

TOWN OF ESSEX



Board, Committee and Commission Member

HANDBOOK

Approved by Board of Selectmen 1/24/2022

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1.0 INTRODUCTION

1.1 Purpose

Thank you for volunteering to serve on one of Essex's boards, committees or commissions (hereinafter referred to as "boards"). Many of our municipal services simply could not be delivered without your efforts. Your dedication and willingness to serve your community is greatly appreciated.

This handbook has been developed to assist members in carrying out their duties on the various boards that serve the Town of Essex by providing information on appointment procedure, membership duties, open meeting law guidelines, record keeping, etc. Checklists and instructions listed in the Appendix can also be printed out and kept for quick reference.

In addition to this handbook, members are required to read and understand additional publications, laws, town bylaws and town policies reference in 1.2 below.

1.2 Additional Publications, Laws and Town Bylaws and Policies

The specific duties and laws related to a particular board may be found in the Massachusetts General Laws (MGL) <https://malegislature.gov/Laws/GeneralLaws> or, in some cases, in our Town By-laws <https://www.essexma.org/>. Additional publications that members are required to read and understand are:

1. [Open Meeting Law Guide and Educational Materials](#)
2. [Summary of Conflict of Interest Law](#)
3. [MA state Ethics Commission Online Training Program](#) (exam required to be taken as new member and then within compliance period/every 2 years).
4. [Town of Essex Comprehensive Public Records and Technology Policy](#)
5. [Other Town Policies](#)

2.0 BOARD FORMATION, APPLICATION AND MEMBERSHIP

2.1 Appointing Authority/Formation

Boards are normally established under MA General law (some examples are the Planning Board and Conservation Commission); by Town Meeting through a local bylaw (example – Conomo Point Commissioners) or by the Board of Selectmen for ad hoc boards which are formed for advice on a specific issue.

Elected Boards: Members of the following boards are elected by ballot in the annual local election:

- Board of Selectmen
- Board of Assessors
- Board of Health
- Essex Housing Authority
- Regional School Committee
- Board of Library Trustees
- Planning Board

Appointed Boards: The Board of Selectmen are the appointing authority for most appointed boards. By law, the Town Moderator also makes or at least recommends some appointments on certain boards. Certain other boards have voting representatives appointed through their home boards (example: Community Preservation Committee members appointed by the Planning Board, Historic District Commission, etc. as representatives from their home board).

The goal of the appointing authorities is to appoint interested residents who are broadly representative of the town. The appointing authorities carefully consider applications and suggestions from many sources, including but not limited to the Citizen Interest Form, verbal expressions of interest and recommendations by boards. Selections are based on current committee composition, qualifications, experience, recommendations, attendance records and previous performance, when available. Non-residents may serve on ad hoc boards or on any other board where residency is not specifically required when the appointing authority deems it in the best interest of the board and the Town. Some boards actually require residents who are also registered voters.

2.2 Authority, Charge or Mission of the Board

For many standing boards, Authority is based on state law and may be further defined within the Essex town bylaws. A Charge or Mission is the official description of the purpose, responsibilities and goals of an appointed board. Not all boards have an official charge; charges are generally established for ad hoc boards. The charge is developed by the Board of Selectmen and includes the purpose of the board, membership composition, reporting requirements, itemized tasks or scope of activities and completion dates. The board should develop a work plan to complete its objectives, referring to the charge regularly in order to remain focused. A charge may be amended by the Board of Selectmen upon written request of the board chair detailing the proposed modification.

2.3 Citizen Application Procedure and Citizen Interest Form

When openings on Town boards are available, the openings are generally published in local newspapers, announced at a scheduled meeting of the Board of Selectmen or posted on the Town website (www.essexma.org). Applicants are encouraged to attend meetings of their board of interest to learn about the board's role in the community, the expectations of the board, time commitment, etc.

Individuals interested in serving on a board ideally should complete a Citizen Interest Form which is available from the Selectmen's office and on the town website.

Citizen Interest Form: This form is to be used to:

1. submit your general interest in serving on boards in the future once a vacancy occurs (you can choose several boards of interest). The Selectmen's office will keep your Interest Form on file for a period of 2 years and will review the submitted forms in June of every year during the annual appointment process.
2. submit your interest and qualifications if you are actively pursuing or being considered for a specific appointment.

Once appointed, the member will receive written notification of appointment and the term of office from the appointing authority or, in some instances, from the Town Clerk.

2.4 Term of Office

Most board members are appointed for a term of up to three years, beginning July 1 and ending June 30th. Elected officials terms begin and end (based on their elected number of years) on the day of the Essex annual local election in May. There are some notable exceptions, such as an ad hoc committee that is appointed for a specific purpose and, once the charge of the board is completed, the board is disbanded. Also, if an expiring term is not filled immediately, the person in that position generally continues to serve until another person is appointed (or the person in that position specifically indicates that are not willing to continue).

When an appointment is made to fill a vacancy created by a board member's resignation, the new appointment is made for the remainder of the unexpired term. This maintains the overlapping terms specified by law and ensures minimal turnover each year.

2.5 Notification of Appointment and Education Requirements

A notification of appointment will be issued to newly appointed members with a copy to the board Chair. The notification specifies that the following documents must be accessed and reviewed prior to taking the Oath of Office. These documents are available on the Town Clerk's page of the Town website:

1. [Open Meeting Law Guide and Education Materials](#)
2. [Summary of Conflict of Interest Law](#)

In addition, the new member is required to complete an online [Conflict of Interest Training program](#). Once you have completed the program online, you will be prompted to print a Certificate of Completion, which must be returned to the Town Clerk's office to be retained on file. It is advised that you also retain a personal copy.

In addition, the Summary of Conflict of Interest Law is required to be distributed to all board members and acknowledged as received in January of every year and the online Conflict of Interest Training Program is required to be retaken during the compliance period which is in the fall of every even year.

The notification of appointment also clearly states that you must be sworn into office prior to taking any official action as a member of the board.

2.6 Oath of Office/Swearing into Office

Within two weeks of appointment, appointees must report to the Town Clerk's office to be sworn to the faithful performance of their duties prior to taking any official action as a member of the board (MGL Ch.41, s.107). It is important to note that any appointee must be sworn in to actually start serving on a board and may wish to take the oath as soon as possible if the next meeting of a board is coming right up.

The Town Clerk will issue an Appointment and Oath of Office Certificate which the member will sign, thus accepting their appointment. The form also is used to acknowledge receipt and understanding of the Open Meeting Law and Conflict of Interest documents listed above (education requirements).

The Town Clerk's Office is open Monday through Thursday from 7:30 am to 3:30 pm. If you cannot come in person during those hours, please contact the Town Clerk to arrange an alternate time. For larger boards, the Town Clerk can also attend a meeting to swear in a group of members.

Members who are reappointed must be re-sworn into office for their new term.

2.7 Attendance

Your in-person attendance at meetings is important to the efficient operation of your board. The concept of the board structure is based on teamwork and participation as a member of a group. In order to convene a meeting, a quorum of the full board must be present. Generally, a quorum consists of greater than 50% of the full membership. This means that if the board is a five-member board, at least three regular members must be present in order for an official meeting to be held (see Quorum 5.1 below for more specific information).

Remote Participation: Except under a state emergency declaration, remote attendance/participation by a board member is not allowed. Essex also has not adopted 940 CMR 29.10 which would permit remote participation in certain circumstances.

2.8 Reappointment

Appointed board members whose terms are due to expire will be given the opportunity to request reappointment to a new term. Reappointment is made at the discretion of the appointing authority based on an evaluation of the member's contributions to the board, the changing needs of the town, the balance on the board and the pool of available candidates. Members will be notified of their reappointment as in 2.4 above,

2.9 Resignation

A board member no longer able to serve should resign promptly so that the vacancy can be filled. A written resignation stating the effective date thereof must be submitted to the appointing authority, with a copy to the board chair and the Town Clerk.

2.10 Removal and Other Termination

If the chair of a board feels that it would be appropriate to consider the termination of a member of a board, the chair should first contact the Town Administrator to discuss the reasoning behind this inclination and to receive further guidance. Potential terminations are fact-specific and certain rights and procedures for due process are afforded to the member whose termination may be considered.

2.11 Dissolution of the Board (Mainly Ad Hoc Boards)

If the charge has been completed, the board may be dissolved. The process would be determined by how the board was formed – statute, bylaw, article or Board of Selectmen action. In some cases, a board is established with a specific time limit in its charge and is automatically dissolved without further action being required. A board that feels that it has fulfilled its charge should notify the Town Administrator's office of their status and request further direction.

3.0 ORGANIZATION OF BOARDS AND DUTIES OF OFFICERS

3.1 Annual Reorganization and Election of Officers

All elected Boards may reorganize at their first meeting following the Annual Town Election and all appointed Boards shall reorganize each year at their first meeting following June 30th.

Reorganization is conducted by electing a Chair, Vice Chair and Clerk/Secretary. Some boards may also elect a Treasurer, if required by statute, but it is generally not required of any board.

3.2 Chair

The chair's primary responsibilities are to work to fulfill the authority, charge or mission of the board, prioritize projects when needed, create meeting agendas, schedule meetings, and facilitate legal Open Meetings.

The chair exercises general supervisory power and presides at all meetings, decides questions of order, calls special meetings, and signs official correspondence. The chair has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon. However, chairs often reserve their votes to either supporting a unanimous commitment of the committee or to breaking a tie. The chair must be mindful of the chair's role in facilitating a full range of opinion from the committee and, in a public hearing, from the public.

Duties overseen by the chair include (some duties may be assigned to the Clerk/Secretary but the Chair is ultimately responsible to ensure completion):

- Conduct meetings in an orderly fashion, normally according to the modified Roberts Rules (See Appendix A)
- Establish the calendar
- Prioritize projects of the board
- Consult with members and staff to prepare agendas
- Ensure all needed materials are available to the board
- Ensure the reservation of a meeting room through the Town Administrator's office
- Ensure legal posting of the meeting and agenda at least 48 hours in advance of the meeting
- Ensure that any technology needs for the meeting are supplied
- Ensure meeting minutes are submitted and approved in a timely manner.
- Represent the board before appointing authority, other town bodies and the public, as required
- Oversee the board's budget and expenses
- Prepare and submit a year end summary of the board's major activities for inclusion in the Annual Town Report.

3.3 Vice Chair

The Vice-Chair fulfills the duties of the Chair whenever the latter is absent from meetings and performs other necessary duties, as may be assigned.

3.4 Clerk/Secretary

Each board must have a Clerk/Secretary, generally a board member is elected as Clerk. Boards may decide to have a rotating Clerk in which board members trade off clerk responsibilities throughout the year. Certain other boards have a dedicated Clerk who is not a board member.

The duties of the Clerk may include all of the following unless the board has formally delegated some of these responsibilities to another member or to the Chair.

- Reserve meeting room space with the Town Administrator's office ahead of a meeting
- Distribute Agendas, draft minutes and other correspondence to members of the board
- Post the meeting and agendas in accordance with the Massachusetts Open Meeting Law
- Ensure that minutes of every meeting are taken, prepared, approved, and uploaded on the town website in a timely manner, in accordance with the Open Meeting Law.
- Ensure that copies of documents and other exhibits used during meetings are provided and referenced in a list to be included as addenda to the approved meeting minutes, in accordance with the Open Meeting Law.
- Maintain an up-to-date roster and contact information for all board members. The roster should be updated by the clerk after the annual reorganization in July and submitted to the Town Administrators office.

It is vital that the Chair and the Clerk of every board clearly define who is responsible for each task.

3.5 Annual Town Report

All appointed and elected boards must file a year-end report to the Town Administrator's office summarizing activities of the board, major projects or accomplishments, goals, permits or licenses issued (if applicable) and finances (if relevant).

4.0 OPEN MEETING LAW

4.1 General

All board members are required to take the time to familiarize themselves with the provisions of the Open Meeting Law (MGL c 30A, § 18-25) and its accompanying regulations (940 CMR 29.00). The Open Meeting Law sets forth specific requirements for posting, scheduling, conducting and recording meetings which are also detailed in this handbook. The purpose of the law is to promote the democratic process in assuring that deliberations and decisions made by our public officials are conducted openly, and not hidden from the public.

Failure to follow the Open Meeting Law may result in the invalidation of actions taken at a meeting and could result in the imposition of a penalty upon the public body of not more than \$1,000 for each intentional violation.

More information of the Open Meeting Law is available on the Attorney General's website:
<https://www.mass.gov/the-open-meeting-law>.

4.2 Meetings and Deliberations under the Open Meeting Law

What Constitutes a Meeting?

A meeting of a board occurs any time a quorum of board members meets to deliberate regarding any public business or policy over which the board has some jurisdiction or advisory authority. Meetings must be held in a place which is open and accessible to the public, except in ten (10) specific situations where Executive Session is permitted (see M.G.L. c.30A, §21 and also Section 7 of this Handbook). A regular meeting time and location is useful but not required. While the frequency of meetings will depend on the nature and work load of the board, most boards meet at least once per month.

There are five stated exceptions to the definition of a “meeting” under the Open Meeting Law:

1. Members of a public body may conduct an on-site inspection of a project or program;
2. Members of a public body may attend a conference, training program or event;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law (applicable only to state public bodies); and,
5. Town Meetings (See M. G.L. c. 39, §§ 9-10, establishing procedures for Town Meeting). Be reminded that deliberation by a quorum outside of a posted meeting, even if that gathering might not constitute a “meeting” for purposes of the Open Meeting Law, would still likely constitute a violation of the Open Meeting Law and would be prohibited.

What constitutes a Deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.”

Distribution of a meeting agenda, scheduling or the forwarding of procedural information, reports or documents that may be discussed at a meeting will generally not constitute deliberation.

Importantly, however, no member of the public body may express their opinions, ideas, feelings or beliefs concerning substantive matters within the body’s jurisdiction. In fact, email exchanges between or among a quorum of the members of a public body discussing matters within that body’s jurisdiction may constitute deliberation in violation of the Open Meeting Law, even if the sender of the email does not ask for a response from the recipients.

A quorum is usually a simple majority of the full members of a public body. Thus, a communication among fewer than a quorum of the members of a public body will not automatically constitute a deliberation in violation of the Open Meeting Law. However, serial communications among the members of the public body that together constitute communication among a quorum of members would constitute a violation of the Open Meeting Law. Further, courts have held that the Open Meeting Law applies when members of a public body communicate in a manner that seeks to evade the application of the law. Thus, in some circumstances, communications between two members of a public body, even if two members would not constitute a quorum, when taken together with other communications, may constitute deliberation.

5.0 MEETINGS

5.1 Quorum

Under Open Meeting Law, a “quorum” is defined as a simple majority of the members of a public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Legally and broadly, this definition is based on the total number of seats on a board (the “full” board). The quorum required to hold a meeting does not change if there are current vacant seats on a board.

Example: A board has 7 established seats (“full” board). A quorum to hold a meeting would be 4 but there are currently 2 vacant seats on the board; nevertheless, the quorum requirement does not change to 3. The board still has to have a quorum of the full board (4) to hold a meeting.

While most boards must meet the above quorum requirements, please refer to the authorizing statute for each particular board as quorum requirements for a very few boards are different than what is defined above.

Example: Finance Committee - Per Town of Essex bylaw 2-4.4, a quorum of the Finance Committee is defined as a majority of the number of members that are presently on the board and its calculation shall not include vacant seats, but in no event shall the board conduct business when less than 3 seats are filled.

5.2 Meeting Schedule

Meeting frequency depends on a board’s workload. Most meetings are held weekly, bi-monthly or monthly. Determining a regular meeting day, time and location should be one of the board’s first priorities. Except in cases of emergency, boards do not meet on major religious or official holidays or if Town Hall is closed due to weather. Weekend meetings are discouraged unless they are required by specific event or circumstance. When possible, other boards meeting schedules should be taken into consideration when deciding when to schedule meetings.

5.3 Meeting Space/Reserving a Room

Board meetings must be held in a building that is open to the public and accessible for persons with disabilities. Several boards meet where their departments are located, e.g., Council on Aging (Senior Center) and the Library Board of Trustees (the Library). Meeting space for all board meetings **MUST** be reserved at the time a meeting is first being scheduled and prior to posting an official agenda.

Contact the Town Administrator’s Assistant to reserve meeting space and get confirmation that your intended room is available prior to posting an agenda for a meeting.

If you have a regular meeting schedule, rooms should be reserved according to the regular schedule. If a special meeting is needed, or if the expected number of attendees requires a larger meeting space, the Town Administrator’s Assistant can likely update the room reservation if given enough notice.

Access to Building: Many meetings take place after normal business hours; therefore Boards who hold meetings in the evening must be able to access the building where the meeting is, be able to unlock the door for public access and be able to relock the doors once finished. Contact the

appropriate manager of the building (Town Administrator for Town Hall and Library, Fire Chief for Fire Station, etc.) to arrange assignment of electronic fobs/cards and keys.

5.4 Preparing Agendas and Other Materials

The Chair of a board (with possible help from the Clerk) is responsible for preparing a formal agenda, compiling all necessary supporting documents listed on the agenda and distributing the agenda and supporting documents to all board members at least 48 hours prior to the meeting so the board may have sufficient time to review them.

Meeting agendas are required to comply with Open Meeting guidelines and must include:

- A call to Order
- Roll call or attendance
- Approval of draft minutes from a prior meeting
- Listing of all topics reasonably anticipated to be discussed at the meeting in specific enough detail so that the public will understand what will be discussed
- Correspondence (when necessary)
- Reports
- Other business
- Items that could not be reasonably anticipated by the Open Meeting Law posting deadline*
- Adjournment
- List of supporting documents to be used in the meeting

Items not reasonably anticipated and updating an agenda after the 48-hour posting deadline*

It is standard practice to include on an agenda “Items that could not be reasonably anticipated by the Open Meeting Law posting deadline” as, occasionally, urgent or unanticipated items that must be deliberated do happen BUT it is necessary to update the agenda with the added agenda item and the posting of that new agenda as soon as possible within the 48-hour window. Although a board MAY consider an item that was not listed on the posted agenda if it was not anticipated and is of an urgent nature, the Attorney General strongly encourages boards to postpone discussion and action on items that are controversial or may be of particular interest to the public if the item is not listed on the posted agenda. If a matter must be discussed in an emergency, it is good practice to also list that matter on the next board agenda, noting that it is a follow up on discussion from the previous meeting.

Public Comment as an Agenda Item: With the exception of Public Hearings, allowing public comment and input at meetings is up to the discretion of the Chair. Public comment or input is not required by law, except at a Public Hearing. Some boards do set aside time for public comment or questions at a certain point in the meeting (which should then be added to the agenda) and some boards may choose to permit public input at any time or not at all. No party has a right to speak at a public meeting that is not also a public hearing unless the Chair so allows.

All board members may receive meeting materials and other communication electronically. The Chair, Clerk, or staff may also generate paper meeting packages for pickup by board members. Board members should remember that no electronic communications (e-mail, social media, etc.) concerning board work should take place among members other than administrative matters of the board

(confirming meeting dates and times, receiving agendas and documents ahead of a meeting). All communications concerning board work should occur publicly at the meetings.

5.5 Official Meeting Posting Requirements

The Open Meeting Law Regulation (940 CMR 29.03) provide, in part, that the “public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meetings, excluding Saturdays, Sundays and legal holidays. The date and time that the notice is posted shall be conspicuously recorded thereon or therewith.”

Essex has adopted a website as the official meeting posting location for all public meetings.

The website we use for official meeting postings, www.MyrTownGovernment, is accessed via the link on the Essex website homepage listed as:

Official Public Meeting Postings: (<http://www.myrTownGovernment.org/01929/>).

Once a board has a meeting scheduled and has put together an agenda, the meeting posting must be added to the www.MyrTownGovernment website no later than 48 hours prior to the meeting time as stated on the agenda. It is the responsibility of the Chair and/or Clerk to ensure a meeting has been legally posted.

The 48 hour rule: Saturdays, Sundays and legal holidays cannot be counted as part of the 48 hours when calculating your meeting posting deadline but Fridays can (even though Town Hall is closed to the public on Fridays). If your meeting is scheduled for:

Monday at 7:00 pm, your posting deadline is the prior Thursday by 7:00 pm.

Tuesday at 10:00 am, your posting deadline is the prior Friday by 10:00 am.

Wednesday at 6:00 pm, your posting deadline is the prior Monday by 6:00 pm.

Instructions for Posting Meetings, Cancelling Meetings and uploading Minutes on

www.MyrTownGovernment: Please refer to Appendix B at the end of this document for detailed instructions on how to use the www.MyrTownGovernment database.

Emergency Meetings: Emergency meetings are sudden, unexpected occasions which require immediate action by the body. The body must make a written determination of the emergency and the 48-hour posting requirement is then waived. It is vital that the meeting is still officially posted as soon as possible, is identified as an emergency meeting on the agenda, and the Town Clerk is notified of the emergency. A board Chair contemplating an emergency meeting should consult with the Town Administrator first, since circumstances allowing for an emergency meeting are limited.

Website Inaccessible for more than 6 business hours: Because Essex has adopted a website as our official meeting posting location, if either website (www.essexma.org or www.myrTownGovernment.org) is inaccessible for more than 6 business hours after a website’s inaccessibility has been discovered, the meeting **MUST** be cancelled as the posting requirements will then not have been legally met and would constitute an open meeting law violation if held. When and

if this happens, the Town Administrator will notify the Town Clerk who will then notify any boards that must cancel their meetings.

Town Clerk Meeting Binder: The Town Clerk is notified via email of all meetings posted and, by law, keeps a binder of current meetings and agendas at the Town Clerk's office for the public to access.

Meetings agendas and minutes on the Essex website board webpages in addition to www.MyTownGovernment: Although some boards also add their agendas and minutes to their respective board pages on the Essex website, it is not recommended to do so as other boards don't add them and it thus creates an inconsistent structure and the public is confused where to look for meeting information. And it creates double work! A better idea is to add a notice on your board webpage as to where Agendas and Minutes can be found and include a link for www.MyTownGovernment.

5.6 Conducting a Public Meeting

All meetings of a governmental body are open to the public and any person is entitled to attend any meetings except in ten specific situations where Executive Session is permitted (See MGL c. 30A, section 21 and Section 7 here). A board Chair contemplating an Executive Session should first consult the Town Administrator since each circumstance possibly warranting Executive Session is fact-specific and a number of important protocols must be followed.

Boards may follow the modified Robert's Rule of Parliamentary Procedure (see Appendix A). Although many board discussions may seem too casual to be called debate, it is advisable for the board to observe generally accepted meeting procedures.

Chair Presides at Meetings: The Chair has supervisory authority over the meeting. Attentive guidance by the Chair and adherence to adopted procedures increase efficiency and maintains objectivity.

Recording a Meeting: Per Open Meeting law, any person may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the Chair so as to not interfere with meeting. The Chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record the meeting, that person should attempt to notify the Chair prior to beginning recording via audio or video devices provided there is no active interference with the conduct of the meeting. If the meeting is being recorded by the board, the Chair should state so at the beginning of the meeting and it should be reflected in the minutes. It is important to realize that notification concerning recording is for the legal benefit of those attending the meeting, not the public officials present. Public officials may actually be recorded without notice from the recording party and the presence of members of the public triggers the notification rule.

Votes: Votes are taken by creating a "Motion" which clearly explains what action is being taken by the vote of the board. The Chair may "entertain a motion to ..." which then must be "moved" by a different board member. A board member may also make a motion, at the discretion of the Chair.

Any motion must be seconded by a different board member. Once moved and seconded, a vote is then taken. The minutes of the meeting must reflect the exact motion as voted and the votes taken. If the vote is unanimous, the minutes can reflect so; if the vote is not unanimous, the minutes must reflect a roll call of which member voted which way. No votes taken in open session (not Executive Session) shall be by secret vote.

Board Members: The Chair may limit member discussion to concise, non-repetitive statements. In some cases, time limits may be advisable. All members who wish to speak should be allowed to do so before anyone is invited to speak a second time. Although desirable, it is not necessary for the board to continue discussion until complete consensus is achieved. The Chair may choose to call for a vote or to postpone until more information is available.

Careful preparation before meetings, e.g., organizing agenda items, distributing information in advance, posting all information online, and anticipating possible questions, can expedite discussion, facilitate action and avoid long and exhausting meetings.

Code of Conduct: Good public process may include vigorous dissent with civil discussion and mutual respect among board members of diverse points of view. Boards discuss the merits of issues; personal comments and attacks on other board members are **always** out of order.

Public Comment: When public comment is allowed or required in a Public Hearing, the Chair oversees the sequence and timing of public comment and can use his/her discretion to end someone's input when discussion gets too repetitive, too long or becomes inappropriate.

Often residents attending public meetings, especially when controversial topics are discussed, are doing so for the first time and may not know the proper protocol for public meetings.

Here are some tips for keeping the meeting productive and orderly:

- Establish ground rules at the beginning of the meeting such as you must wait to be called upon to speak.
- Make sure every speaker states his or her name and address before speaking. If there is a non-resident speaker, the committee should vote to allow (or not allow) that person to speak.
- Emphasize the need for constructive comments at the start of the meeting.
- The Chair may need to set time limitations and warn against repetition. A normal time limit is 2 or 3 minutes.
- Acknowledge a speaker's contribution but if they're going on too long, try and interrupt them tactfully.
- Do **not** be drawn into a speaker's argument - respectfully acknowledge what they have said and move on.
- Make sure everyone has had an opportunity to speak once before allowing a speaker to address the committee a second time.
- Some attendees may be reluctant to speak. If appropriate, the chair may provide the opportunity to submit written comments to the board and provide an email address for attendees to use.

If a member of the public refuses to be silent or is otherwise disruptive after a warning from the Chair, the Chair has the authority to order the visitor to leave or be removed from the meeting by the police, to call a recess, or to continue the meeting to another certain date and time. Use caution when considering asking someone to leave or to bring in the police. Always wait to see if the person causing the disruption is able to regain their composure first. Keep in mind though that boards represent and serve the Town and visitors and board members should always be treated with courtesy and consideration.

6.0 PUBLIC HEARINGS

6.1 Purpose

A public hearing is held for the purpose of obtaining information from which the board can reach a determination, usually regarding the issuance of a license or permit and the public must be allowed to participate in the public testimony portion of the meeting.

The Board of Selectmen, Planning Board, Zoning Board of Appeals, Conservation Commission, Licensing Board and Board of Health are sometimes required by state law or local regulations to hold public hearings. Such hearings will typically have requirements and timeframes for advertising and posting public notice of the hearing, notifying abutters and rendering and filing a decision. These requirements vary depending on the type of hearing.

6.2 Conducting the Public Hearing

It is the responsibility of the Chair to ensure that the requirements of the public hearing process are properly followed. Please refer to 5.6, Conducting a Public Meeting, for relevant information which also applies to a public hearing. The Chair must make sure electronic displays are in working order; all materials being presented in the public hearing should be clearly visible to the public present.

6.2.1 Open the Public Hearing

- The Chair opens the public hearing at the time prescribed by defining the purpose, objectives, legal requirements and any general law or regulatory constraints. Generally reading the public notice into the record will satisfy this section.
- Chair states guidelines and procedures including time limits and decorum.
- Chair states background information, where necessary.

6.2.2 Presentation

The applicant/proponent is invited to give their presentation. This presentation should not be interrupted by the members or the public. The chair may subject the presentation to a time limit.

6.2.3 Input from the Board and other Municipal Stakeholders

- Information presented from Town Officials and other boards.
- Board members question applicant/proponent.

6.2.4 Public Comment

The chair invites public comment. See Public Comment under 4.7, Conducting a public meeting. Abutters, if applicable, are generally given priority to speak.

6.2.5 Closing the Hearing

Only close the hearing after all participants have been given a reasonable chance to speak. If the hearing needs to be continued, it should be continued to a date and time certain - generally the next normal meeting time for the committee. The continued date and time must be clearly announced to all those present. A hearing should be continued if its objectives have not been accomplished. For large, complex problems or issues, a series of hearings is often appropriate, with specific components or topics heard on specific dates. The Chair must hold a vote to close the hearing and the minutes must reflect the vote and the time the hearing was opened and closed.

6.3 Making the Public Hearing Decision

The board begins deliberation in an Open Meeting session. Motions may be made and votes may be taken, with the board ultimately voting a final decision on the reason for the hearing. A decision usually entails a vote of approval, disapproval or approval with conditions. Conditions and a rationale for the decision should be clearly spelled out and be based on information given at the hearing, state law, town reports and studies, and other town planning documents. Decisions may not be arbitrary and capricious or based on legally untenable grounds. The decision may have a set deadline.

This is important to note that in the hearing process - a decision must be based on the testimony and evidence submitted at the hearing or, if written, entered into the record at the hearing. The decision must be based on facts and cannot be arbitrary. The rules of evidence that apply in court do not apply in public hearings of local boards. As such, hearsay and other evidence that would not be permitted in a court may be heard by a board as each member deems appropriate but irrelevant, immaterial and information based on emotions are not appropriate evidence upon which to base a decision. It is good practice for the chair to contact the Town Administrator to get access to Town Counsel when developing a draft decision that may be discussed at an upcoming meeting.

Make sure to document discussions and decisions in the minutes with enough detail to document the substantive reasons for the decision.

6.4 Conveying the Decision

Land Use boards have special requirements for writing and issuing decisions. Please refer to your specific board for more details. In general, inform the project proponents of the board's decision through official written correspondence. Establish a set of all written correspondence, meeting materials, and minutes as the official record of the hearing. Depending on the board, applications, minutes and decisions must also be submitted to the Town Clerk.

7.0 EXECUTIVE SESSION

7.1 Purpose

The Open Meeting Law requires that all meetings of a governmental body be open to the public, except for a few limited purposes for which a board may enter into executive session. A board Chair contemplating an Executive Session should first consult the Town Administrator since each circumstance possibly warranting Executive Session is fact-specific and a number of important protocols must be followed. General information concerning executive sessions is listed below.

Executive session may be held only for the following purposes (see [Open Meeting Law Compliance Distribution Package](#) for further details on each purpose):

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. (See MGL Ch. 30A sec. 21 for individual rights.)
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
3. To discuss strategy with respect to collective bargaining or litigation if any open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto.
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints.
6. To consider the purchase, exchange, lease or value of real property if the chair declares that on open meeting may have a detrimental effect on the negotiating position of the public body.
7. To comply with, or act under the authority of, any general or special law or general grant-in-aid requirements.
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity (see MGL Ch.30A sec. 21 for further provisions).
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 government 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 selling or distributing electric power and energy.

7.2 Conducting an Executive Session

Executive session is closed to the public, but the board must first convene in a duly posted open session.

- A majority of the members must vote by roll-call in favor of a motion to enter into executive session. The motion must state the reason for the executive session and must state whether or not the board will return to open session. All votes taken in executive session must be recorded roll-call votes. The minutes must reflect this information.
- Topics discussed in Executive Session are confidential.

7.3 Executive Session Minutes

Minutes must be taken during Executive Session; however they will not be released until the matter discussed has been resolved. Once the matter has concluded and the minutes have been approved, minutes and other records from the session must be disclosed unless they fall within an exemption to the Public Records Law (M.G.L. C.4 S.7). The Board shall regularly review Executive Session minutes for public release.

8.0 RECORDKEEPING AND MINUTES

8.1 Taking Minutes

The Open Meeting Law requires that public bodies create and maintain accurate minutes of all meetings, including executive session. Each board must have a Clerk prepared to take and submit accurate minutes of every meeting.

Minutes **MUST** include:

- the date, time and place
- the members present or absent
- a summary of the discussions on each subject listed on the posted agenda and any others not anticipated.
- the decisions made and the actions taken at each meeting, including the record of all votes. If a vote is unanimous, the minutes can reflect so. If the vote is not unanimous, then the minutes must reflect the vote and who voted for and against.
- a list of 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 maintained as part of the official record of the session. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes **SHOULD** include:

- names of additional participants (not press or observers)
- name of Clerk taking and submitting the minutes.
- time convened, and time adjourned.

Minutes **MAY** include:

- a schedule of future meeting.

8.2 Approval and Submission of Minutes

The Open Law requires that public bodies create and approve minutes in a timely manner. A "timely" manner is considered to be within the next 3 meetings of the board or 30 days from the date of the meeting, whichever is later. The Attorney General encourages minutes to be approved at a board's next meeting whenever possible.

The Board must vote to accept all minutes. Once minutes are approved, they should be updated to include the date of approval by the Board.

Once minutes are approved, they must be uploaded onto the official meeting website (www.mytowngovernment.com). Please refer to Appendix B for instructions on how to upload minutes to the website. Alternatively, minutes may be submitted in paper or digital form to the Town Clerk's office who will keep them on file and upload them to the website.

It should be noted that the minutes of an open meeting, in whatever form (notes, draft, tape recording, etc.) are considered public records and must be made available to the public upon request. BUT recordings can be destroyed once written minutes are approved by a board unless specifically entered into the minutes on the record.

Audio or video recordings may not be used as permanent records of a meeting.

The approval of the prior meeting's minutes should always appear as an agenda item to encourage timely completion and filing of the minutes.

Minutes are a record of actions taken by a board and are required to be kept permanently. Minutes should not be housed in a Clerk's home, rather they MUST be either uploaded to the www.mytowngovernment.com website or submitted to the Town Clerk's office for permanent retention.

8.3 Public Records Law

The Massachusetts Public Records Law (MGL c. 66, Section 10) 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 boards are mostly all public information and boards are obligated to properly secure and maintain them. Minutes must be regularly uploaded to the official website (www.mytowngovernment.com). Supporting documents can also be uploaded for each meeting, if necessary or they may be submitted to the Town Clerk's office to be kept as permanent record of the meeting.

Since use of personal e-mail addresses could subject a member's personal e-mails to a records request, it is recommended that board members create a new e-mail address for themselves to use for Town and board business.

The Town of Essex also has a [Public Records Policy](#). It is the responsibility of all Board members to read, understand, and follow this policy.

A guide to the Massachusetts Public Record law: <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

9.0 CONDUCT OF PUBLIC OFFICIALS

9.1 Conflict of Interest

The Conflict of Interest Law, [M.G.L. Chapter 268A](#), seeks to prevent conflicts between private interests and public duties, foster integrity in public service and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service. Below is a brief summary of some important aspects of the law. In addition to the state law, further information and guidance is available through:

- [State Ethics Commission Website](#)
- [Summary of Conflict of Interest](#)

Under the law, elected and appointed board members, whether paid or volunteer, are considered “municipal employees,” and are held to that standard.

9.1.1 Conflict of Interest Law Provisions

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

- Immediate family.
- Partner or business associates.
- A business organization in which the committee member serves as an officer, director, trustee, partner or employee (including a non-profit organization.)
- Any person or organization with whom the committee member is negotiating or has any arrangement concerning prospective employment.

9.1.2 Conflict of Interest Disclosure

If a board member discloses a conflict of interest or an appearance of conflict in a matter before the board, he/she will not be counted in the quorum nor be allowed to participate in any discussions or votes on that issue. It is advisable that the member excuse him/herself from the meeting during discussions and votes to ensure that no undue influence is felt by fellow board members.

If a board member is concerned about the possible conflict of interest, he/she should contact the State Ethics Commission. The Ethics Commission exists to provide protection for employees/volunteers. All communication with the Ethics Commission is kept strictly confidential on their part. However, the one who sought information from the Ethics Commission is free to disclose that fact and the information given.

In some instances, a formal disclosure may be needed or a special exemption could be granted by the appointing authority so the board member may continue service.

After discussion with the Ethics Commission staff, if board members have any questions about their activities, they should file a written request with the Town Administrator who may consult with Town Counsel on the issue.

9.2 Standards of Conduct and Corrective Action

The following policy sets forth expectations and guidelines to serve as a standard for achieving high levels of public confidence by maintaining professionalism and mutual respect among board members. This policy applies to all members of a board in the Town of Essex.

Standard of Conduct

Members of all boards, committees and commissions are expected to:

- Be well informed concerning the state and local duties of the board on which the members serve.
- Always keep in mind that they represent the Town of Essex.
- Accept their position as a means of unselfish public service, not to benefit personally, professionally or financially from their position.
- Treat all members of the board, all applicants who come before the board, all staff members and the public with respect, despite differences of opinions.
- Treat all staff as professionals in a manner that respects the abilities, experience and dignity of each individual.
- Share information obtained on pending issues with other board members.
- Conduct themselves in a manner that maintains public confidence in our local government.
- Conduct official business in such a manner as to give the clear impression that they cannot be improperly influenced in the performance on their official duties.
- Abide by the ethics guidelines established under MGL Chapter 268A, making every effort to avoid any appearance of conflict, and properly disclosing any apparent conflict.
- Unless specifically exempt under MGL Chapter 30A, section 18-25 (Open Meeting Law), conduct the business of the public in a manner that promotes open and transparent government.
- Honor confidential matters not legally subject to disclosure that come before the Board in executive session.

Corrective Action

Anyone who feels that a board member is acting inconsistently with these standards of conduct may take one or more of the following actions, as deemed necessary, in the order listed below:

- Speak privately with board member about his/her behavior in an effort to correct said behavior.
- Ask the Chairman to speak with the individual in an effort to correct said behavior.
- Bring the matter to the attention of the appointing authority (whose Chair should consult with the Town Administrator after receiving the complaint). The appointing authority should NOT deliberate over any such complaint at the meeting at which the complaint is received. The Town Administrator will assist the Chair with an appropriate future plan of action.
- File a formal complaint in writing to the Town Administrator.

9.3 Speaking for a Board

An individual board member has a right to speak publicly as a private citizen but should not purport to represent the board or exercise the authority of the board except when specifically authorized by that body to do so. If members identify themselves as members when speaking as private citizens, it may be perceived that they speak for the board. Such a perception should be avoided. An individual board member should not speak publicly as a private citizen before the board upon which they sit.

10.0 BUDGETS

Most boards do not have a budget or funds specifically set aside to operate. Exceptions are Land Use boards and any others funded by an appropriation at Town Meeting. If an expense is contemplated by the Board, please contact the Town Administrator's office prior to making a purchase and they can advise you on how to proceed.

11.0 MAILBOXES

All boards have a dedicated secure mailbox located in the mailbox cabinet on the second floor landing at Town Hall. Incoming mail and interoffice mail is put in your mailbox by all departments. It is the responsibility of the Chair to regularly check the mailbox. Please contact the Town Clerk or the Town Administrator's office for the combination to open the cabinet.

12.0 USE OF TOWN HALL RESOURCES

The Town Hall copy, fax and postage machines are available to board members to use for board business only. Reimbursement for supplies can be requested ahead of time through the Town Administrator's office.

APPENDIX A

RECOMMENDED MEETING PROCEDURE BASED ON ROBERT'S RULES OF ORDER

Robert's Rules of Order is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion. It is based on Parliamentary Procedure which is a time-tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. The suggestions below have been adapted to meet Open Meeting Law and other guidelines specific to municipal boards.

ORDER OF BUSINESS

Boards should use parliamentary procedure when setting meeting agendas and then follow a fixed order of business based on the agenda. Below is a typical example:

- Call to order
- Roll call of members present
- Reading or approval of minutes of last meeting
- Board or subcommittee reports
- Continuing or unfinished business (as specified on the agenda)
- New business (as specified on the agenda)
- Announcements
- Adjournment

MOTIONS

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the full Board present take action or a stand on an issue. Individual members can:

- Call to order and make a motion
- Second motions
- Debate motions
- Vote on motions

How to Present a Motion

1. Obtain the floor
 - Wait until the last speaker has finished.
 - Raise your hand and wait to be recognized by the Chair
2. Make Your Motion
 - Speak in a clear and concise manner.
 - Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
3. Wait for Someone to Second Your Motion
4. Another member will second your motion or the Chair will call for a second. If there is no second to your motion, it is lost.
5. The Chair Calls for Discussion
 - The chair will say, "the motion has been moved and seconded", thus placing your motion before the board for consideration and action.

- Once your motion is presented to the membership by the Chair it becomes "assembly property", and cannot be changed by you without the consent of the Board members.
6. Expanding on Your Motion
- The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
 - The mover is always allowed to speak first.
 - All comments and debate must be directed to the Chair.
 - The mover may speak again only after other speakers are finished, unless called upon by the Chair.
 - Other Board members may suggest small changes to the original motion which must go through the same process as listed above.
7. Putting the Question to the Board for a Vote
- The Chair asks, "Are you ready to vote on the question?"
 - If there is no more discussion, a vote is taken.

Voting on a Motion

The method of vote on any motion depends on whether the meeting is being conducted in-person or virtually, in an open public meeting or in executive session and at the discretion of the Chair as to whether they feel the vote will be split. There are 2 methods:

- By Voice -- The chair asks those in favor to say, "aye", those opposed to say "no". Any member may move for an exact count.
- By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
- Secret ballots are NOT allowed under any circumstances.

There are two other motions that are commonly used that relate to voting.

- Motion to Table -- This motion is often used in the attempt to "kill" a motion or to "take it off the table" for possible reconsideration by the board.
- Motion to Postpone Indefinitely -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken or can be used by a Board to permanently close out an item on their agenda.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

- Allow motions that are in order
- Have members obtain the floor properly
- Speak clearly and concisely
- Obey the rules of debate
- Most importantly, BE COURTEOUS

APPENDIX B

INSTRUCTIONS FOR USING WWW.MYTOWNGOVERNMENT.ORG WEBSITE FOR POSTING MEETINGS, AGENDAS AND MINUTES

OVERVIEW

The Town Clerk administers the site and is always available to help if needed but it is expected that each Board is responsible for posting on this site. The Town Administrator's Assistant is also able to help if necessary. New Users and changes to Users are handled through the Town Clerk's office.

NEW USER

If your Board needs to create or update a User, please contact the Town Clerk (with your name and email address) and you will be added as a user for your Board. Once added, you will receive a welcome email from MyTownGovernment where you will be able to update your password. Each Board can have up to 2 users with posting capabilities.

SCHEDULE A MEETING AND POST AN AGENDA

Remember that your first task is always to reserve a room through the Town Administrator's office for your meeting before you post the Agenda. Scheduling a meeting on this website does NOT reserve your room. The Agenda must be posted/submitted 48 hours prior to a meeting (see the handbook for more details):

Select your Board from the drop down list on the left side of the page. Your Board page will appear.

Click on **Schedule a Meeting**:

- Input all of the information required (Date, Time)
- *Location* should be selected from one of the locations listed in the drop down menu. If your meeting is taking place in a location not listed in the menu, you will select Other (at the bottom of the menu) and can input the information directly but ALL accepted/preferred locations for board meetings are listed in the drop down menu.
- *Location Details* is not necessary to complete if all of the details are already listed from the Location selected.
- *Meeting Type* should always be Regular Open Meeting unless you have an Executive Session to post. Please contact the Town Clerk for help posting an Executive Session as you will have to post 2 agendas (regular as well as Executive for the same meeting date).
- *Agenda* The easiest way to input an Agenda is to copy and paste (highlight only the agenda from your document, then hit Control C on your keyboard, navigate to Agenda box in MyTownGovernment and hit Control V. Your agenda will be copied into the box. Make any adjustments necessary so that the Agenda is easily readable. You SHOULD NOT include date, time, location, in this box - just the Agenda.
- *Submit* Click on Submit. Your meeting is considered posted per open meeting law requirements (if within the 48 hour window) and the website will document when the posting was submitted. The Town Clerk and all Users will get an email with the meeting posting details.

UPDATE A MEETING ALREADY SCHEDULED

If you need to update an agenda, location, time, etc., find your meeting on the Board homepage list and Click on **Update**:

- Make your changes as needed and click on Submit.
- The database keeps track of changes made and the times each change was submitted.
- Remember that you should be very careful what changes, if any, you make within the 48 hour meeting posting requirement but if you do have an URGENT item to add, it is necessary to add it to the agenda within the 48 hour window.

CANCEL A MEETING ALREADY SCHEDULED

If you need to cancel a posted or regularly scheduled meeting, it is vital that you update that information on the website. Find your meeting on the Board homepage list and Click on **Update**:

- At the top of the page is a Cancelled Box. Click the box.
- Click on Submit.

ADD MINUTES AND OTHER DOCUMENTS

It is the responsibility of the Board to upload approved minutes on a regular basis to the website. Alternatively, the Board can submit approved minutes to the Town Clerk, who will keep the paper copies and upload them for each meeting to the website. Find your meeting on the Board homepage list and Click on **Details and Agenda**:

- *Manage Documents* Scroll down to the bottom of the page where you will find the section for managing documents.
- Upload your minutes from your browser and click submit.
- Your minutes will appear as a clickable item next to the meeting information on your Board homepage.

SCHEDULE REGULAR MEETINGS

Users can set a regular meeting schedule from their Board homepage. Make sure that you set up a recurring meeting room reservation with the Town Administrator's office. Click on **Set Regular Meeting Schedule** and input your information. Your scheduled meetings will then automatically be posted prior to the 48 hour window BUT without an agenda so you still need to add the agenda at least 48 hours prior to the meeting to comply with Open Meeting Law. You will also get an emailed reminder that you need to add an agenda to a meeting. If you cancel the meeting, you will need to update the status to Cancelled.

UPDATE BOARD INFORMATION

Here is where your membership and other general information can be updated. From the Board homepage. Click on **Update Board Info**. Add Board members (you can add their term dates or not), add a link to your board page on the Town of Essex website and add any other pertinent information you want to about your board. Click on Submit.

CONTACT: Town Clerk townclerk@essexma.org 978.768.7111

Town Administrator's Assistant pwitham@essexma.org 978.768.653