COMMITTEE HANDBOOK

Adopted: January 27, 2014
FORWARD

This Handbook has been prepared by the Town of Falmouth to provide a brief description of the duties and responsibilities of elected and appointed officials. Many citizens voluntarily serve the Town of Falmouth and their commitment and contributions are greatly appreciated.

The Selectmen, in carrying out their duties as prescribed by Charter, State Law and by the votes of Town Meetings, expend considerable time and effort to make thoughtful and appropriate appointments to boards and committees. As a board or committee member, you will be working with others, like yourself, who have volunteered to address specific issues and concerns of the Town and will be making decisions and/or recommendations in the best interests of the Town.

It is important that the good of the Town, present and future, be of primary consideration in your deliberations. A proposed course of action that may make sense from the perspective of your committee may not always be what is best for the Town. Therefore, all alternatives need to be explored while considering many factors such as the impact on other programs or plans. A cost/benefit analysis of proposed actions is always a high priority.

It is also important to remember that you represent the entire Town. You not only have a responsibility to the community as a whole, but also to the Town Administration and to other members of your committee.

Committee or board members may utilize the offices of the Town Manager to facilitate communications and answer questions that may be pertinent to a member’s assignment. The Board of Selectmen wishes to thank you for giving of your time and effort in the improvement of our community.
COMMITTEE MEMBERSHIP

A) Appointments

The Board of Selectmen makes appointments to multi-member bodies, boards and committees, define their duties, set the limits for the scope of their responsibilities and the terms of their service. All vacancies and impending appointments are publicly advertised in advance of appointments. Each new appointee will receive a letter of notification of appointment from the Town Manager's office and will be instructed to contact the office of the Town Clerk to be sworn in.

B) Duration of Appointments

Except as otherwise provided, members of boards and committees shall be appointed by the Board of Selectmen for overlapping three-year terms. No member of an appointed town board shall serve more than three (3) consecutive three-year terms.

C) Duties of Board or Committee

Board and Committee members shall exercise all powers given them under the Constitution and laws of the commonwealth and may exercise such additional powers and duties as may be authorized by the Charter, bylaw or vote of the Town Meeting. Some committees, such as the Conservation Commission, Historical Commission and Zoning Board of Appeals, are charged by the applicable laws of the Commonwealth to act and consider matters in a very narrowly defined way. If you have been appointed to one of those positions, please ensure that you obtain a copy of these laws. Other standing or ad hoc committee members will receive a letter of the duties and responsibilities from the Board of Selectmen or responsibilities will be charged in accordance with the Code of Bylaws of the Town. All such boards and committees shall meet with the Board of Selectmen at least once each year.

D) Committee Leadership

All boards, commissions and committees of the town shall organize annually, elect officers, establish a quorum requirement, adopt rules of procedure and voting, and maintain minutes and records of attendance, copies of which shall be filed with the Town Clerk.

E) Attendance

Unexcused absences of a member from one-half (1/2) of the total number of meetings during any twelve-month period or from four (4) or more consecutive meetings shall serve to vacate the office. When such a vacancy has been created, it shall be filled within thirty (30) days in accordance with General Law.

F) Resignations

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Resignations must be submitted in writing and delivered to the Board of Selectmen’s Office with copies to the respective Committee Chairman and Town Clerk. When a vacancy occurs, the committee chairman may recommend individual(s) who have demonstrated an interest in the work of the committee for consideration to fill the vacancy. All applicants will be considered.

G) Special Municipal Employees

The Board of Selectmen shall annually review the composition of all boards, committees and commissions to ensure that all positions are appointed as special municipal employees.

GUIDELINES OF CONDUCT FOR MEETINGS

Participants should commit to the following:

- Treat all participants with respect;
- Listen in order to understand ideas being expressed;
- Clarify each others’ ideas rather than critique them;
- Participate in constructive and active listening;
- Separate people from the problem (critique ideas, not People);
- Discuss past problems only in order to develop future solutions;
- If you disagree with another participant, explain why and recommend what you think would work better.

CONDUCT FOR MEMBERS OF BOARDS, COMMITTEES & COMMISSIONS

The conduct of members of Municipal Boards, Committee, and Commissions, as well as employees is regulated by the provisions of Chapter 268A of the Massachusetts General Laws, and enforced by the Massachusetts Ethics Commission. The statute assigns personal responsibility to regular and special municipal employees (including elected and appointed volunteers) in four general areas, as follows:

A. Community Responsibility
B. Responsibility to Municipal Administration
C. Relationship to other Board Members
D. Prohibited Conduct

A. COMMUNITY RESPONSIBILITY

A member of any Board, Committee or Commission in his/her relations with the community shall:
1. Realize that his/her basic function is to make policy, not administer it, unless otherwise empowered by state and/or local law.

2. Realize that he/she is one of a team and should abide by, and carry out, all board decisions once they are made.

3. Be well informed concerning the duties of a board member on both local and state levels.

4. Remember that he/she represents the entire community at all times.

5. Accept the appointment as a means of unselfish service, and not for the purpose of personal or political benefit from his/her board activities.

6. In making all decisions relative to individual appointments, he or she shall avoid political patronage by judging all candidates on merit, experience and qualifications only.

7. Avoid voting on any manner in which the individual member has a conflict of interest, as defined under the Massachusetts Conflict of Interest Law, G.L. c. 268A.

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

   1. Endeavor to establish sound, clearly defined policies that will direct and support the administration for the benefit of the people in the community.

   2. Recognize and support the administrative chain of command and refuse to act on complaints as an individual outside the administration.

   3. Direct all questions or concerns to the Town Manager. Concerns may also be addressed to the Board of Selectmen. However, an initial contact with the Town Manager will expedite any necessary action and will deal most directly with an issue, which needs to be clarified, changed or corrected. Please remember, however, that the Town Manager and Board of Selectmen do not have control over issues dealing with elected officials or committees/individuals appointed by the Moderator.

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

   1. Recognize that action at an official legal meeting is binding and that he/she alone cannot bind the Board outside of such meeting.

   2. Not make statements or promises of how he/she will vote on matters that come before the Board until he/she has had an opportunity to hear the pros and cons of the issue during a board meeting.

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3. Uphold the intent of Executive Session and respect the privileged communication that exists in Executive Session.

4. Make decisions only after all facts on a question have been presented and discussed.

5. Treat with respect the rights of all members of the board, despite differences of opinion.
APPENDIX A

SUMMARY OF THE OPEN MEETING LAW

Purpose of the Law

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public’s interest in witnessing the deliberations of public officials with the government’s need to manage its operations efficiently.

AGO Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General’s Office (AGO). G.L. c. 30A, § 19 (a). To help public bodies understand and comply with the revised law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and takes remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

Certification

Within two weeks of a member’s election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences for violating it. The certification must be retained where the body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General’s regulations, and this Guide.

Where no term of office for a member of a public body is specified, the member must complete the Certificate of Receipt on a biannual basis by January 14 of a calendar year, beginning on January 14, 2011. Where a member’s term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member should have completed the Certificate of Receipt by January 14, 2011. In the event a Certificate has not yet been completed by a member of a public body, the member should complete Open Meeting Law Guide Page 2 Version 2.10.12 and submit the Certificate at the earliest opportunity to be considered in compliance with the law.

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” As explained more fully below, a deliberation is a communication between or among members of a public body.

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These four questions will help determine whether a communication constitutes a meeting subject to the law:

1) is the communication between members of a public body;
2) does the communication constitute a deliberation;
3) does the communication involve a matter within the body’s jurisdiction; and
4) does the communication fall within an exception listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Neither individual government officials, such as a mayor or police chief, nor members of their staff, are “public bodies” subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements.

Bodies appointed by a public official solely for the purpose of advising on a decision that the individual could make himself or herself are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a four member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.

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 procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings, and will generally not constitute deliberation, provided that when these materials are distributed no member of the public body expresses an opinion on matters within the body’s jurisdiction. E-mail exchanges between or among a quorum of the members of a public body discussing matters within that body’s jurisdiction may constitute deliberation, even if the sender of the email does not ask for a response from the recipients.

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among fewer than a quorum of the members of a public body will not be a deliberation, unless there are
multiple communications among the members of the public body that together constitute communication among a quorum of members. 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, when taken together with other communications, may be a deliberation.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any “matter within the body's jurisdiction.” The law does not specifically define “jurisdiction.” As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five 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; however, they cannot deliberate at such gatherings;

2. Members of a public body may attend a conference, training program or event; however, they cannot deliberate at such gatherings;

3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they cannot deliberate at such gatherings;

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; and,

5. Town Meetings are not subject to the Open Meeting Law. See G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

For “quasi-judicial boards or commissions,” the AGO interprets this exemption to apply only to certain state “quasi-judicial” bodies, and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as “agencies” for purposes of G.L. c. 30A.

What are the requirements for posting notice of meetings?

Except in cases of emergency, a public body 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. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

What are the requirements for filing and posting meeting notices for local public bodies?
For local public bodies, meeting notices must be filed with the municipal clerk sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting.

**What information must meeting notices contain?**

Meeting notices must be posted in a legible, easily understandable format; contain the date, time and place of the meeting; and list the topics that, as of the time the notice is filed, the chair reasonably anticipates will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. While not required under the Open Meeting Law, public bodies are encouraged to make a revised list of topics to be discussed available to the public in advance of the meeting if the body intends to discuss topics that come up after posting but before the meeting convenes.

**A note about accessibility**

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website utilizes technology that is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice. 3 The Attorney General’s Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 727-2200.

**When can a public body meet in executive session?**

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, he or she must state at the start of the executive session that no other person is present and/or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant’s location. While in executive session, the public body must keep accurate records and must take a roll call vote of all votes taken and may only discuss matters for which the executive session was called.
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 public body may enter executive session.

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.

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

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

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

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

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

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

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
   (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
   (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:

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a. 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;
b. in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
c. in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
d. 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.

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must state the date, time and place of the meeting, a list of the members present or absent, and the decisions made and actions taken including a record of all votes. Minutes must also include the name of any member who participated in the meeting remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. In addition, the minutes must include a list of the documents and other exhibits used at the meeting. While public bodies are required to retain these records in accordance with records retention laws, the documents and exhibits listed in the minutes need not be attached to or physically stored with the minutes. The minutes, documents and exhibits are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law and must be retained in accordance with the Secretary of State’s record retention schedule. The State and Municipal Record Retention Schedules are available through the Secretary of State’s website at: http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. The law requires that existing minutes be made available to the public within 10 days upon request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within 10 days upon request.

There are two exemptions to the open session records disclosure requirement: 1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any resume submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both
individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

**Executive Session Meeting Records**

Public bodies are not required to disclose the minutes, notes or other materials used in an executive session where the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they are within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted, and such determination must be included in the minutes of the body's next meeting. A public body must respond to a request to inspect or copy executive session minutes within 10 days of request and promptly release the records if they are subject to disclosure. If the body has not performed a review to determine whether they are subject to disclosure, it must do so prior to its next meeting or within 30 days, whichever is sooner.

**What is the Open Meeting Law complaint procedure?**

**Step 1. Filing a Complaint with the Public Body**

Individuals who allege a violation of the Open Meeting Law must first file a complaint **with the public body** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a **Complaint Form** available on the AGO website. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

**Step 2. The Public Body’s Response**

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to review the complainant's allegations; take remedial action if appropriate; notify the complainant of the remedial action; and forward a copy of the complaint and description of the remedial action taken to the AGO. The public body may request additional information from the complainant. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government, and should state the reason for the requested extension.

**Step 3. Filing a Complaint with the Attorney General's Office**

A complaint is ripe for review by the AGO 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are **not** automatically treated as filed for review by the AGO upon filing with the public body. A complainant who has filed a complaint with a public body, and seeks further review by the Division of Open Government, must file the complaint with the AGO after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation. When
filing the complaint with the AGO, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the remedial action taken by the public body. Complaints filed with the AGO are public records.

The AGO will review the complaint and any remedial action taken by the public body. The AGO may request additional information from both the complainant and the public body. The AGO will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The AGO may decline to investigate a complaint where more than 90 days have passed since the date of the alleged violation.
APPENDIX B

SUMMARY OF THE CONFLICT OF INTEREST LAW FOR MUNICIPAL EMPLOYEES

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help town employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Town employees can obtain free confidential advice about the conflict of interest law from the Commission’s Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law 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, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to $10,000 ($25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a “key employee” under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

II. On-the-job restrictions.

(a) Bribes. Asking for and taking bribes is prohibited.

(See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or
because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)
Municipal employees may not accept gifts and gratuities valued at $50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth $50 or more. A number of smaller gifts together worth $50 or more may also violate these sections.

Example of violation: A town administrator accepts reduced rental payments from developers.

Example of violation: A developer offers a ski trip to a school district employee who oversees the developer’s work for the school district.

Regulatory exemptions. There are situations in which a municipal employee’s receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions, and is considering creating additional exemptions, permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Other exemptions are listed on the Commission’s website.

Example where there is no violation: A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of firefighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)
A municipal employee may not use her official position to get something worth $50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth $50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation: A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

Example of violation: A city councilor directs subordinates to drive the councilor’s wife to and from the grocery store.

Example of violation: A mayor avoids a speeding ticket by asking the police officer who stops him, “Do you know who I am?” and showing his municipal I.D.

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)
A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

**Example of violation:** A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

**Example of violation:** A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

**Example:** A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She needs not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

**Example where there is no violation:** An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.
There is also an exemption for both appointed and elected employees where the employee’s task is to address a matter of general policy and the employee’s financial interest is shared with a substantial portion (generally 10% or more) of the town’s population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

(e) **False claims.** Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26) A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth $50 or more, or cause another person to do so.

**Example of violation:** A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) **Appearance of conflict.** Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

**Example where there is no violation:** A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

(g) **Confidential information.** Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

III. After-hours restrictions.

(a) **Taking a second paid job that conflicts with the duties of your municipal job is prohibited.** (See Section 23(b)(1))

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

**Example:** A police officer may not work as a paid private security guard in the town where he serves because the demands of his private employment would conflict with his duties as a police officer.
(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

Example of violation: A full-time health agent submits a septic system plan that she has prepared for a private client to the town’s board of health.

Example of violation: A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client’s property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for “special” municipal employees than for other municipal employees.

The status of “special” municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as “special” if it is unaided, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as “special” and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically “special”; selectman in larger towns cannot be “specials.”

If a municipal position has been designated as “special,” an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

Example: A school committee member who has been designated as a special municipal

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employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

Example: A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20) A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an “inside track” to further financial opportunities.

Example of violation: Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

Example of violation: A selectman buys a surplus truck from the town DPW.

Example of violation: A full-time secretary for the board of health wants to have a second job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

Example of violation: A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission’s Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee. If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing

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concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation: A former school department employee works for a contractor under a contract that she helped to draft and oversee for the school department.

(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service. Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

Example: An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company’s work on the contract for one year after leaving the town.

(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.

Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

Example: While serving on a city’s historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner’s behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

Example: A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, www.mass.gov/ethics, contains further information about how the law applies in many situations. You can also contact the Commission’s Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.
As of September 2009 all regular and special municipal employee will be required to complete online training of the requirements of the conflict of interest law every two years.

If you have a question concerning a potential conflict, you should contact the Town's Municipal Liaison to the State’s Ethics Commission. You may also find the State Ethics Commission’s website helpful, at http://www.mass.gov/ethics.
APPENDIX C
On-Line Posting Policy, attached

APPENDIX D
Speakers Policy, attached

APPENDIX E
Committee Appointment Policy, attached
Town of Falmouth
Board of Selectmen
ONLINE POSTING POLICY
Adopted: September 26, 2011

This policy is intended to conform to the intent and spirit of the Massachusetts Open Meeting Law (M.G.L. Ch. 30A, § 18-25) to inform our citizens by utilizing the town website as an additional bulletin board.

Definitions

Committee – Any multi-member body, e.g., board, committee, commission

Applicability

This policy applies to the posting of public meeting notices, agendas and minutes for all committees appointed by the Board of Selectmen and its subordinates.

General Policy and Responsibility

1. Pursuant to 940 CMR 29.03(2)(b)1., all notices, agendas and minutes shall be posted on the town website, effective November 1, 2011. When filed electronically at meetings@falmouthmass.us the Town Clerk's office will post these to the website.

2. A notice of every meeting of any public body shall be filed with the Town Clerk at least 48 hours, not including Saturdays, Sundays or holidays, prior to such meeting. The notice shall contain the date, time and place of the meeting, and agenda or subjects the chair reasonably expects to be discussed at the meeting.

3. A public body is required to create and maintain accurate minutes of all meetings. The minutes of a regular open meeting session should contain the date, the time, the place, the members present and absent, a summary of discussion on each subject, a list of documents or other exhibits used at the meeting, the decisions made and actions taken, and the record of all votes.

4. Minutes shall be created and approved promptly and they must be filed with the Town Clerk and available upon request by any person within 10 business days of the meeting, excluding Saturdays, Sundays and holidays, whether approved or in draft form.

5. If approved minutes are not available, draft minutes will be made available. It shall be noted on the web page of the committee in question that draft minutes are available and may be obtained from the Town Clerk upon request.

6. The filing and posting of notices, agendas and meeting minutes with the Town Clerk and to the website shall be the responsibility of the chair of the committee calling the
meeting.

7. It shall be the responsibility of the Town Manager to ensure that all committees are able to carry out this policy.

8. The IT Department and the Town Clerk may provide assistance to any committee member on how to use the website as needed.

9. The Board of Selectmen shall annually conduct a review to ensure compliance with this policy.
This policy is to promote orderly public hearings and insure the efficient administration of business, while maintaining civility of all attendees before town boards and committees.

1. The chair shall call the meeting to order and introduce all board members present to the public in attendance and identify the voting members if there are alternate or associate members present.

2. The Board shall conduct its business in accordance with the open meeting law.

3. Only speakers recognized by the chair shall be permitted to speak. All persons wishing to speak shall be recognized by the chair in the order determined by the chair.

4. There shall be no time limit on recognized speakers unless, 1) the chair announces the limit at the beginning of the hearing, and 2) the limit applies equally to all speakers. No speaker may yield to another speaker without permission of the chair.

5. Speakers shall focus remarks on the agenda item and remain “on topic”. There shall be no discrimination based upon the speaker’s viewpoint. The chair may terminate extraneous and irrelevant remarks after warning the speaker to focus remarks on the subject matter.

6. Members of the public audience shall remain silent until recognized as a speaker by the chair.

7. Personal remarks about any member of the Board, any person having business before the Board or any other identified individual are not appropriate conduct. The chair may dismiss a speaker who violates this policy after warning the speaker to refrain from personal remarks.

8. Any person who interrupts the meeting or refuses to keep quiet or otherwise disrupts the proceedings of the Board shall be admonished by the chair to comply with this policy. If the interruption or disruption continues, the chair may ask the offender to leave the meeting room, and if the offender refuses, the chair may summons a police officer or constable for the purpose of removal.

9. The minutes of the meeting shall reflect any admonishment or warning given to a speaker and any other action taken with respect to enforcement of this policy.

10. Members of the Board shall conduct themselves respectfully to other board members, speakers and members of the public in attendance.
Town of Falmouth  
Board of Selectmen  
COMMITTEE APPOINTMENT POLICY  
Adopted September 29, 1993  

The Falmouth Board of Selectmen has the responsibility of appointing over 300 persons to over 44 committees. As this is among the most important responsibilities of the Board, these policies and procedures are intended to provide guidelines for the appointment of all persons serving thereon. The Board of Selectmen will make every effort to encourage participation in and to effectively communicate with these volunteer committees, which are a major component of effective town government.

Definitions

Committee – Any multi-member body; for example, a board, committee or commission.

Advisory committee - Boards, committees and/or commissions which act only in an advisory capacity to the Board of Selectmen; for example, Bikeways Committee, Waterways Committee, Transportation Management Committee.

Regulatory committee – Boards, committees and/or commissions with financial and/or regulatory authority granted by state law and/or the town charter. These include, Conservation Commission, Zoning Board of Appeals, Historical Commission, Historic Districts Commission, Community Preservation Committee and Board of Health.

Applicability

All policies and procedures set forth under the General Law of the Commonwealth of Massachusetts and all provisions of ARTICLE VII, “Appointed Town Boards”, of the Falmouth Home Rule Charter shall be applicable. This policy applies to all committees appointed by the Board of Selectmen and its subordinates.

General Policy and Responsibility

1. As stipulated in Article VII of the Charter, all vacancies for committee appointment shall be publicized in advance of consideration of candidates.

2. Applications for committee appointment are available in the Selectmen’s office or on the Town website, which can be submitted at any time to express interest in serving the Town. Applications shall be retained for 6 months so that a pool of applicants will be available in the event of a vacancy. Applications more than 6 months old shall be discarded.

3. The appointment of completed terms of office shall be considered at a regularly scheduled public meeting of the Board in June. Pending appointments, due to both completion of terms and vacancies, shall be considered together.
4. Unless circumstances require greater expediency (for example, there is no quorum of members), all vacancies not filled in June will be advertised and filled at a regularly scheduled public meeting of the Board on a quarterly basis.

5. Incumbents are asked to indicate in writing their interest in continuing to serve on their respective committees.

6. To qualify for membership on a committee, a person must be a resident or taxpayer of the Town of Falmouth.

7. Length of terms shall be for three years, unless otherwise specified. No member of a committee shall serve more than three consecutive three-year terms (for the Zoning Board of Appeals, two five-year terms). After leaving a committee due to term limits, candidates may not return to the same committee until a minimum of one year has lapsed.

8. All applicants shall be interviewed by the Board at a regularly scheduled public meeting.

9. If the only applicant to an advisory committee is an incumbent in good standing seeking reappointment, the Board may waive the requirement for a public interview by a majority vote.

10. The requirement of a public interview for applicants to regulatory committees may not be waived because of the authority granted to these committees by State Law and/or the Town Charter.

11. The Board shall take no public comment during the public interviews, but will solicit public feedback about the fitness of the applicants for appointment.

12. Appointments are made by a vote of no less than three selectmen, and confirmed in writing. If only three members of the Board are present, the vote must therefore be unanimous.

13. Committees appointed for a specific purpose shall be given a charge and provided with guidelines and dates of completion.

14. Attendance, among other factors, shall be considered by the Board when reappointing incumbents; therefore, each board shall forward annually to the Selectmen the attendance records of all members.