § 1.

(I) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (H) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Amended by St.1996, c. 204, § 3; St.1996, c. 450, §§ 1 to 4.

Appendix D

MULLIN V. PLANNING BOARD OF BREWSTER

Voting When You Have Not Attended All Parts of a Hearing

Does a Conservation Commissioner have to be present for every portion of a public hearing to vote on a project? It depends.

In some cases, the right of certain members of a Conservation Commission to vote on a permit may be challenged because of the infamous “Mullin Rule,” so named after an Appeals Court decision, **Mullin v. Planning Board of Brewster**, 17 Mass. App. Ct. 139 (1983). The rule, which has long applied to state agencies, states that when members of a board or agency are acting in a “quasi-adjudicatory manner,” each member who participates in the decision must have heard all the evidence first-hand. (And reading the transcript of the hearing or viewing a tape later isn’t good enough.) A state agency is considered to be acting in a “quasi-adjudicatory” manner when it conducts “a proceeding ... in which the legal rights, duties or privileges of

specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing.” In the Mullin case, the Appeals Court decided that a Planning Board was acting in a “quasi-adjudicatory” fashion when it considered an application for a special permit, and therefore members who did not attend all portions of the hearing were disqualified from voting.

When Conservation Commissions consider applications under the Wetlands Protection Act, their decisions are subject to complete review by DEP, including the right to an adjudicatory hearing later in the process. For this reason, even though the local hearing is similar in form to a zoning hearing, MACC does not believe that the local hearing under the Act is a “quasi-adjudicatory” situation. In fact, it is hard to see how the Mullin Rule would even be raised under the Act, because the only way to appeal a Commission’s decision is to request a superseding order, and DEP regional offices do not remand wetlands hearings to Commissions on procedural grounds anyway. That being the case, when Conservation Commissions are acting under the Wetlands Protection Act, they can safely ignore the Mullin Rule. If the hearing is conducted after proper notice and in conformity with the Open Meeting Law, and if the Order of Conditions is signed by a majority of the Commission, the Order is legal. (Indeed, the members who sign the Order need not be the same ones who voted to issue it.)

When a Conservation Commission is acting under a local home rule bylaw, however, the Mullin Rule clearly does apply, because the Commission’s decision is considered the final action of an agency. If you’re the Chairperson of your Commission, this means that you need to be attentive to whether you continue to have a majority who have been present at all of the sessions of a hearing, and try to avoid continuing hearings so many times that attendance becomes a problem.

If a Mullin Rule problem is brought to your attention after the mistake has already been made and a majority of members have missed at least some of the evidence, there are two choices: get some kind of waiver from the applicant, or start the hearing all over again. Bear in mind that there are no constructive approvals of bylaw applications, (i.e. no automatic approvals if the Commission doesn’t act in time). So the worst that can happen is that a court would set aside your decision and make you do it again. Usually, the applicant doesn’t want the delay this causes and will grant the Commission a waiver. The applicant would then take the risk of having to fend off third party appeals if the project is approved.

Also bear in mind that a decision rendered after a Mullin Rule violation isn’t void - it’s voidable. The difference is that a void decision is considered invalid forever, but a voidable decision is as good as any other decision if no one appeals it.

George A. Hall, Jr., Esq.
MACC President
Anderson & Kreiger LLP

Appendix E

MGL C. 39, §23D TOWN BOARD QUORUMS AT ADJUDICATORY HEARINGS

Accepted at the November 13, 2006 Special Town Meeting

Article 10. *Accept MGL C.39, §23D Town Board Quorums at Adjudicatory Hearings.* To see if the Town will vote to accept, for all boards, committees, or commissions holding adjudicatory hearings in the Town, the provisions of Section 23D of Chapter 39 of the General Laws, which provide that a member of a board, committee, or commission holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to the member's absence from one session of such hearing, provided that certain conditions are met; or to take any other action relative thereto.

[Requested by the Board of Selectmen and the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

BOARD OF HEALTH RECOMMENDS: 4-0-0

PLANNING BOARD HAS NO RECOMMENDATION

CONSERVATION COMMISSION RECOMMENDS: 4-0-0

FINANCE COMMITTEE HAS NO RECOMMENDATION

Cheryl Andrews moved that the Town vote to accept, for all boards, committees, or commissions holding adjudicatory hearings in the Town, the provisions of Section 23D of Chapter 39 of the General Laws, which provide that a member of a board, committee, or commission holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to the member's absence from one session of such hearing, provided that certain conditions are met.

Motion Passed.

Chapter 39: Section 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification *[Text of section added by 2006, 79 effective August 10, 2006.]*

Section 23D. (a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

(b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

Appendix F

BOARD OF SELECTMEN POLICY STATEMENT 2012-01-09 TOWN BOARD REMOTE PARTICIPATION POLICY

The Board of Selectmen authorize remote participation for all appointed and elected Town Boards in accordance with the requirements of Massachusetts Open Meeting Law 940 CMR 29.00, section 29.10: Remote Participation, with the following additional criteria:

Criteria:

- Remote participation will be permissible to all appointed and elected Town Boards, with the exception of the Board of Selectmen.
- The method for remote participation by all non-regulatory Town Boards will be by telephone with speaker/conference call function on and clearly audible to all persons present in the meeting location.
- The method for remote participation by all regulatory Town Boards, namely the Conservation Commission, Board of Health, Historic District Commission, Licensing Board, Planning Board, and Zoning Board of Appeals, will be by video/web technology, with the remote participant clearly visible and audible to all persons present in the meeting location.

The Selectmen emphasize Section 29.10 (4) Minimum Requirements for Remote Participation, specifically, that a quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by [M.G.L. c. 30A, sec 20\(d\)](#); and members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of [M.G.L. c. 39, sec. 23D](#).

Reasons for Remote Participation:

- Personal illness.
- Personal disability.
- Emergency.
- Military Service.
- Geographic distance.

Town Board Remote Participation Procedure:

- Step 1:** Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.
- Step 2:** At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.
- Step 3:** All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
- Step 4:** A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the

discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

Step 5: When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with [M.G.L. c. 30A, sec. 22](#).

The Board of Selectmen reserve the right to revoke Town Board remote participation at any time under 940 CMR 29.10 (3).

Adopted January 09, 2012

In favor: 5

Opposed: 0

Appendix G

APPLICATION OF THE PUBLIC RECORDS LAW AND THE OPEN MEETING LAW TO ELECTRONIC MAIL AND VOICE MAIL COMMUNICATIONS

Kopelman & Paige Memorandum to Municipal Clients Attached