



TOWN OF BECKET

HANDBOOK

For

Elected and Appointed Officials

Board/Committee/Commission
Members

July 2009
(Revised 11/4/09)

FOREWORD

This Handbook has been prepared by the Town Clerk for use by the elected and appointed individuals, Boards, Committees and Commissions involved in town government. It provides information concerning legal obligations, procedural matters and advice for the effective operation of these groups and officials.

The Town of Becket is grateful to the many citizens who serve in these positions for the Town and hope that this Handbook will assist them with their duties and responsibilities.

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Becket Town Clerk

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I. GENERAL

1. Appointments

Appointments are made, according to Town of Becket By-Laws, either by the Board of Selectmen or the Town Administrator. The appointed individual receives a formal written notification of his/her appointment and the individual must appear before the Town Clerk to take the required oath of office to faithfully perform their duties prior to beginning to perform those duties.

ALL ELECTED AND APPOINTED MEMBERS OF A BOARD OR COMMISSION OF THE TOWN AND EVERY ELECTED OR APPOINTED TOWN OFFICER MUST, BEFORE ENTERING UPON HIS OFFICIAL DUTIES, BE SWORN TO THE FAITHFUL PERFORMANCE THEREOF [41:107].

If litigation results from some action taken by a board, the case may be lost if all board members involved in the action have not taken the required oath. The Town Clerk may be called upon to certify the membership of the board and whether or not each board member had been sworn.

2. Officers

Each committee or board should elect a chairperson, vice-chairperson and clerk annually at their first meeting. Committees and boards may, at their option, establish various other offices within the committee.

3. Applications

Applications for a committee assignment should be submitted in writing to the Board of Selectmen. If no openings exist, the application will be held on file until an opening becomes available. Applications are available at Town Hall. A well-written application will assist the appointing authority in making the best decision on committee appointments. Ideally, the application should list education, work experience and outside accomplishments that will significantly contribute to the committee's area of responsibility.

4. Resignations

All resignations shall be submitted in writing to the Town Clerk, with a copy to the appointing authority and the committee to which appointment was made when the individual does not intend to continue to participate. Resignations of all town officials, elected or appointed, must be filed with the Town Clerk prior to becoming effective [41:109]. The person resigning may specify in his resignation an effective date later than the date of filing, however, if he does not, the effective date is the date on which the town clerk received it in his/her office. If the resignation is addressed only to the Town Clerk, the Town Clerk will send a copy to the Selectmen, the appointing authority if this is some official other than the Selectmen, and to the chair of the board or committee from which the person resigned. The Town is unable to appoint someone else to the position unless a resignation is received by the Town Clerk.

5. Surrender of Records

Whoever has custody of any public records shall, upon the expiration of his term of office or employment, deliver to his successor all records which he is not authorized by law to retain. He shall make an oath before the Town Clerk that he has delivered the records and the Town Clerk shall make a record of such oath [66:14]. A form for this purpose is provided in Appendix D.

6. Reappointments

If a person chooses not to be reappointed, the appointing authority should be advised in advance. The appointing authority may, at their discretion, choose not to reappoint a person to a committee, and shall inform the person.

7. Committee Composition and Duties

Many 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. The composition of most appointed committees is specified by Town By-Laws or Town Meeting vote. Below are descriptions of Town of Becket committees noting relevant General Laws and/or Town of Becket By-law:

Agricultural Commission

Established at the May 13, 2006, Annual Town Meeting to represent the Becket farming and agricultural community, as well as other farming and forestry activities. The purpose of the Agricultural Commission will be to support commercial agriculture and other farming activities in the Town of Becket. The Commission's duties shall include but will not be limited to the following: serve as facilitators for encouraging the pursuits of agriculture in Becket; promote agricultural-based economic opportunities in Town; act as mediators, advocates, educators, and/or negotiators on farming issues; work for the preservation of agricultural lands; advise the Board of Selectman, Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, Historical Commission, Board of Assessors, and the Open Space Committee, or any other appropriate Town Boards, on issues involving agriculture; and shall pursue all initiatives appropriate to creating a sustainable agricultural community.

The Commission shall consist of three members appointed by the Board of Selectman, of which the majority of the membership shall be substantially engaged in the pursuit of agriculture. All members of the Commission must either be residents of the town, or owners and farmers of agricultural property within the town. There may be one or two alternates appointed to the Commission by the Selectmen. The alternates will fill any vacancies at meetings of the Commission. In making its appointments, the Board of Selectman is asked specifically to consider the intent of the Commission to represent the agricultural interests of the town. The terms will be as follows: One member for a term of three years; one member for a term of two years and three thereafter; and one member for a term of one year and three years thereafter. The Board of Selectman shall fill a vacancy based on the unexpired term of the vacancy in order to maintain the cycle of appointments, based upon the recommendations of the Commission.

Arts Lottery Council (Becket Cultural Council) [MGL c.10, sec 58]

Appointed by Board of Selectmen; council consists of at least 5 but no more than 22 citizens; 3-year terms; members can serve a maximum of 2 consecutive terms, or a total of 6 years, unless the appointing authority removes a member before the expiration of a term; members must remain off the council for a 1-year interval before serving additional terms; terms should be staggered. The Local Cultural Council (LCC) Program was established in 1982 and was overseen by the Mass. Arts Lottery Council until 1990. It then merged with the Mass. Council on Arts & Hum. to form the Mass. Cultural Council. [962 CMR 2.00]

A *Municipal Guide to Local Cultural Councils* is available in the Town Clerk's Office and more information is available online at www.massculturalcouncil.org.

Board of Health - [MGL c. 111]

Shall consist of three (3) members, one (1) to be elected each year for a term of three (3) years.

ARTICLE 10--BOARD OF HEALTH

SECTION 1.The Board of Health shall have all the powers and duties given to it under the Massachusetts General Laws and the rules and regulations of state agencies, including but not limited to MGL Chapter 111, 105 CMR and 310 CMR (Title V), MGL Chapters 40A and 41 and its own rules and regulations.

SECTION 2.The Board of Health shall submit an annual report to the Town of all permits and licenses issued, fees collected, inspections made and orders issued for the year.

Board of Health members can find support from:

- Massachusetts Association of Health Boards
<http://www.mahb.org>

Cemetery Commission [MGL c.114: Cemeteries and Burials; MGL c.114, s.43M: Cremation Remains.]

There shall be three (3) CEMETERY COMMISSIONERS, one (1) to be elected each year for a term of three (3) years.

ARTICLE 14--CEMETERY COMMISSIONERS

SECTION 1.The Commissioners shall keep ledger accounts of all fees, when collected, and when transmitted to the Town Treasurer.

SECTION 2.A record shall be kept of all sales of burial plots and the deeds thereto.

SECTION 3.Perpetual Care contracts and all deeds to plots shall be deposited with the Town Treasurer for safe keeping in the vault. Only in this manner, can the Treasurer properly invest funds for maximum return to the Town.

Community Preservation Committee [MGL c. 44B]

Appointed by Board of Selectmen; constituted at 10/18/08 Special Town Meeting; seven members: one member of the Planning Board, one member of the Conservation Commission, one member of the Historical Commission, one member of the Parks Commission, and three at large members appointed by the Board of Selectmen. This committee shall study the needs, possibilities and resources of the town regarding community preservation.

Community Preservation Committee members can find support from:

- The Community Preservation Coalition
<http://www.communitypreservation.org/index.cfm>

Conservation Commission [MGL c. 40, sec 8C; MGL c. 131, sec 40; 310 CMR 10.00-10.99]

Appointed by Board of Selectmen, 7 members with staggered 3 year terms. Per Town Counsel 11/8/06, there are no age, citizenship, residency or training requirements for our Conservation Commission. Under the Conservation Commission Act (MGL 40:8C), there is no provision for alternate members who sit in and vote when regular members cannot be present.

ARTICLE 15--CONSERVATION COMMISSION

SECTION 1.The Commission shall have all the duties and powers given to it under Massachusetts General Laws and the rules and regulations of the state agencies, including but not limited to MGL Chapter 131, Section 40 and MGL Chapter 40, Section 8C.

SECTION 2.The Commission shall submit an annual report to the Town of all permits issued, fees collected, inspections made, and notices and orders issued for the year.

SECTION 3.The Commission shall consist of seven members to be appointed to staggered 3 year terms.

Conservation Commission members can find support from:

- Massachusetts Association of Conservation Commissions
<http://www.maccweb.org/>
- Massachusetts Department of Environmental Protection
<http://www.magnet.state.ma.us/dep/dephome.htm>

Council on Aging [MGL c. 40, sec 8B; MGL c. 19A]

The Town of Becket accepted MGL Chapter 40, Section 8B, to establish a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging and in coordination with programs of the Department of Elder Affairs.

Finance Committee

Shall consist of five (5) members, two (2) to be elected each year and one (1) on the third (3rd) year, for a term of three (3) years.

Article 16A--Finance Committee

Section 1.The Finance Committee shall have all duties and powers given to it under Massachusetts General Laws and the Town of Becket By-Laws, including but not limited to MGL Chapter 39, Section 16.

Section 2.The Finance Committee shall consider any and all municipal questions for the purpose of making reports or recommendations to the town. It shall be the duty of the committee to investigate all proposals in the articles of the warrant for any town meeting that shall in any way affect the finances of the town and to recommend to the town at the time of said meeting a course of action thereon, and in general to make recommendations to the town in regard to any financial business of the town. The committee shall make recommendations on each warrant article involving an appropriation. The committee may or may not endorse warrant articles, as it deems appropriate, where there is no appropriation requested.

Section 3.The committee shall have the authority to vote transfers from the Reserve Fund per MGL Chapter 40, Section 6. The Treasurer and the Town Accountant are to be notified of any action or transfer of fund requests.

Section 4.The Committee shall annually elect its own chairman, clerk and other necessary officers. All vacancies in the membership shall be filled by a majority vote of the combined Select Board and Finance Committee; the term to be until the next election.

Section 5.The Finance Committee shall report annually in the Town Report, the financial condition of the town

A "Finance Committee Handbook" is available from the Town Administrator.

Historical Commission [MGL c. 40, sec 8D]

Established at the May 17, 1975 Annual Town Meeting. Appointed by Board of Selectmen, the Historical Commission shall consist of five to seven members; 3 year terms.

Parks Commission [MGL c. 45, sec 2]

Appointed by Board of Selectmen; 3 year terms

Planning Board [MGL c. 41, sec 81A]

Shall consist of five (5) members, one (1) to be elected each year for a term of five (5) years.

ARTICLE 12--PLANNING BOARD

SECTION 1.The Planning Board shall have all the duties and powers given to it under the Massachusetts General Laws and the Town of Becket By-Laws and Zoning By-Laws, including but not limited to MGL Chapters 40 and 41.

SECTION 2.The Planning Board shall meet a minimum of twelve (12) times per year to review planning and shall hold public hearings as required for zoning amendments, special permits, applications and changes in subdivision rules and regulations, or for the resolution of complaints from citizen groups.

SECTION 3.The Planning Board has functioned for a number of years under the authority of the Subdivision Control Law. The nature of this authority and the duties of the Board thereunder are described in MGL Chapter 41, Sections 81K through 81GG.

SECTION 4.The Planning Board shall report annually in the Town Report, the condition of the Town and any plans or proposals for its development and estimates of the cost thereof; and to enumerate any Special Permits granted or denied to petitioners during the year.

SECTION 5.The Board shall make available the most recently approved version of the Protective (Zoning) By-Laws.

A Planning Board Reference Handbook is available on line at

<http://berkshireplanning.org/6/handbook/>

Planning Board members can find support from:

- Berkshire Regional Planning Commission
<http://www.berkshireplanning.org>

- Citizen Planner Training Collaborative
<http://www.umass.edu/masscptc>
- Massachusetts Department of Housing and Community Development
<http://www.state.ma.us/dhcd>
- The MA Federation of Planning and Appeals Boards (508-892-1411)

Recreation Committee

Established per Article 22 of the Annual Town Meeting on February 28 1970, to investigate and recommend improvements in, town sponsored recreation, sports, social, and cultural opportunities for youth; amended per Article 18 of the Annual Town Meeting of 5/10/97; Appointed by Board of Selectmen; 7 members; 3 year terms.

Zoning Board of Appeals [MGL c. 40A]

Shall consist of five(5) members and two(2) alternates, who shall be appointed by the Selectmen, for terms of such length and so arranged that the term of one (1) member shall expire each year; and said Board shall elect annually a chairman, vice-chairman and clerk from its own members.

ARTICLE 13--BOARD OF APPEALS

SECTION 1. Meetings of the Board shall be held at the call of the Chairman.

SECTION 2. Such Chairman, or in his absence the acting Chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the Board shall be open to the public, and in full compliance with Section 1, and 2 of Article 4 as recorded in these by-laws.

SECTION 3. This Board will consider the appeals of property owners who may be aggrieved by zoning restrictions that are embodied in the Town's protective By- Laws, or by failure to acquire a Permit from the Inspector of Buildings because of said Protective By-Law restrictions. A Variance may then be granted upon evidence of a specific and material hardship.

SECTION 4. This Board has no jurisdiction over grievances or alleged hardships because of the imposition of Building Code restrictions by the Inspector of Buildings. Such matters must be referred to the appeals Board associated with the Code Commission in Boston.

Zoning Board of Appeals members can find support from:

- Citizen Planner Training Collaborative
<http://www.umass.edu/masscptc>
- Berkshire Regional Planning Commission
<http://www.berkshireplanning.org>
- Massachusetts Department of Housing and Community Development
<http://www.state.ma.us/dhcd>
- The MA Federation of Planning and Appeals Boards (508-892-1411)

8. Public Records

DEFINITION OF PUBLIC RECORD

“Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristic, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof,...unless such materials or date fall within the exemptions of [4:7(26); Public Records Access Regulations 950 CMR 32.03]. The statutory definition of “public records” contains exemptions providing the basis for withholding records completely or in part. The exemptions are strictly and narrowly construed. Where exempt information is intertwined with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are deleted. Exemptions are listed in **A Guide to the Massachusetts Public Records Law** available from the Town Clerk or online at

Minutes of open meetings become public upon creation. If the minutes are not transcribed at the time a request is made, there is no requirement under the Public Records Law that the board transcribe those minutes in response to the request. However, an audio tape of a meeting or any notes taken by the recording secretary are public records. Executive session minutes may remain confidential until the reason for the executive session no longer exists. Accurate minutes are to be kept and maintained of all meetings. The law requires the minutes to set forth: (a) the date; (b) the time; (c) the place; (d) the members present or absent; (e) the actions taken; and, for executive sessions, (f) any votes, by recorded roll call. Minutes need not be transcripts of everything said. They should accurately reflect what business was before the board or committee.

CUSTODY OF RECORDS

Town records are in the custody of the department, board, commission or office which generated them. The clerk of the department, board or office has the responsibility to enter the votes, orders or proceedings of the department in record books and has custody of those books. Every sole officer in charge of a department has custody of the records of that department.

The Public Records Law only applies to records that are in existence and in the custody of a government official. The law does not require an official to answer a question or to create a record in response to a question or a public records request.

The Town Clerk has custody of any record which is required under a section of the General Laws or by town bylaw or charter to be filed or recorded in the Town Clerk's office where the record was generated by another public agency, a private individual, or by a business.

ACCESS TO AND COPIES OF PUBLIC RECORDS

Record Custodian

Custodian means the governmental officer or employee who in the normal course of his or her duties has access to or control of public records.

When Records May be Inspected

The custodian of any public record must allow it to be inspected and examined by any person at reasonable times and without unreasonable delay. The regulations provide that the custodian must allow a public record to be inspected and copied by any person during regular business hours. However, if the office does not have regular business hours, a notice must be posted in a conspicuous place listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.

In addition, the custodian is required to maintain procedures that will allow access to public records at reasonable times and without unreasonable delay and must respond to requests as soon as practicable and within 10 days.

Form of Request

Under the Public Records Law, a custodian of public records may not require that requests be made in writing. An oral request, made in person (not by telephone) is valid under the Public Records Law. In order for a requester to appeal a custodian's failure to provide copies or access to records, however, their original request must have been in writing.

The person seeking access to a public record shall provide a reasonable description of the record so that the custodian can identify and locate it promptly. The person requesting the record cannot be made to make a personal inspection of the record prior to receiving a copy of it. In addition, the custodian is prohibited from requiring that the requester disclose the reasons he is seeking access to or a copy of a public record and the custodian cannot require proof of the requester's identity prior to complying with requests for copies of public records.

If a custodian has filed or recorded a non-public record along with the public record, the custodian must allow public inspection of that part which is a public record, provided it can be separated from that part which is not public. For example, if impounded birth records are recorded in the same book as those which are not impounded, the custodian must allow inspection of a page in the record book which does not contain any impounded entries. In this case, the custodian should be sure that the examiner does not turn to a page in the book containing an impounded record.

Response to Request

The custodian's written response, made within ten days of the request, must be either an offer to provide the requested materials or a written denial. A denial must detail the specific legal basis for withholding the requested materials. Requesters are free to file an appeal with the Public Records Division if they do not receive the records within the ten-day period, or if they dispute the custodian's written denial. A failure to respond within the allotted time period, or a denial in writing from the custodian, allows a requester to appeal to the Supervisor of Public Records.

Examination of Records

Inspection of a public record must take place under the supervision of the record custodian. Such supervision is necessary to prevent the removal of a record from the room, altering, defacing or destroying the record, or changing the order of papers in a file. The procedures a custodian establishes for the examination of records will depend to a large extent upon the physical arrangements of their office, the location in which the records are kept, and the custodian's own judgment as to what may be necessary to protect the records.

The custodian, or one of his/her employees, must keep the record being examined and the person examining it in view at all times. Should the examiner start to do something which might damage the record, such as underlining or making other marks on a paper or in a book, he should be stopped immediately. Under no circumstances should an examiner be allowed to remove a record to examine it outside of the custodian's office area. Vigilance is strongly recommended to prevent an examiner from tearing a page out of a record book or removing papers from a file and taking them with him when he leaves the office.

Copies of Records

A copy of a public record must be furnished to any person upon request and upon the payment of a reasonable fee. In addition, every person for whom a search of public records is made shall, at the direction of the record custodian, pay the actual expense of such research.

If the costs are estimated to exceed \$10.00, the custodian must provide a written good faith estimate of cost including costs for copying, searching the records, etc. Actual cost of postage, if any, may be assessed and added to the copying costs. However, a custodian may not charge a fee for mere public inspection of records, unless compliance with the request for inspection takes more than one-half hour. In that case, a fee may be assessed.

NOTE: Please contact the Town Clerk with any questions that you might have. For further information see **A Guide to the Massachusetts Public Records Law** available from the Town Clerk or online at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

9. Training

Elected and appointed individuals and Board/Committee/Commission members are encouraged to attend all available and relevant training. In addition to various statewide associations, training is available from:

www.townboard.org – a calendar of training events for local officials

www.umass.edu/masscptc - The Citizen Planner Training Collaborative

www.mma.org – The Massachusetts Municipal Association

www.state.ma.us/ethics - The State Ethics Commission

II. MEETINGS

1. Meeting Notice

A notice of every meeting of a governmental body must be filed with the Town Clerk at least 48 hours prior to the meeting [MGL 39:23B]. The Town Clerk will post the notice on the Town bulletin board. The notice must state the date, time and place of the meeting. In calculating the 48 hour period prior to a meeting, Saturdays should be included, but Sundays and legal holidays should be excluded. For example, a notice for a meeting to be held on Monday at 8 P.M. must be posted on the preceding Friday, not later than 8 P.M. Saturday would be included in the calculation even though the office may not be open for business on that day. Ideally, seven days notice is desirable for adequate notice to the public.

NOTE: Local and state political parties are not subject to the Open Meeting Law as they are 'party bodies' not governmental bodies.

2. Meeting Schedule and Location

The first meeting of a committee will be called by the chairman of the committee or, being none, then by the appointing authority. At that time it is advisable to review the goals of the appointed committee so that all members understand and agree upon the objectives of the committee.

To accomplish committee objectives, regular meeting times and locations should be established and some coordination with other boards and committees for meeting space may be necessary. Depending on committee workload, meetings may be held weekly, bi-monthly or, at the very least, monthly. A regular night of the week and time for the meetings should be established and notice of such shall be recorded in the office of the Town Clerk. By law, meetings must be conducted in a public building, but not scheduled for holidays, election days, or Sundays. Meeting space for the Town Hall must be scheduled with the Selectmen's Office (413-623-8934).

3. Filing/Posting Meeting Notices

Ordinarily, the secretary or chairman of a town board or committee should either mail or deliver to the town clerk in person the notice of the meeting. If the notice is delivered, it is suggested that the person delivering it be certain it is handed to the town clerk or the assistant town clerk rather than being left on an unattended desk or counter where it might be lost or misplaced.

If timing is short prior to the deadline for filing and posting, the town clerk may accept a notice by telephone for a board or committee. In this case, the town clerk would type the notice and post it noting that the notice was received "Per telephone call from (name) on (date)."

Each notice is Time stamped by the town clerk as soon as it is received and a copy is kept on file. The town clerk may be asked, either by the public or by a board or committee, to show that the notice requirements of the open meeting law have been met. Since the Supreme Judicial or Superior Court may invalidate any action of a board or committee taken at a meeting if the open meeting law has been violated, it is particularly important that meeting notices are filed in a timely manner. Notices of meetings must be kept by the town clerk for one year if no litigation is pending. [state retention schedule #2.59]. If litigation is pending, notices are kept at least until the litigation has been completed.

4. Emergency Meetings

The filing and posting requirements for meeting notices do not apply to emergency meetings. Emergency is defined in 39:23A as "a sudden, generally unexpected occurrence or set of circumstances demanding immediate action." For example, a meeting of the board of health to take action with respect to a matter endangering the public health due to a sudden flooding of an area, would be considered an emergency

meeting. A meeting simply called in a hurry to take action prior to the expiration of a deadline would not qualify as an emergency meeting.

5. Executive Session Meeting

No executive session (a meeting closed to the public) may be held until the governmental body has convened in an open session for which notice has been given and a majority of its members have voted to go into executive session. The procedures to be followed and the purposes for which an executive session may be held are specified in 39:23B (see Appendix A).

Since an open meeting is required prior to voting to convene an executive session, the meeting notice should be posted in the same manner as a regular meeting. The intent to convene an executive session is not required to be stated in the meeting notice, although it usually is.

Deliberations and votes held in private, commonly called executive session, are allowed under strict circumstances outlined in the open meeting law (See Appendix A). Executive sessions are allowed for discussions and negotiations of a land purchase, union negotiations, deployment of security measures, personnel or equipment, and certain actions concerning employees. A regular job performance review is not a reason for executive session, however, an executive session may be held if the nature of the discussion concerns the health and mental competence of an employee. If an employee is involved in any matter proposed for executive session, your board must be extremely careful that the rights of that person are not violated. Personal rights include advance notification and the right to have an attorney present. *For any questions relative to executive session, please consult the Town Administrator.*

6. Cancelling a Meeting

A board or committee should file with the town clerk a notice of cancellation of any regularly scheduled meeting and should file a separate notice of any special meeting not covered by the general listing.

7. Quorum

A committee should establish a quorum necessary for conducting business. This quorum must be greater than fifty per cent (50%) of committee membership. This may deviate depending on the criteria used to establish the committee. If a quorum is not present, the committee may not conduct any business and the meeting must be cancelled. Decisions of a board or committee are only effective when they are the result of a vote of a majority (or in some cases a 2/3 vote) of the board taken at a properly posted public meeting with a quorum present. No individual board member may act on behalf of that board on his/her own, even if that member is the Chair of that board.

8. Providing Copies of the Open Meeting Law

The town clerk is required to furnish a copy of the open meeting law to each person appointed or elected to a governmental body upon his being qualified. A person is qualified by taking the oath to faithfully perform his duties as a member of a board or committee. The town clerk is also required to obtain a signed acknowledgment from the board or committee member that he has been furnished with a copy of the open meeting law. The town clerk will revise the copies of the open meeting law to include any amendments as they are passed by the General Court but does not need to send an updated copy to each individual to whom the town clerk has already furnished the open meeting law. However, the chairman of each board or committee should receive information concerning any new provisions.

A copy of the Open Meeting Law [MGL 39:23B, 23A and 23C] and MGL 66:5A, Records of meetings of boards and commissions, are attached as **Appendix A** for your information and guidance. In addition, further information may be found in the booklet titled "Open Meeting Law Guidelines" published by the

Attorney General's Office that is available from the Town Clerk and that can be found at the Town of Becket website (Town Clerk Department) or at <http://www.mass.gov/Cago/docs/Government/openmtgguide.pdf>.

IMPORTANT NOTE: "An Act to Improve the Laws Relating to Campaign Finance, Ethics and Lobbying," was signed on July 9, 2009, by Governor Deval Patrick. The Act includes many provisions of interest to municipalities and also includes substantial revisions to the Open Meeting Law. Importantly, the Act provides that the amendments to the Open Meeting Law will take effect on July 1, 2010. Prior to that time, it is anticipated that the Attorney General's office will issue detailed educational materials, regulations, and guidance regarding the manner in which the law will be implemented.

9. Open Meeting Law Guidance

"Telephone meetings" – discussion by telephone among members of a governmental body on an issue of public business within the jurisdiction of the body – are a violation of the Law. This is true even where individual telephone conversations occur in serial fashion.

"Revolving door" meetings, in which a quorum of members participates in serial fashion, are meetings under the Open Meeting Law and must comply with all the Law's requirements.

"Email" - With the advent of computers, it has become more common for persons, both at home and at work, to communicate through electronic mail, or "e-mail." Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting." Thus it is a violation to e-mail to a quorum messages that can be considered invitations to reply in any medium, and would amount to deliberation on business that must occur only at proper meetings. It is not a violation to use e-mail to distribute materials, correspondence, agendas or reports so that committee members can prepare individually for upcoming meetings..."

10. Minutes

A written record of all meetings is required by law and immediately becomes part of the public record. They must contain:

- Date, time and place
- Names of members present or absent
- A record of all votes
- A record of any vote to enter an executive session and the reason
- A summary of the discussions

A "Meetings and Minutes Guide for Boards, Commissions and Committees" is available from the Town Clerk or at http://www.ci.lancaster.ma.us/Pages/LancasterMA_Admin/meetings_and_minutes_guide.pdf.

Minutes should be approved by the members at the next regularly scheduled meeting. After approval, all minutes should be maintained in a permanent file and copies forwarded to the Town Clerk, Town Secretary (for inclusion on website), and any other Town committee impacted by a decision.

If a tape recorder is used during meetings, that taped record is also part of the public record until formal minutes are adopted. The tapes can then be disposed of or reused.

Minutes of meetings and mailings are usually done by the clerk of the committee. Some committees have their members take turns taking minutes so that one member is not overly taxed with the responsibility. A copier is at your disposal for Town use at Town Hall.

Some committees may have paid employees working for that committee. All appointments of such personnel must be made by the Town Administrator.

11. Public Hearings

If you serve on the Board of Selectmen, Planning Board, Zoning Board of Appeals, Conservation Commission, Historical Commission, or the Board of Health, occasionally you will be required to hold a public hearing in accordance with Massachusetts General Laws. Hearings are held for the purpose of gathering information from which your board or committee can draw a conclusion. Written notices, advertising in a local newspaper, the initiation of the hearing, and the written conclusions of a hearing may have strict legal time limitations that vary with the nature of the hearing and the Board. Several procedures are common to all hearings. All public hearings must take place at a properly posted public meeting. The Chairman or other designated person should run the hearing and state the guidelines and time allowances - if restricted - before any testimony is given. All questions should be directed to the chair who in turn, may ask for a response from the floor. We suggest that each board/committee develop written guidelines that:

1. Set ground rules, time limits, direct all questions to chair, etc.
2. During deliberations, findings of fact are noted
3. Decision is written using notes of discussion, fact & findings
4. Decision is filed in appropriate places

A sample format for the hearing is as follows:

1. Open Public Hearing
2. The Chairman will announce the nature and purpose of the hearing, identify the particular matter, and recite the notice given.
3. Order of Presentation
 - a. Presentation by Proposer
 - b. Receipt of recommendations from any Town agency or officer
 - c. Questions from Board Members
 - d. Statements by members of the public
4. Close Public Hearing
5. Deliberate on Findings and Merit
6. Entertain Motions to render a decision or take the matter under advisement, announcing the intended date of decision.

A public hearing may be “continued” to a specific date, time and place and no further public notice or advertising is required to do so.

An important aspect of the hearing process is that a decision must be based on the testimony and evidence submitted at the hearing or, if written, entered into the record at the hearing. The decision must be based on facts and cannot be arbitrary. Hearsay and emotions are not evidential and should not impact the final decision.

Per MGL 39:23D, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member’s absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session and the written certification shall be part of the record of the hearing. A form for use by committee members for this purpose is attached as Appendix E.

A board member serving on a hearing panel must be neutral without having formed an opinion in advance. The purpose of the hearing is to determine all facts. Once fact finding is complete, then the board can begin to develop a basis for an opinion based on those facts that have been identified and outlined. If a board member is pre-disposed to a decision, they must consider recusing themselves from the hearing.

A sample **Public Hearing Guideline for Special Permit Applications** is attached as Appendix F.

III. FINANCIAL MATTERS

1. Submission of Bills

All requests for payment of bills must be given to the Town Treasurer. An “Expense Account Cover Sheet” is available in the Committee Room for your use and invoices must be attached. There are very strict laws, regulations and guidelines for collecting, accounting for, and expending public money. Your committee may have an administrative budget voted at Town Meeting; otherwise, you will have to seek funds for any goods or services through the Town Administrator. Large expenditures, for goods or programs, will have to be voted upon at Town Meeting and, in many instances competitive bidding is required by law. Committees will need guidance from the Town Administrator’s Office on the proper bidding format

2. Turning in Receipts

If your board or committee charges a fee for any of your services or programs, that money must be kept in a secure place and then turned over to the Town Treasurer. All checks received should be made payable to “Town of Becket”. The turnover form “Schedule of Departmental Payments to Treasurer” (available from the Treasurer or in the Committee Room) should be used when submitting cash and/or checks and it should be noted on the form whether the item was paid by cash or check. The original form with cash/checks should be given to the Town Treasurer, or, in her absence, placed in the box outside her office door labeled Treasurer’s Turnovers. A copy of the turnover form should be given to the Town Secretary for forwarding to the Town Accountant. Plan to turn in the money at least once a month. Please keep in mind that unauthorized expenditures of public money for goods or services is illegal.

3. Budget

Each year the Town prepares an operating budget to be presented to Town Meeting in May. You may be required to submit budget documentation to the Town Administrator. If your committee or board has financial needs or wishes to discuss capital items, please contact the Town Administrator’s Office.

IV. CONDUCT OF PUBLIC OFFICIALS

1. Conflict of Interest

In addition to the Open Meeting Law, the conduct of public officials is subject to the Conflict of Interest Law. The State Ethics Commission maintains a website which details all aspects of the Law. That site may be accessed at <http://www.mass.gov/ethics/>. If you have a doubt about a conflict, please consult with the Town Administrator who will relay the question to Town Counsel if warranted.

The Conflict of Interest Law was enacted in 1962 and the ethical conduct of public officials is now governed by this law. The Ethics Commission has ruled that the law applies to all public officials, paid or unpaid. It also regulates the activities of public officials after their term of service is over. Its purpose is to ensure that the private interests of any individual do not conflict with the best interest of the community.

On July 1, 2009, Governor Patrick signed into law [Chapter 28 of the Acts of 2009, An Act to Improve the Laws Relating to Campaign Finance, Ethics and Lobbying](#) (the “Bill”). The Bill’s changes to the conflict of interest law take effect on September 29, 2009. The Bill contains mandatory ethics training requirements for all public employees. All individuals who are considered state, county or municipal employees under the conflict of interest law, including special employees, will be required to comply with the new training requirements. The Board of Selectmen of each municipality must designate a senior level employee as the municipality’s liaison to the Ethics Commission. The Commission will provide educational materials to the liaisons and assist them in developing procedures for the municipality to comply with the ethics training requirements, and the conflict of interest law generally.

Every public employee must be provided with a [summary of the conflict of interest law](#), as posted on the Ethic Commission’s website, within 30 days of becoming such an employee, and annually thereafter. Employers must distribute the summaries by the following deadlines:

- On or before December 28, 2009, and annually thereafter, summaries must be distributed to current state, county, and municipal employees who became such employees on or before November 28, 2009.
- Summaries must be distributed to persons who become state, county, or municipal employees after November 28, 2009, within 30 days of the date on which they commence employment, and annually thereafter.
- Beginning in 2010, all employers must distribute the summaries to all current employees each year between September 15 and December 15. New employees must receive the summaries within 30 days of the date on which they commence employment and in each subsequent year between September 15 and December 15.

Every public employee must sign a written acknowledgment that he has received the summary and provide such receipt within ten (10) business days of receipt of the summary. The Town Clerk of each municipality must provide the summary of the law for municipal employees to that municipality’s employees, and must maintain employees’ acknowledgements of receipt.

The statutory definitions of who is a state, county, and municipal employee for purposes of the conflict of interest law are very broad. These definitions are not limited to paid, full-time public employees. Everyone who performs services for, or holds an office or position with, a state, county, or municipal agency is subject to the conflict of interest law. This is true whether the person is paid or unpaid, is a volunteer, works part-time, is employed only for part of the year or on a seasonal basis, or is a “special” employee. The law applies to these individuals, regardless of whether the employee is elected, appointed, or working under a contract.

The **Summary of the Conflict of Interest Law** is attached as **Appendix B**.

2. Online Training Program

On or before April 2, 2010, and **every 2 years** thereafter, all current state, county and municipal employees must complete an ethics training program on the Ethics Commission's website. Public employees hired after April 2, 2010, must complete the online training **within 30 days** of the dates on which they commence employment, and **every 2 years** thereafter. Public employees in the Town of Becket will be required to provide a certificate of completion of the training to the Town Clerk and the certificate shall be retained by the Town for **6 years**.

The Online Training is available at the Ethics Commission website www.state.ma.us/ethics. Upon completing the online training program, employees should print out the completion certificate, keep a copy for themselves and provide a copy of the completion certificate to the Town Clerk.

3. Political Activity

Chapter 55 of the General Laws regulates your political activity. Appointed, compensated employees may not directly or indirectly solicit contributions, or anything else of value, for campaigns or other political purposes. In addition, the Town itself and its departments may not engage in campaigning for a person or an issue. For more information about political activity, contact the Office of Campaign and Political Finance at (617) 979-8300 or visit their website at <http://www.mass.gov/ocpf/> .

4. Financial Conflicts

The law assumes that objectivity and integrity could be compromised if you act on matters in which you have a financial interest. Any "particular matter" that comes before a committee or board in which a business partner or family member are associated, should be regarded as a potential conflict and the committee member is encouraged to leave the meeting during any discussion and subsequent vote that follows. A "particular matter" includes almost any proceeding, application, decision, special permit, or other determination of the committee or board. Consult with the Town Administrator if in doubt. Special rules may be applicable.

APPENDIX A
(OPEN MEETING LAW)

CHAPTER 39. MUNICIPAL GOVERNMENT

Chapter 39: Section 23A. Definitions

Section 23A. The following terms as used in sections twenty-three B and twenty-three C shall have the following meanings:—

“Deliberation”, a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

“Governmental body”, every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of a local housing, redevelopment or similar authority; provided, however, that this definition shall not include a town meeting.

“Made public”, when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

“Meeting”, any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

“Quorum”, a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

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

Section 23B. All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussions or considerations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.
- (c) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) to speak in his own behalf.

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

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

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

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

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

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

(9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or Town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or Town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or Town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or Town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and Town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or Town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or Town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or

the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or Town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A 1/2 of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

Chapter 39: Section 23C. Regulation of participation by public in open meetings

Section 23C. No person shall address a public meeting of a governmental body without permission of the presiding officer at such meeting, and all persons shall, at the request of such presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly behavior, said officer may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned.

CHAPTER 66. PUBLIC RECORDS

Chapter 66: Section 5A. Records of meetings of boards and commissions; contents

Section 5A. The records, required to be kept by sections eleven A of chapter thirty A, nine F of chapter thirty-four and twenty-three B of chapter thirty-nine, shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but unless otherwise required by the governor in the case of state boards, commissions and districts, or by the county commissioners in the case of county boards and commissions, or the governing body thereof in the case of a district, or by ordinance or by-law of the city or town, in the case of municipal boards, such records need not include a verbatim record of discussions at such meetings.

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 municipal 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. Municipal 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 fire-fighting 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 need 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 unpaid, 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 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 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.

Version 3: Revised October 7, 2009

APPENDIX C

COMMISSION ADVISORY NO. 05-01

THE STANDARDS OF CONDUCT (Section 23)

This Advisory explains the provisions of the Standards of Conduct contained in Section 23 of G.L. c. 268A, the conflict of interest law. The Standards of Conduct provide a general code of ethics for all public employees when faced with the overlap of private interests and official responsibilities. Conflict of interest law violations under Section 23 may be created when a public employee's personal interests or relationships overlap with his or her public obligations and may result in penalties of up to \$2,000 per violation. The term "public employee" includes both elected and appointed state, county and municipal employees, whether paid or unpaid. Unpaid volunteer board members as well as, in some instances, consultants and contractors are considered public employees for purposes of the conflict of interest law.

I. UNWARRANTED PRIVILEGES (G.L. c. 268A, § 23(b)(2))

Public employees are prohibited from, knowingly or with reason to know, using or attempting to use their official positions to secure for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals. "Substantial value" has been set at \$50 or more by the courts and the Ethics Commission. In some instances, "substantial value" may not be readily ascertainable, such as when a public employee uses his or her position to get preferential treatment, to secure a special benefit or to retaliate against someone. In such cases, the Ethics Commission will view the totality of the circumstances to determine whether the substantial value threshold has been met. "Similarly situated individuals" can mean, in various situations, other people, businesses or entities in the city, town, state or county who are not necessarily public employees.

Using public equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others. Thus, the use of public resources valued at \$50 or more for personal, private or political purposes violates the conflict of interest law. In addition, public employees may not use the "inherently coercive authority" of their position to seek anything of substantial value.

Example: A manager may not use official time, his staff or the supplies or equipment available to him in his office in order to write books.

Example: An elected official may not invoke his position to seek preferential treatment from police officers during a traffic stop.

Example: A public employee may not generally solicit donations for a private or charitable organization from individuals with whom he conducts official business.

II. "APPEARANCES" OF CONFLICTS (G.L. c. 268A, § 23(b)(3))

Public employees must avoid conduct that creates a reasonable impression that any person may improperly influence them or unduly enjoy their official favor, or that they are likely to act (or fail to act) because of kinship, rank, position or undue influence of any party or person. A reasonable impression of favoritism or bias may arise when a public employee, knowingly or with reason to know, acts on matters affecting the interest, whether financial or non-financial, of a friend, a business associate or a relative other than an immediate family member or a non-financial interest of an immediate family member. ⁽¹⁾

The conflict of interest law allows public employees to act on matters, even if it creates the appearance of a conflict, if they openly admit all the facts surrounding the appearance of bias prior to any official action. Specifically, the conflict of interest law states that if a reasonable person having knowledge of the relevant circumstances would conclude that a public employee might be improperly influenced, the public employee can dispel this impression

of favoritism by disclosing all the facts that would lead to such a conclusion. For example, it may be necessary for a public employee to disclose a personal relationship with someone appearing before his or her board.

Appointed employees must make such disclosures in writing to their appointing authority (the person or board who appointed them to their job). This disclosure must be kept available for public inspection. An elected employee's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made prior to any official participation or action. In addition, the Commission advises public employees to make an oral disclosure for inclusion in the meeting minutes. Occasionally, an appearance of a conflict of interest arises for the first time during a public meeting. In that case, a public employee should make an oral disclosure at the meeting and file a written disclosure as soon as possible thereafter. Alternatively, instead of filing a written disclosure under Section 23(b)(3), a public employee may simply abstain from participating, i.e. debating, voting or otherwise being involved, in a matter that creates an appearance of a conflict.

Once a public disclosure has been made, the public employee may participate in the matter notwithstanding the "appearance" of a conflict. When public employees do act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person.

Example: An elected planning board member participates in the planning board's consideration of a subdivision plan submitted by a contractor who previously built the planning board member's house. Her participation in the planning board's consideration would create a reasonable basis for the impression that the contractor might unduly enjoy the planning board member's favor in the performance of her official duties. To dispel this appearance of bias, the planning board member must disclose in writing her private business relationship with the contractor and file the disclosure with the town clerk before participating. She may then participate in the board's consideration of the subdivision plan, including voting on the plan.

Example: The longtime friend of the head of a state agency applies for a job in the agency. If the agency head gets involved in the hiring process, it would appear to a reasonable person that he might be biased in favor of his friend. To dispel the appearance of favoritism, the agency head must disclose his private friendship with the job applicant in writing to his appointing official. The appointing official may then determine whether further steps should be taken to avoid the appearance of a conflict (e.g., instruct the agency head not to participate in the hiring and delegate the matter to another employee).

III. DEALINGS WITH SUBORDINATES (G.L. c. 268A, § 23(b)(2))

The inherently exploitable nature of the relationship between superior and subordinate requires formal safeguards to protect against even accidental or unintended coercion or undue pressure by the superior. Section 23 of the conflict of interest law prohibits both actual exertion of undue influence and also the appearance of acting in anything but a completely objective manner. Therefore, persons in supervisory positions may not ask their subordinates to work for them in a private capacity or to contribute to any private interest or organization. In such situations, the subordinate employee may feel coerced even if there is no such intent on the part of the supervisor, and it would be impossible to avoid the "appearance" of impropriety in such situations. The limitations of Section 23 also apply to a public employee dealing with vendors and other individuals that the employee regulates.

Example: A public employee is doing substantial renovations on his home, and he knows that his administrative assistant and his brother do roofing work on the side. The public employee may not ask his assistant to re-shingle the roof, even if he is willing to pay a fair market wage for the work. If, however, the solicitation is made by the subordinate, either directly or through advertisement, rather than the superior, private employment of the

subordinate by the superior may be permissible if the proper public disclosures are made to the superior's appointing official. Individuals considering such arrangements should contact the Ethics Commission's Legal Division for specific advice.

IV. INHERENTLY INCOMPATIBLE ACTIVITIES (G.L. c. 268A, § 23(b)(1))

A public employee is prohibited from, knowingly or with reason to know, accepting other employment involving compensation of substantial value (\$50 or more), the responsibilities of which are inherently incompatible with the responsibilities of his or her public office. For example, a public employee who is acting as a mediator would violate the conflict of interest law by working privately for a union when he was simultaneously involved in mediating a labor dispute with the same union.

V. USE OF CONFIDENTIAL INFORMATION (G.L. c. 268A, § 23(c))

No current or former officer or employee of a state, county or municipal agency may, knowingly or with reason to know:

- accept employment or engage in any business or professional activity that will require disclosure of confidential information the employee has gained by reason of his or her position or authority; nor
- improperly disclose material or data that are not considered public records, when an employee acquired such information in the course of his or her official duties; nor
- use such confidential information to further his or her personal interests.

Example: A former employee of the town personnel office sets up her own employment placement service and uses confidential information from the town's personnel records to prepare a client list for use in her private business. This violates Section 23 because she would be using confidential information acquired in the course of her official duties to further her personal interests, and also because she would be using her official position to secure for herself an unwarranted privilege not properly available to similarly situated individuals (i.e., other placement services).

* * *

For more information about the state conflict of interest and financial disclosure laws (G.L. c. 268A & c. 268B), including the subjects discussed in this Advisory, please contact:

State Ethics Commission (www.mass.gov/ethics)
One Ashburton Place, Room 619
Boston, MA 02108
(617) 371-9500

ISSUED: March 1987 [as a Fact Sheet]
REVISED: January 28, 1991
REVISED: December 31, 1992
REVISED: February 3, 2005 [as an Advisory]

FOOTNOTE

¹The conflict of interest law (in Sections 6, 11 and 19) expressly prohibits public employees from acting on any matter that affects the financial interest of themselves, their immediate family members or businesses for which they serve as an employee, partner, officer, director or trustee. "Immediate family" is defined in the law as the employee and his or her spouse and each of their parents, children, brothers and sisters. The public disclosure process is not available for elected public employees when faced with matters affecting these groups - the officials must abstain from participating in the matter. Public employees who are appointed or hired to their jobs should contact the Ethics Commission or consult its "[Advisory 86-02: Nepotism](#)" before taking any action on such matters.

APPENDIX D

TOWN CLERK

TOWN OF BECKET

557 Main Street, Becket, MA 01223

TOWN HALL - (413) 623-8934

FAX - (413) 623-6036



MGL 66:14. Surrender of records by retiring officer

Whoever has custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, according as they are the records of the commonwealth or of a county, city or town, before the state secretary, the clerk of the county commissioners or the city or town clerk, who shall, respectively, make a record of such oath.

I solemnly swear that I have delivered to my successor in office all of the records which I am not authorized by law to retain.

Name (please print)

Signature of retired officer

Office held

Subscribed and sworn to before me,

Becket Town Clerk

Date: _____

APPENDIX E

Pursuant to G.L. c. 39, § 23D, the undersigned member of a board, committee or commission of the Town of Becket hereby certifies that he or she has examined all of the evidence received by the said board, committee or commission at the one session of its adjudicatory hearing on the matter identified below which the undersigned member failed to attend, and that such evidence included an audio or video recording of the missed session or a transcript thereof. This Certification has been executed prior to the undersigned's participating in a vote on the matter and shall be part of the record of the hearing.

Member Name:

Board, Committee or Commission:

Subject Matter of Hearing:

Date of Missed Session:

Signed under the pains and penalties of perjury

this __ day of _____, 20__.

Signature

Chapter 39: Section 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification

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

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

Accepted by the Town of Becket on July 24, 2007.

APPENDIX F

Public Hearing Guidelines For Special Permit Applications

1. Establish a quorum
 - a. Four positive votes are required for a five member board to approve an application.
 - b. If only a four member is present, the applicant must be given the option of deferring the hearing date to a meeting with five members.

2. Open the hearing
 - a. It is now ____ PM and the public hearing for the application for Special Permit by _____ will open.

_____ is applying to _____ at _____.
 - b. Will the secretary please confirm that all Parties in Interest have been notified and all fees and reimbursements to the town been paid?

3. Applicant's presentation
 - a. _____, please present your application.

4. Board questions
 - a. Are there any questions from board members?

5. Public questions/comments
 - a. Are there any members of the public who wish to be heard?
 - b. (Be sure to indicate verbally when "Public Input" is closed.)

6. Close the Hearing
 - a. It is now ____ PM and this hearing is closed.

7. Board deliberation
 - a. Board members discuss the application
 - b. Share their views
 - c. Identify relevant and credible evidence
 - d. Assess compliance with standards
 - e. The Chair, seeing a consensus emerging, may go around the table and give each member one final opportunity to comment and bring the discussion to closure.

8. Vote
 - a. Entertain a motion to approve or deny the application
 - b. Get a second to the motion
 - c. Is there any discussion on the motion?
 - d. Will the Secretary please read back the motion?
 - e. Confirm that the motion is correct
 - f. Poll the board for a vote
 - g. State the results of the vote