TOWN OF IPSWICH
MASSACHUSETTS

HANDBOOK FOR MEMBERS OF TOWN BOARDS

A Town board acts only by a majority vote of the members.

Introduction

The purpose of this handbook is to assist the members of elected/appointed boards, committees, and commissions to easily understand the variety of laws, procedures and traditions which govern and inform their participation in municipal government. This handbook blends the directions and requirements that are found in state, town charter, town By-laws and administrative directives. In the event that this handbook conflicts with any federal, state or local laws or regulations, the laws or regulations take precedence**.** Throughout this handbook the term "Town board" applies to every board, committee, commission, or subcommittee that represents an appointing authority.

Cover Quote: "A town board acts only by a majority vote of the members." *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 that town board.

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Town Board Mission

Unless otherwise determined by law, charter or by-law, each Town board must have their mission statement reviewed and approved by the Board of Selectmen every 3 years.

Town Board Membership

To participate on a Town board within the Town of Ipswich, an application must be filed with the Town Manager/Board of Selectmen. The applicant must be a registered voter within the Town of Ipswich. The Town Manager will forward the application to the appropriate appointing authority. Depending upon the Town board, the appointing authority may be the Board of Selectmen, the Town Manager, or the Town Moderator. The Town Manager's office maintains a yearly directory of which appointing authority is empowered to appoint members to each Town board. Committees should have at least five members unless otherwise required by law, regulations or the Town's By-laws or Charter. There may be as many alternates (non-voting members) as determined by the appointing authority unless otherwise determined by any law, regulations or the Town's By-laws or Charter.

Thank you for your interest in serving the Town. Being a member of a Town board is a privilege. As a member of a Town board, you will be viewed as representing Town government in a position of authority and responsibility. Therefore, committee members must be residents in good standing. This includes but is not limited to: satisfying the residency requirements, satisfying tax obligations, etc. The Board of Selectmen may remove a committee member if the member is not a resident in good standing.

Please consider your own reputation and the good standing of your Town board as you interact with Town residents and discuss Town affairs. Always think before making personal comments and remarks about individuals who are part of the Town government. If you have concerns about the behavior of any individual in Town government, they should be brought to the attention of the Town Manager.

APPOINTMENT PROCEUDRES

Once the decision is made to appoint a member to a Town board, the *Appointing Authority* shall be responsible to:

1. File a completed "Notice of Appointment" letter with the Town Clerk for each appointment made to a Town board.
2. Notify the appointee of his/her appointment in writing and inform him/her of the need first to be sworn to the faithful performance of their duties, before he/she may sit as a member or alternate member of a Town board.

If an *Appointee* accepts the offer to participate on a Town board, the appointee shall be responsible to:

1. Appear at the office of the Town Clerk as soon as practicable after receiving notification of appointment to a Town board; sign the notice accepting such appointment; and be sworn to the faithful performance of his/her duties.

2. Accept the appointment within (30) days of the date the appointment was made or forfeit the appointment and have the appointing authority consider the appointment to be vacant as of that time.
3. Contact the Risk Management Coordinator to obtain a copy of the video "Conducting the Public Meeting" to be viewed by the new member. In addition, members of the Planning Board, Conservation Commission, and Zoning Board of Appeals will be asked to review the video "Zoning and Land Use Issues".

The *Town Clerk* shall be responsible to:

1. Maintain a file of all letters of appointment as a public record available for inspection.

The *Town Manager* shall be responsible to:

1. Maintain, publish, and periodically update a roster of the membership of all Town boards, including the following information for each board member: (a) name; (b) mailing address; (c) home telephone number; (d) e-mail address if available; and (e) date of term expiration.

ALTERNATE BOARD MEMBER

To the extent permissible by law**,** 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 seniority. The selected alternate shall sit on a given matter until its conclusion.

When a seat of a regular member becomes available an alternate may not automatically assume that position. If an alternate member desires to become a regular member he/she must make application to the appointing authority.

COMPENSATION

A member of a Town board shall be a volunteer and shall not receive compensation for service on that board (with the exception of the Board of Selectmen) but may be reimbursed for vouchered expenses pertaining to Town business before that board, providing that prior approval of the spending authority has been obtained. In addition, a member of a Town board shall not be paid for any work done for the Town, or be allowed to bid on any Town contract for a job, which is in any way related to the board on which he/she serves or on which he/she has served within the past year.

INELIGIBLE FOR MEMBERSHIP

Individuals who are not residents in good standing and who are not registered to vote within the Town of Ipswich are ineligible to participate on Town boards. A paid employee of the Town shall not be a member of a Town board which is in any way related to his/her employment, but may act in an advisory position to that board. Also, any paid Town employee with supervisory duties shall not be a member of a Town board which is in any way related to his/her employment during his/her term of office or for at least one year after leaving office.

In regard to participation on a regulatory board, no person shall serve simultaneously as a member/alternate member of more than one of the following Town boards: Conservation Commission, Board of Health, Historical Commission, Planning Board, Zoning Board of Appeals or Board of Selectmen.

ABSENSES WITHOUT INFORMING THE CHAIR

A member or alternate member of any Town board who is absent from three consecutive meetings without informing the Chair or his/her designee, shall be considered to have resigned as a member of the board. The Chair of a Town board who is absent from three consecutive meetings without informing the appointing authority and without appointing an Acting Chair for such meetings shall automatically be considered to have resigned as a member of the board.

Procedure

1. The fact that a member has been absent from a meeting without informing the Chair shall be reflected in the minutes.
2. The Chair should notify the Town Manager of a member missing three consecutive meetings without informing the Chair.
3. Once the minutes are filed with the Town Clerk's office, the Town Manager will prepare and mail a letter notifying the member that he/she has ceased to be a member of this board.

REAPPOINTMENT

Reappointments are not automatically issued. A board member must reapply at the end of his/her term if he/she desires and is eligible to serve again. A board member may continue to serve after the expiration date of his/her appointment, until his/her successor is chosen. Boards without designated terms shall have members appointed for three (3) years.

RESIGNATION

A board member who is no longer able to serve should resign promptly so that the vacancy may be filled. A written resignation needs to be submitted to the chair of the board and to the appointing authority. The resignation letter shall then be filed with the Town Clerk.

TERMINATION

Any non-elected member of a Town board may be removed by the appointing authority for cause in Executive Session, in accordance with the following procedure:

1. The appointing authority shall deliberate the removal decision in Executive Session. A written notice of the intent to remove and a statement of the reasons therefor shall be delivered by registered mail to the last known address of the member being considered for removal.

2. Within fourteen days of delivery of the notice, the member may request a public hearing before the appointing authority.

3. If the member fails to request a public hearing, then he/she shall be discharged forthwith.

4. At the discretion of the Appointing Authority, such member may be represented by counsel at the hearing, and shall be entitled to present evidence, to call witnesses, and to examine any witness appearing at such hearing.

5. Within ten days after the public hearing is adjourned, the appointing authority may, by a majority vote, remove the member.

6. A notice of a decision to remove the member and the reasons therefor shall be delivered by

registered mail to the last known address of the member.

Nothing is this section shall be construed as granting a right to such a hearing when a member who has been appointed to a fixed term is not reappointed when his or her original term expires.

VACANCY

The Chair of any Town board shall notify the appointing authority and the Town Manager in writing when a vacancy occurs on the Town board. The appointing authority shall make every reasonable effort to fill the vacancy within sixty days of receipt of the notice of vacancy.

Officers

Please Note: The duties that are described for officers originate from general practice. A Town board, through a majority vote of its members, can further define and/or redefine these responsibilities. Additionally, Robert's Rules of Order also defines the responsibilities of each Town board officer. Robert's Rule of Order maybe accessed, reviewed, and downloaded at www.robertsrules.com.

ELECTION OF OFFICERS

All Town boards shall annually elect a Chair and other necessary officers. Each Town board has the discretion to elect other officers.

CHAIR

The Chair schedules and presides at all meetings, sets the agenda**,** 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. The Board of Selectmen encourages the rotation of the Chair of a Town board at least every 2 years.

VICE-CHAIR

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

SECRETARY

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

1. Schedule meeting location through the Town Clerk's office.
2. Post the meeting with the Town Clerk's office.
3. Prepare agendas in conjunction with the Chair as well as any other materials. The tentative agenda for the next meeting and minutes of the pervious meeting should be prepared and available to each board member prior to each meeting.
4. Take and prepare the minutes for the Town board. Minutes will be typed in format.
5. Where applicable, process the accounts payable and turnovers for the board to the Accountant's Office.

PAID SECRETARY

If a Town board determines that its workload or meeting schedule is such that the secretary'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 assemble 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 (Sundays are not included) before any meeting of a Town board is to be held, the meeting shall be posted on the Town Clerk's 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 for a particular day and time.

The Town Clerk shall maintain a log calendar, 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 Chairs 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 completed ***Public Meeting Notice*** form provided by the Town requesting assignment of a particular meeting space for a particular period of time; and

(2) an agenda containing all items which are scheduled to come before the Town board at a meeting. Such form and agenda shall be submitted to the Town Clerk at the Town board's earliest convenience, but not later than forty-eight hours prior to the time the meeting is scheduled to convene.

Upon receipt of the completed *Public Meeting Notice* form, the Town Clerk shall assign the meeting space requested for the period of time requested unless such space has already been assigned; whereupon the Town board shall request another location or period of time.

The Town Clerk shall promptly post on the Town bulletin board at Town Hall a copy of the approved

Public Meeting Notice form together with the agenda.

It is recommended that meetings, agendas and minutes be posted on the Town's website.

Meeting Times

Town Boards are encouraged to schedule public meetings when the public can reasonably be available. Meetings on Sundays and state and federal holidays are not allowed; except in emergencies.

AVAILABLE MEETING ROOMS

Meetings must be held in approved meeting rooms within Town-owned buildings. This provision shall not prohibit on-site inspection when necessary for the proper conduct of Town business. (GBL.5-6) All meeting rooms must meet the standards for barrier-free access.

Conducting a Meeting

In all procedural matters, it is suggested that meetings of Town boards follow the latest revised edition of *Robert's Rules of Order*, except as provided by the adoption of rules and regulations governing the conduct of adjudicatory hearings.

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 nine specific situations (listed below) where Executive Session is required/permitted. 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 advise on administrative matters. Please refer to Appendix B for a complete reading of the Open Meeting Law.

Basic Requirements:

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except under those circumstances listed below. (MGL.c39§23B)

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 the circumstances listed below.(MGL.c39§23B)

No votes taken in open session shall be by secret ballot. (MGL.c39§23B)

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the Town Clerk at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to such meetings.

The notice shall be printed in easily readable type and shall contain the date, time, and place of such meeting.

Executive Sessions do not need to appear on agendas prior to 48-hour meeting postings but are strongly encouraged by the District Attorney's Office to be part of the agenda. Executive Sessions

can be moved during the properly posted meetings for one of the Executive Session reasons displayed under "Reasons for Convening Executive Session."

EXECUTIVE SESSION

Executive Session is a meeting that is closed to the public for one of the nine purposes listed below. The following required procedures must be followed:

1. The Town board shall first convene in an open session for which an agenda had been posted.

2. A motion is made to enter into an Executive Session and the Chair has cited the purpose for an Executive Session.

3. A majority of 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.

4. The Chair states before the Executive Session whether or not the governmental body will reconvene after the Executive Session. (MGL.c39§23B)

All votes taken in Executive Sessions shall be recorded roll call votes and shall become a part of the record of said executive session. The minutes of Executive Sessions should be released when all matters before the executive session are closed.

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 the professional competence – of an individual.

2. To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the government's bargaining or litigating position. Also, to conduct strategy sessions in preparation for negotiations with non-union personnel; to actually conduct collective bargaining and contract negotiations with non-union personnel.

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

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

6. To consider the purchase, exchange, taking, lease or value of real property, if such discussion may have a detrimental effect on the negotiating position of the governmental body.

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

8. To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a Town board 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 and confer with a mediator regarding litigation or decision.

MINUTES AND RECORDS OF TOWN BOARDS M.G.L. C.39, §23B

Every Town board is required to maintain accurate records of its meetings referred to as "minutes". All "original copies" of minutes and related records must be promptly filed with the Town Clerk within one week of acceptance by the Town board. The chair should make every effort to have the minutes at the subsequent posted meeting for review and acceptance.

Each set of minutes must by typed and include the following:

- ❑ The date and time of the meeting.
- ❑ The location of the meeting.
- ❑ The names of members who are present.
- ❑ The name(s) of members who are absent but had informed the Chair.
- ❑ The name(s) of members who are absent but had not informed the Chair.
- ❑ An "exact record" of motions, votes and official actions taken.
- ❑ The subjects that were discussed.

Minutes may also include or have attached to:

- ❑ Assignments.
- ❑ Names of additional participants of the meeting.
- ❑ Supporting materials, letters, requests and reports.
- ❑ Summaries of discussion (recommended only if they are helpful in understanding decisions or provide factual information that may be useful to the board).

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 the public records 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 Secretaries and the draft of the minutes are public records, and must be made available for inspection and copying if requested.

ADOPTION OF RULES & REGULATIONS

A copy of all rules and regulations adopted by a Town board shall be filed in the Office of the Town Clerk and made available for review by any person who requests such information.

TAPE RECORDING BY OBSERVERS

A meeting of a Town board 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. (MGL.c.39§23B)

Voting

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. 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 seniority, provided both would be able to attend and participate in all subsequent proceedings of the petition(s) presented for consideration by the Board.

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 Conservation Commission, the Board of Health, 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.

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.

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 be advertized. At least fourteen (14) days in advance of the hearing, the text of proposed new or revised rule(s) or regulation(s) is made available; and the date, time and place of the Hearing together with the text of the proposed regulation (or a summary thereof) shall have been published in a newspaper of general circulation in the Town and posted on the bulletin board in Town Clerk's; 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. The final adopted text shall be posted on a bulletin board at the office of the board adopting said regulation and on a bulletin board at the Town Clerk's office **for 14 days.**

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 Chair or Secretary 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 in accordance with requirements of General Laws, By-Law, Charter or Town Meeting with a copy to the Board of Selectmen. If no requirement, the Town board will report annually to the Board of Selectmen. This report should include accomplishments as well as goals for the future year. Reports are to be limited to two pages. 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. Reports shall be submitted prior to March 1st**.**

Annual reports and recommendations. The Town Manager or his designee will select certain Town board reports to be included in an annual report for the previous calendar year. The report will be an overview of the board's activities, together with any recommendation relative to those activities. The report shall be submitted prior to March 1st.

Official Files & Records

RECORDS OF ACTIVITIES 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 by 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 to notify the Town Manager or Administrative Assistant to the Town Manager. Town boards should arrange with the Town Manager or Administrative Assistant to the Town Manager. Town boards should arrange with the Town Manager for on-site storage of their files. Town boards who customarily meet in buildings other than the Town Hall may keep their records with the Town Clerk.

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 C 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 Act.

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 Number 4 of this section.

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.

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 Number 4 of this section.

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 Number 4 of this section.

4. Requirements and Summary of the Public Records Law

3.3. 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, which is currently 20 cents/page(no charge for Town employees or Boards) plus an hourly rate for requests requiring more than a half hour of labor.

3.4. Public Records Defined: The Massachusetts General Laws broadly defines "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 Number 4.5 Exemptions.

3.5. 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.

3.6. 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.

3.7. 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 Municipality 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 posses 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. For boards with independent revolving accounts, which must be annually authorized by Town Meeting, a budget request should be submitted to the Town Manager before funds may be expended.

PROCUREMENT

The ability of a Town board to spend public funds is dependent upon the authority that is approved by Town Meeting. For boards that allocate money from any of the gift funds, a request must be sent to the Board of Selectmen for acceptance of a gift and authorization to expend the same without further appropriation per MGL 44:53A. All funds donated to the town shall be made out to the Town of Ipswich and are tax deductable.

DISBURSEMENTS

As bills are incurred by the Town board, the Chair or Secretary shall:

1. Obtain a Schedule of Payment form from the Accountant's office.
2. Complete the Schedule of Payment and attach all receipts and supporting paperwork.
3. Submit 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

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 make assignment to the appropriate employee(s);
2) Return the request with an explanation.

TOWN COUNSEL

Per Town By-law, the Moderator, Board of Selectmen, School Committee, and the Town Manager shall have independent access to Town Counsel. All other Town boards are required to go through the Town Manager and obtain permission in order to use Town Counsel's services. For financial control, Town Counsel has standing instructions *not* to respond to questions posed by a Town board unless approval of the Town Manager can be evidenced.

Procedure:

1. Frame question(s) in writing and provide all supporting documentation.

2. Submit this said request to the Administrative Assistant to the Town Manager or to the Town Manager. Said request may be via e-mail.

3. The Town Manager will take one of three (3) actions in response 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 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 Ethics 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, www.mass.gov/ethics.

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 *Actual Conflicts-of-Interest: Do Not Participate.* 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 table at that time, and sit in the audience during all times that particular matter is being discussed.

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

2.2.1 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.

2.2.2 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.

2.2.3 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.

2.3 *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.

2.3.2 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*.

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

2.4 *Applicability of Policy.* This policy shall apply to appointments made by the Board of Selectmen and the Town Manager.

2.5 *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.

2.6 *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, 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.

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

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

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.

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 Ipswich, 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.

TOWN BOARD: a Town board, committee, sub-committee, commission or Counsel, including the Board of Selectmen, created by the Massachusetts General Laws, regulations, Town Charter, By-laws, a vote of the Town Meeting, or the Board of Selectmen.

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.

Questions

Questions regarding this Handbook or membership in a Town board should be directed to the Town Manager.

Appendix A

MUNICIPAL RESOURCES
AVAILABLE FROM THE TOWN CLERK'S AND TOWN MANAGER'S OFFICE

- Acts & Resolves of Massachusetts, 1980-present
- Massachusetts Appeals Court Report, 2001-present
- Massachusetts General Laws
- Massachusetts Reports, 1999-2003
- Town of Ipswich Annual Town Reports, 1894-Present
- Town of Ipswich Charter
- Town of Ipswich By-Laws
- Town of Ipswich Personnel Rules and Regulations
- Town of Ipswich Zoning By-Laws
- Town of Ipswich Municipal Archive

Appendix B

MASSACHUSETTS OPEN MEETING LAW

Copy available for viewing in the Town Clerk's Office and online at

www.state.ma.us/legis/laws/mgl/index.html

Appendix C

MASSACHUSETTS PUBLIC RECORD LAW

Copy available for viewing in the Town Clerk's Office and online at

www.state.ma.us/legis/laws/mgl/index.html