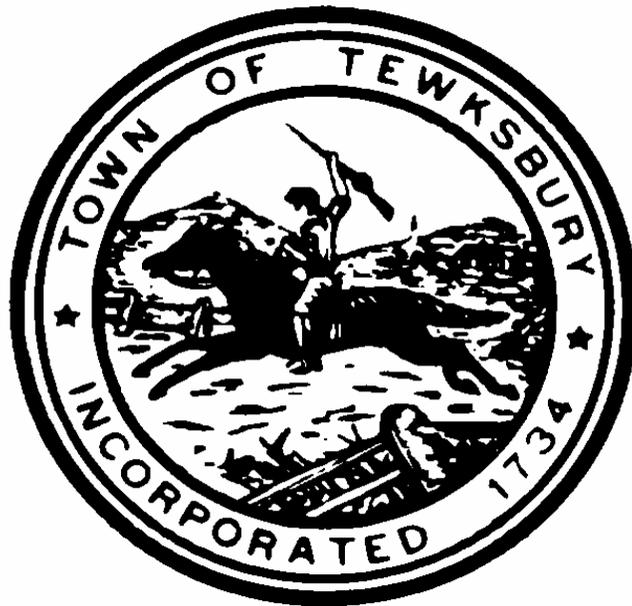


Town of Tewksbury



Reference Guide

Boards, Committees & Commissions

Denise Graffeo
Town Clerk

Revised
May 2025

TABLE OF CONTENTS

	Page
1. Introduction.....	4
Purpose	4
2. Formation and Membership	5
Eligibility.....	5
Application Procedure.....	5
Appointments.....	5
Board Formation.....	5
Charge and Plan of Action.....	5
Reappointment.....	6
Resignation.....	6
Attendance.....	6
The Mullin Rule.....	6
Remote Participation.....	6
Removal of Members.....	7
3. Board Orientation.....	7
Qualification.....	7
Orientation.....	7
4. Officers.....	7
Organization (Chair, Vice Chair, Clerk).....	7
Secretary.....	8
Staff Assistance.....	8
5. Meetings.....	8
Open Meeting Law.....	8
Public Meeting Posting.....	9
Agenda Posting Instructions.....	9
Public Hearings.....	10
Cancelled, Postponed or Relocated Meetings.....	10
Meeting Room Requirements.....	10-11
What Constitutes Deliberation.....	11
E-Mail.....	11
Executive Session.....	11
The Ten Purposes of Executive Session.....	11-13
Executive Session – Procedures for Convening.....	13

6. Minutes and Records.....	13
Meeting Minutes.....	13-14
List of Documents and Other Exhibits.....	14
Requirements of the Public Records Law.....	14
Requesting a Public Record.....	14
Responding to a Public Records Request.....	14
Once Minutes Are Accepted by Board Vote.....	14
Timely Manner.....	14
Executive Session Minutes.....	15
7. Voting.....	15
Quorum.....	15
Calculation of Majority Vote.....	15
Who is Eligible to Vote.....	15
Abstaining.....	15
Majority of the Board vs. Majority of Those Present.....	15
Rule of Necessity.....	16
8. Conflict of Interest Law.....	16-17
Mandatory Training.....	17
Seek Advice.....	18
File a Complaint.....	18
9. Town Counsel.....	18
10. Resources and Links.....	19

TOWN OF TEWKSBURY

BOARD, COMMITTEE AND COMMISSION REFERENCE GUIDE

This Reference Guide is intended to be a handbook by the Town of Tewksbury (Town) for all Town Boards, Committees, Commissions, and public bodies (collectively referred to throughout the Reference Guide as “Board”) and contains important requirements and additional information to help you on your journey as a Board member as you participate in the conduct of Town business.

Although this Reference Guide does not contain all the answers, it will help you in locating the appropriate department or agency for assistance. Additional resources are available on the [Open Meeting Law](#) page of the Town’s website:

www.tewksbury-ma.gov

Sections of this Reference Guide refer to various provisions of Massachusetts General Laws, and the Town Bylaws and Town Charter. Consulting the updated versions of Massachusetts General Laws, the Town By-laws, and the Town Charter, is recommended as these may change from time to time.

- [Massachusetts General Law Search](#)
- [Town of Tewksbury Charter and Bylaws](#)

Thank you for giving your time, expertise, energy, and enthusiasm for the improvement of our Town and for the benefit of our citizens.

1. INTRODUCTION

PURPOSE

This Reference Guide was created to assist the many Boards, of the Town to function effectively and in a manner consistent with all applicable laws. The Reference Guide provides a brief description of procedures, and provides details about important state statutes, such as the Open Meeting Law and Conflict of Interest Law. This Reference Guide provides information regarding important legal procedures but is not intended to amend, supersede or supplement existing law. The statutes and regulations of the Commonwealth of Massachusetts contain the full range of legal obligations of Board members and local officials.

2. FORMATION AND MEMBERSHIP

ELIGIBILITY

All residents of the Town are eligible to serve on an appointed Board. Ad hoc and special Boards may include non-residents or ex-officio members when the appointing authority deems it is in the best interest of the Board and the Town. The appointee will receive written notification of appointment and the term of office from the appointing authority. The goal of the appointing authority is to appoint qualified and interested individuals who are broadly representative of the Town and the Town's interests. The appointing authority takes into consideration all relevant factors in making representative selections.

APPLICATION PROCEDURE

Notices about openings on Boards are posted on the Town's website. (www.Tewksbury-ma.gov) Candidates seeking appointment to a particular Board are required to complete the application found on the Town's website on the Select Board page where the [application](#) may be completed and filed electronically. A paper copy of the application form is available in the Town Manager's Office. The completed form shall be submitted to the Town Manager's Office and will then be forwarded to the appointing authority as identified in the notice.

APPOINTMENTS

All officials and Boards, not elected are appointed. The Town Manager appoints the Town Clerk, Town Accountant, Chief Assessor, Town Treasurer, Tax Collector and all other Town Officials whose appointments or election is not specifically provided for in the Town Charter. The appointing authority for most Boards is the Select Board. The Moderator, the Chair of the Select Board and the Chair of the Finance Committee appoint Finance Committee members for a three year term. The Chair of the Council on Aging appoints six members of the Council on Aging for a three year term, and the Select Board appoints five members of the Council on Aging for a three-year term.

BOARD FORMATION

State statutes outline the powers and duties of many Boards; the Town Bylaws further define the work of some Boards. Town Meeting may request the appointment of a Board by approving an article for that purpose. The appointing authority prepares the charge and receives the reports and recommendations of the Board.

CHARGE AND PLAN OF ACTION

The Board reviews the charge prepared by the appointing authority at an early meeting and periodically thereafter in order to keep its work focused and moving toward its goals. When the Board is established through action of Town Meeting, the appointing authority usually incorporates the purpose of the article within the charge. The Board, with advice from staff and the appointing authority, develops a plan of action to accomplish the objectives. The plan should include reporting major milestones so that the Board and the appointing authority may assess Board progress.

REAPPOINTMENT

Reappointment to a Board is based on an evaluation by the appointing authority of the Board member's contribution to the Board, the desirability of widespread involvement, and the changing needs of the Board and the Town. There is no fixed limit on the number of terms that may be served, unless limited by state law or a governing state agency. In cases where special training or expertise is required, additional terms of service may be appropriate. A Board member is under no obligation to accept reappointment, nor is the appointing authority obligated to offer reappointment. If, at the conclusion of a term, there is no action of reappointment, the particular member of the Board may continue to serve, if he or she chooses to do so until the reappointing authority acts.

RESIGNATION

A Board member who is no longer able to serve should resign promptly to allow the vacancy to be posted and filled. A written letter of resignation is required for the appointing authority to act on filling the open position. A written letter, stating the member's intent and including a resignation date, shall be filed with the Town Clerk. Upon receipt of a resignation, the Town Clerk shall notify the remaining members, the Town Manager, and the appointing authority. (See M.G.L. c. 41, §109.)

ATTENDANCE

Attendance is important to ensure that a quorum is achieved. Without a quorum, no official business can be conducted or voted upon. A quorum is usually a simple majority of the members of the Board. If a member is unable to attend a meeting, please notify the Chair or appropriate staff member in a timely manner.

THE MULLIN RULE

On May 9, 2007, the Town of Tewksbury accepted M.G.L. c. 39, § 23D, known as the "Mullin Rule." In summary, this allows a member of a Board who misses testimony due to absence at **one** session to participate in future proceedings given the following circumstances:

1. Only **one** session was missed.
2. The member shall examine audio, video, or transcript of the missed session.
3. The member shall provide a written certification that he or she examined such evidence, and that this certification must be included as part of the written record of the hearing.

REMOTE PARTICIPATION

On November 27, 2012, the Select Board voted to authorize Remote Participation by members of a Board not present at the meeting location in accordance with Massachusetts Open Meeting Law, M.G.L. c. 30A, § 20 (d), and 940 CMR 29.10; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the Board, including the Chair, or in the Chair's absence the person authorized to chair the meeting, are present at the meeting location.

REMOVAL OF MEMBERS

In rare circumstances such as continued, unexplained absences or conflict of interest, the appointing authority may ask for a member's resignation, or if necessary, terminate the appointment in accordance with law. Absence for more than 25% of its meetings within a calendar year is deemed cause for removal. (See Town By-law Section 2.12.010.) Prompt, written notification to the Board member will be given by the appointing authority and filed with the Town Clerk in the event of such action.

3. BOARD ORIENTATION

QUALIFICATION

Newly appointed, re-appointed, elected, or re-elected Board members must be sworn in by the Office of the Town Clerk before they can participate in the Board's business.

ORIENTATION

New Board members will be provided with the following general information:

1. The Open Meeting Law;
2. Open Meeting Law Regulations;
3. The Attorney General's Guide to the Open Meeting Law; and
4. The Conflict of Interest Law and Mandatory Ethics Online Training Instructions.

4. OFFICERS

ORGANIZATION

Boards elect a Chair, Vice-Chair, and a Clerk annually, (unless otherwise provided by Massachusetts General Laws, Town Charter, or Town By-laws) usually at the first meeting after a new term begins in July. A record of Board officers should be submitted annually in writing to the Town Clerk. Board Chairs will receive a Guide to posting meetings, agendas, and minutes. The Chair is responsible for notifying the appointing authority, the Town Manager, and the Town Clerk of changes in officers.

Chair: The Chair presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the signature of the Chair.

Vice-Chair: The Vice-Chair acts for the Chair whenever the Chair is absent from meetings, and the Vice-Chair performs other necessary duties of the Board, as directed by the Chair.

Clerk: The Clerk proofreads the minutes of the meetings and submits the minutes to the Board at a properly called meeting for approval.

SECRETARY (Paid or unpaid)

The Secretary, upon direction from the Chair, is responsible for the following duties:

1. Taking and transcribing the Board's minutes;
2. Preparing the agenda and other materials;
3. Posting the meeting notices with the Town Clerk no later than 48 hours prior to the meeting (excluding Saturdays, Sundays, and holidays). The notice must contain a list of agenda items that the Chair reasonably anticipates will be discussed, with sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting; and
4. After the meeting minutes have been approved, the Secretary shall file a copy of the meeting minutes with the Town Clerk.

STAFF ASSISTANCE

If a 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 request a budget for paid, part-time assistance by applying in writing to the Town Manager. A request for such assistance is subject to availability of funds and the approval of the Town Manager and, potentially, Town Meeting.

5. MEETINGS

OPEN MEETING LAW

Reference Link: [Commonwealth of Massachusetts Open Meeting Law](#)

The purpose of this section is to ensure all meetings of any Board are conducted in a consistent manner compliant with Massachusetts Open Meeting Law, M.G.L. c. 30A, § 18-25.

Upon being sworn in by the Town Clerk, you will receive required documentation relative to the Open Meeting Law.

Note: All business conducted by a Board must be done in full view and hearing of the public. A Board cannot ask the public to leave while it is taking testimony, deliberating, or voting on a subject. The only exceptions are for the purposes of Executive Sessions, further described in this Reference Guide.

PUBLIC MEETING POSTING

Except in cases of emergency, a Board must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Meeting notices must be filed with the Town Clerk sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting. Any revisions to the posting should be made as soon as possible prior to the meeting.

The following information shall be included in every meeting posting:

1. The name of the Board that is meeting;
2. The date and time of the meeting;
3. Where the meeting is being held (location, address, and room);
4. Any topics that are reasonably expected to be discussed at the meeting in sufficient details to reasonably advise the public of the general issues to be discussed, provided however, that if a topic was not reasonably expected to be discussed at the meeting at the time of posting, such topic may be discussed at the meeting.

24 HOURS A DAY/ 7 DAYS A WEEK

The Open Meeting Law requires 24 hours a day/7 days a week access to meeting schedules and agendas. The Town utilizes the Town Website to comply. Each meeting will be posted on the [Official Meeting Calendar](#) found on the home page at www.tewksbury-ma.gov.

AGENDA POSTING INSTRUCTIONS

- Although you may use any of the following means to communicate with the Town Clerk's Office, e-mail is the preferred method to use for your postings: **E-mail:** townclerk@tewksbury-ma.gov
- Fax: 978-851-8610
- In Person: Town Clerk's Office, Town Hall, 1009 Main Street

Note: PLEASE DO NOT e-mail postings to a specific staff person in the Town Clerk's Office. E-mail to townclerk@tewksbury-ma.gov This account is shared by all Town Clerk staff and periodically checked throughout the day. This will ensure that your posting will be processed despite individual work schedules or vacations.

Once the Town Clerk's Office posts your meeting, the Town Clerk's Office will respond to your e-mail indicating that it has been posted on the official meeting calendar on the front page of the Town's website. At that point, check the website to be sure your meeting was posted correctly. **If you do not receive an e-mail from the Town Clerk's Office, or if your meeting was not posted correctly, please contact the Town Clerk's Office as soon as possible.**

Note: If you are at the deadline to comply with the 48hour notice, please call the Town Clerk's Office at 978-640-4355 to inform the Town Clerk's Office that you have e-mailed the posting so that the Town Clerk's Office may assist you with compliance.

PUBLIC HEARINGS

If you are a member of the Select Board, Planning Board, Board of Health, Board of Appeals, or Conservation Commission, occasionally you will be required to hold a public hearing in accordance with Massachusetts General Law. In most cases where notice of a public hearing is required, notice shall be given by publication in a newspaper of general circulation in the Town for a specified period of time. Posting such notice in a conspicuous place in the Town Hall for a specified period of time is necessary. For specifics, please reference the governing statute. Written notices, the initiation of the hearing, and the written conclusions of the public hearing may have strict legal time limitations that vary with the character of each Board.

CANCELLED, POSTPONED OR RELOCATED MEETINGS

If a meeting is cancelled or moved to another location, the Town Clerk shall be informed, so that the Official Meeting Calendar may be revised. For the sake of courtesy, a sign should be posted on the meeting room door and on the entrance door to the building informing the public of the changes.

MEETING ROOM REQUIREMENTS

Meetings must be held in a location that is open to the public. The location shall have disability access. Public meeting rooms are available for Board use in various Town Buildings, and reservations should be made in advance by contacting the appropriate staff as follows:

Town Hall:	Town Manager/Select Board's Office
Phone:	978-640-4300
E-Mail:	pmirabella@tewksbury-ma.gov
Library:	Library Director's Administrative Office
Phone:	978-640-4490
E-Mail:	jbriley@tewksbury-ma.gov
Senior Center:	Council on Aging Director's Administrative Office
Phone:	978-640-4482
E-Mail:	jconole@tewksbury-ma.gov
Police Station:	Police Administrative Office
Phone:	978-640-4385
E-Mail:	egamlin@tewksbury-ma.gov
Town Hall Annex:	Finance Administrative Office
Phone:	978-640-4320
E-Mail:	arego@tewksbury-ma.gov
TMHS:	Facilities Coordinator
Phone:	978-640-7825
E-Mail:	rdrouin@tewksbury.k12.ma.us
All Other Schools:	School Administrative Offices
Phone:	978-640-7806
E-Mail:	smeuse@tewksbury.k12.ma.us

In the event a meeting is cancelled for any reason, the person calling the meeting should immediately notify the office scheduling the meeting room. The meeting room can then be available for use by others.

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 Board on any public business within its jurisdiction ...” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to Board members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the Board expresses an opinion on matters within the body’s jurisdiction.

To be a deliberation, the communication must involve a quorum of the Board. A quorum is usually a simple majority of the members of a Board. Thus, a communication among less than a quorum of the members of a Board will not be a deliberation, unless there are multiple communications among the members of the Board that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a Board communicate in a serial manner in order to evade the application of the law

E-MAIL

E-mail conversations among a quorum of members of the Board, that relate to public business violates the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail “meeting”.

For example, if a member of a Board sends an e-mail to a quorum of such Board expressing his or her opinion on a matter that could come before such Board, this communication violates the law even if none of the recipients responds.

Note: E-mail messages among members of a Board should be avoided except for matters of a purely housekeeping or of an administrative nature.

EXECUTIVE SESSION

The Open Meeting Law gives the public and media a legal right to attend all Board meetings except when the Board votes to go into Executive Session.

THE TEN PURPOSES FOR EXECUTIVE SESSION

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a Board may enter executive session. The ten purposes for which a Board may vote to hold an executive session are:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member, or individual. The individual to be discussed in such executive session shall be notified in

writing by the Board at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open.

2. To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the Board and the Chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease, or value of real property if the Chair declares that an open meeting may have a detrimental effect on the negotiating position of the Board;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the Chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in M.G.L. c. 233, § 23C, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
 - a. Any decision to participate in mediation shall be made in an open session; and the parties, issues involved, and purpose of the mediation shall be disclosed; and
 - b. No action shall be taken by any Board with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session;
or
10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the Department of Public Utilities pursuant to M.G.L. c. 164, § 1F, , in the course of activities conducted as a municipal aggregator under M.G.L. c. 164, § 134, or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to M.G.L. c. 164, § 136, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

Votes and proceedings in executive session may be kept private, as long as privacy will serve the purpose for which the executive session was called. When the reason for executive session has been satisfied, the minutes for executive session meetings must be released. Boards should review all executive session minutes periodically, and in public session release those no longer private.

Note: Due to the limits of their jurisdiction, most Boards will generally be permitted to avail themselves to a very limited number of the above-cited reasons to enter into executive session. In instances where a Board has concerns regarding the application of the executive session privileges, such Board should seek guidance from the Town Manager prior to the specific meeting.

EXECUTIVE SESSION – PROCEDURES FOR CONVENING

Before an executive session can be called, the following procedures must be followed:

1. An open session, for which notice has been given, must be convened;
2. The Chair must cite the purpose for the executive session and state whether the Board will reconvene thereafter in open session;
3. The Chair must also state that a public discussion will be detrimental to the public interest; and
4. A majority of Board members must vote, by roll-call, to go into executive session; and the vote must be recorded in the Board minutes.

6. MINUTES AND RECORDS

MEETING MINUTES

Boards shall create and maintain accurate minutes of all meetings, including executive sessions. Minutes are not intended to be a transcript of the meeting, but rather an accurate recording of the meeting logistics, topics discussed, and actions taken by the Board. The minutes must:

1. State the date, time, and location (address and room);
2. List all members present and all members absent;
3. Summarize each topic discussed by the Board;
4. Exact wording of all motions, including who made and seconded the motion;
5. The decisions made and actions taken, including a record of all votes. (Votes in executive session must be recorded in the minutes by a roll call); and
6. A list of documents and other exhibits used by the Board at the meeting and where such exhibits or documents may be reviewed by the public.

Importance of the Record: Many matters before Boards are reviewable by a court on an appeal. In many of these matters, the appeal is based on the record developed before the Board. Thus, of importance is to adequately develop a record which accurately reflects the Board's proceedings and also supports the Board's decision.

LIST OF DOCUMENTS AND OTHER EXHIBITS

Documents and other exhibits, such as photographs, recordings, or maps used by the Board at an open meeting or executive session shall be part of the record of the session. While Boards are required to retain these records in accordance with records retention laws, the documents and exhibits listed in the minutes need not be physically stored with the minutes. **Please be sure that minutes include a list of documents used and in which office such documents will be stored** so that, upon public request to review, one will know where to find those items.

REQUIREMENTS OF THE PUBLIC RECORDS LAW

Reference Link: [A Guide to the Massachusetts Public Records Law](#)

The Massachusetts Public Records Law 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. (See M.G.L. c. 4, § 7, clause 26.) The minutes, informational data, memoranda, and circulating materials of any Board are mostly all public information. The Board should consult with the Town Manager if questions arise concerning a request for public records.

REQUESTING A PUBLIC RECORD

A request which provides the custodian of the record with a reasonable description of the desired information is sufficient. Requests may be oral or written.

RESPONDING TO A PUBLIC RECORDS REQUEST

All requests must receive a response as soon as practicable, without any reasonable delay, and always within 10 days. Contact the Town Clerk for a list of Town Records Access Officers (RAOs).

ONCE MINUTES ARE ACCEPTED BY BOARD VOTE

Indicate on the minutes the date of the meeting at which the minutes were accepted. The minutes shall be e-mailed in Word format to townclerk@tewksbury-ma.gov for posting on the Town website and delivery to the Town Clerk for permanent retention.

TIMELY MANNER

Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three Board meetings or within 30 days, whichever is later, unless the Board can show good cause for further delay. The Attorney General encourages Boards to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY 940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

EXECUTIVE SESSION MINUTES

Minutes from an executive session should not be released if the lawful purpose for conducting an executive session would be defeated. Such minutes should be withheld from public disclosure unless and until the reason for convening the executive session no longer exists. However, executive session minutes should be approved by the Board in a timely manner.

The Board Chair or other appropriate designee shall, from time to time, review the purpose for having entered into executive session to determine whether continued non-disclosure of minutes is warranted. Such review should not be unreasonably delayed in that there is a policy for release of executive session documents as soon as the reasons for executive session have lapsed. This review and determination must be included as a topic discussed in the minutes of said meeting.

Once disclosure would no longer defeat the lawful purpose for the executive session, the minutes must be disclosed unless the minutes are otherwise exempt from the Public Records Law, M.G.L. c. 4 §7, clause 26, or are attorney-client privileged. Case law has dictated that Boards are entitled to attorney-client privilege, but the Attorney General has offered an opinion that the privilege is not absolute. Town Counsel should be contacted to determine whether the privilege applies.

Note: *Members of Boards must refrain from disclosing any matter discussed within an executive session unless and until the executive session minutes are released.*

7. VOTING

QUORUM

A quorum is the number or percentage of members that must be present for business to be conducted legally. A quorum is a simple majority of the Board unless otherwise defined by applicable law.

CALCULATION OF MAJORITY VOTE

The yeas, nays, and abstentions are calculated to determine a majority vote.

WHO IS ELIGIBLE TO VOTE

All officially appointed and sworn in current members of a Board, are eligible to vote.

ABSTAINING

A Board member may abstain from voting, and the member's vote would be recorded as he or she abstained.

MAJORITY OF THE BOARD VS. MAJORITY OF THOSE PRESENT

When the rules of a Board require a majority of its membership to vote in the affirmative to take an action, the yea votes must be greater than the nays, abstention(s) and absent voters combined. Therefore, the only time that a simple count of more yeas than nays guarantees passage is when all members are present and voting. Another way of stating this is that the yea votes must always be greater than half of the total membership to pass a motion.

RULE OF NECESSITY

The need to vote even if a member has a conflict of interest.

The Rule of Necessity is not a law written and passed by the Legislature. Rather, the Rule of Necessity was developed because judges applied it in their court decisions. It can only be used if a Board is unable to act on a matter because it cannot obtain a quorum because members are disqualified from acting. The Rule of Necessity should be invoked by the Chair, upon advice from Town Counsel. The meeting minutes should clearly indicate that the Board was unable to obtain a quorum due to the disqualification of members and, as a last resort, those disqualified will now participate under the authority of the Rule of Necessity.

Note: This rule cannot be invoked when there is lack of a quorum due to absent members. Members must be disqualified or vacancies exist on the Board.

8. CONFLICT OF INTEREST LAW (M.G.L. C. 268A)

Reference Link: [Summary of the Conflict of Interest Law](#)

This section of the Reference Guide is meant to provide the basics governing conflict of interest. The laws regarding conflict of interest are complex and is summarized as follows: No Board member shall do business either directly or indirectly with the Town. This restriction shall apply for 2 years after service on a Board is completed.

Each individual shall be responsible for his or her actions regarding the Conflict of Interest Law. Any individual having a question concerning his or her own position may request an opinion from the State Ethics Commission or Town Counsel prior to taking action and should immediately notify the Town Manager of the potential conflict. (See below for contacts.)

1. Purpose - Note that “municipal employee” refers to anyone holding any office, position, employment, or membership in any municipal agency. Unpaid members of Boards are municipal employees, as are private citizens serving on a special advisory Board. 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 law is broadly written to prevent a public employee from becoming involved in a situation that could result in a conflict or give the appearance of a conflict.

The Conflict of Interest Law restricts what a public employee may do:

- a. On the job as a Board member;
 - b. After hours; and
 - c. After leaving public service.
2. Provisions - The Conflict of Interest Law prohibits a variety of actions, including bribery, extra pay, receipt of gifts or privileges because of Board members’ official actions, and acting as an agent or attorney for anyone in a claim against or doing business with the Town. The

Conflict of Interest Law prohibits all municipal employees from participating in a particular matter in which Board members or any of the following have a financial interest:

- a. Immediate family includes the employee and his or her spouse and their parents, children, brothers and sister. Cousins, nephews, aunts, uncles, etc. are not considered immediate family members. Also, under the definition of “immediate family,” some brothers-in-law are immediate family, others are not; if your brother-in-law is your spouse’s brother, he is immediate family but if he is your sister’s husband, he is not immediate family for purposes of the Conflict of Interest Law.
- b. Partner or business associates.
- c. A business organization in which the Board member serves as an officer, director, trustee, partner or employee (including a non-profit organization).
- d. Any person or organization with whom the Board member is negotiating or has any arrangement concerning prospective employment.

If a Board member has a conflict of interest or an appearance of conflict in any matter before the Board, he or she should not be counted in the quorum nor participate in or be present for any pertinent discussion or votes. Nor shall any conflicted member sit with the Board during deliberation on the matter in question.

The Conflict of Interest Law provides for the legal determination of conflict of interest status for any municipal employee submitting a request to the appointing authority or to the Massachusetts State Ethics Commission or to Town Counsel. The Conflict of Interest Law also provides for continued service in certain circumstances if full disclosure is made or a special exemption is granted by the Select Board in accordance with M.G.L. c. 268A, § 19 and 20.

MANDATORY TRAINING

All public employees and board/committee members must complete the ethics online training within 30 days of beginning public service, and every 2 years thereafter. The compliance cycle for online training begins in December of every even-numbered year, and the deadline for completing the online training is the first week in the following April.

1. Visit the website: <https://massethicstraining.skillburst.com>
2. You will be prompted to enter your name, email address, and select Tewksbury as your agency/organization.
3. You will receive an email and you will create a login.
4. Upon logging in for the first time, you will see that you will have two courses assigned to you, the conflict-of-interest training, and the code of ethics acknowledgement for municipal employees. Please complete both.

These two items are extremely important, as they will give you tools to help protect yourself and the Town from any conflict of interest or ethics violation complaints.

SEEK ADVICE

For questions and advice about how the Conflict of Interest Law applies to you, please call the State Ethics Commission's main number at (617) 371-9500 and ask for the Attorney of the Day. You may find more info at the following link:

<https://www.mass.gov/how-to/get-advice-about-how-the-conflict-law-applies-to-you>

FILE A COMPLAINT

To file a complaint if you believe someone has violated the Conflict of Interest Law, please call the State Ethics Commission's main number at (617) 371-9500 and ask to speak to an Investigator, or you may electronically file a complaint:

<https://www.mass.gov/how-to/file-a-complaint-with-the-ethics-commission>

Mailing address:

State Ethics Commission Legal Division
Sixth Floor, Room 619
One Ashburton Place
Boston, MA 02108

9. Town Counsel

Contact the Select Board's Office (978-640-4300) for the process for requesting permission to contact Town Counsel.

10. RESOURCES AND LINKS

[Open Meeting Law Web Training Videos](#)

[Text of the Open Meeting Law](#)

[Open Meeting Law Regulations, 940 CMR 29.01-29.11](#)

[Open Meeting Law Educational Materials](#)

[Frequently asked questions about the Open Meeting Law](#)

[Official Notice Posting Locations for Public Bodies](#)

[The Conflict of Interest Law, M.G.L. c. 268A](#)

[Ethics Commission Regulations](#)

[Online Ethics Training](#)

[A Guide to the Massachusetts Public Records Law](#)