



Massachusetts Select Board Handbook

This handbook is a comprehensive guide for the nearly 1,200 Select Board members in Massachusetts.

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Welcome to the Handbook for Massachusetts Select Board Members!

This handbook is a comprehensive guide for the nearly 1,200 Select Board members who serve their communities from Mount Washington to Provincetown, and from Abington to Yarmouth. It covers the full range of roles and responsibilities for Select Board members as leaders of their towns.

The history of the Select Board Handbook goes back many decades, and printed copies of older editions can be found in Town Halls across the state. The book has been updated periodically, with the previous major update published in 2014.

This 2024 edition brings an end to the printed (and PDF) format – it is the first to be published online! This new online handbook is intended to be easily navigated (using the menu to the left), and has its own powerful search function. Material here can now be updated as needed. (If you spot any errors, please let us know using our convenient feedback form.)

Not only will this handbook help current Select Board members, it will also help candidates for the office, and is available to the public to enhance their understanding of local government.

This handbook has 13 chapters, and there are a number of sections within each. The menu to the left is expandable to enable users to go directly to a topic of interest.

Dedication



The 2024 edition of the Handbook for Massachusetts Select Board Members is dedicated to the late Worthington Select Board Member, MSA and MMA President, and State Representative Stephen Kulik (1950-2022).

The Massachusetts Select Board Association wishes to acknowledge the public service legacy of Stephen Kulik, who was a loyal champion of local government, serving first as a member of the Planning Board and later as a Selectman in Worthington, his hometown for 45 years. He served as President of the Massachusetts Municipal Association in 1993, and as a state Representative from 1993 until 2019.

Stephen was a tireless advocate for local government and the communities we are honored to serve. Stephen was passionate about rural matters, justice and equity, broadband access, food security, climate issues, and conservation. Integral to Stephen's public service was his joyful

and positive approach to legislating and to local leadership, earning him the respect and affection of colleagues and constituents. We are honored to dedicate the handbook to Stephen Kulik.

Acknowledgment

The editors of the 2024 Handbook for Massachusetts Select Board Members wish to recognize the talent, record and contributions of Geoff Beckwith, Executive Director of the Massachusetts Municipal Association from 1992 to 2023. Geoff's leadership, mentorship and stewardship at the MMA have contributed in countless ways to every city and town in Massachusetts, and to the public service careers of thousands of local leaders.



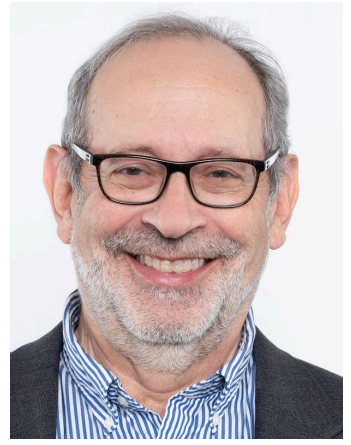
Credits

This edition of the Handbook for Massachusetts Select Board Members would not be possible without the dedicated efforts of a committee of local officials and members of the MMA staff. The effort to update the handbook began more than a year ahead of its publication, and entailed careful planning, many, many meetings, and countless hours poring over text and research materials. The process was deliberative and collaborative.

The MSA Handbook Committee included former Norwell Select Board Member Alison Demong, Williamstown Select Board Member Andy Hogeland (President of the Massachusetts Select Board Association), former Natick Select Board Member Joshua Ostroff, and former Arlington Town Manager Adam Chapdelaine (now Executive Director of the MMA), all of whom made invaluable contributions to the content and direction of this handbook.

At the MMA, the effort was organized and launched by former Senior Member Services Coordinator Isabelle Jenkins and Communication and Membership Director Candace Pierce. MMA Deputy Communications Director John Ouellette carefully and thoroughly edited the manuscript and managed the effort to publish it on the MMA website, with assistance from MMA Digital Communications Specialist Meredith Gabriliska and MMA Member Program Coordinator Anneke Craig.

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Massachusetts Select Boards – An Introduction

As a Select Board member, you serve in an important executive role to help guide your community through challenges large and small. This handbook is intended to help you to be an effective local leader, and empower you to embrace the practices of deliberate decision making, careful oversight, and ethical leadership upon which effective local government depends.

Select Board members must strive to work collaboratively in order to deliver quality public services to constituents, while modeling best practices for civic discourse, transparency and accountability in local government. Select Boards should aim to honor community traditions while preparing for inevitable change.

Select Board members are encouraged to use this handbook as a resource, to engage with the [Massachusetts Municipal Association](#) to share and learn best practices, and to actively participate in the professional network of local leaders providing excellence in public service. Attending MMA events in order to network with Select Board members from other towns is truly one of the best ways to become an informed, prepared and confident select board member.

History of the Office of Select Board

Early in the history of the Commonwealth, towns had no regularly elected town officials. In order to conduct town business, residents gathered for annual town meetings to approve budgets and laws. During these meetings, they would periodically “select” prominent men within the community to carry out the votes and conduct the business of the town. Gradually, town functions became involved enough to require more consistent supervision. Borrowing the concept of councils from their English heritage, the colonists elected between three and nine “selectmen,” or “townsmen,” to serve for fixed terms. Dorchester (now part of Boston) was the first New England town to organize a local government, in 1633, choosing 12 men to serve as selectmen. Other Massachusetts towns quickly adopted this unique form of government.

In general, selectmen carried out and enforced the votes of the town meeting, but they were also granted authority over specific administrative areas of town government. During the late 17th century, the Massachusetts General Court began passing laws that shaped the character

of the office. Selectmen were given significant authority over town finances, care of the poor, schools, admission of new residents into the town, roads and other public works, land regulation, local defense, and the appointment of other town officials not elected by the Town Meeting. Selectmen were solely responsible for the content of Town Meeting warrant articles until 1715, when the General Court passed a law requiring them to accept articles on the petition of 10 or more property owners.

In recent years, there has been a growing trend in towns across the Commonwealth to adopt gender-neutral titles for their principal elected executive boards, primarily transitioning from “Board of Selectmen” to “Select Board.” As of December 2022, more than 180 municipalities have made the change to “Select Board,” a title which more accurately reflects the longstanding participation of both men and women on local government boards. (The first woman elected to a Board of Selectmen in Massachusetts was Helen Cook of Middlefield in 1921.) In 2020, the Massachusetts Selectmen’s Association formally changed its name to the Massachusetts Select Board Association, to align with the growing trend seen in municipalities and to promote inclusivity within the organization.

The Massachusetts General Laws authorize town voters to elect Select Boards of three or five members on an at-large basis, for terms of one or three years. In almost all towns, Select Board members are elected annually for staggered three-year terms.

As the activities of towns became increasingly sophisticated over time, Select Board members were granted greater responsibilities and authority, but new elected officers and boards were entrusted with specialized functions, independent of Select Board control. While it is true that the Select Board serves as the community’s principal elected executive board, it does share executive power with other boards, such as the school committee, the planning board, and the board of health. Consequently, no single executive office has comprehensive control of all “executive branch” town functions. Very often, the Select Board does not have the only word, or even the last word, on what gets done in town.

Government by Committee

A Select Board operates as a collective decision-making body. An individual member of the board may act independently only if specifically authorized by the board. One example of this is the chair, who often acts on behalf of the board on routine matters between meetings. In most towns, the chair of the Select Board is chosen by the Select Board members themselves, usually for a one-year term. In some towns, the position simply rotates among board members each year. Most boards reorganize, and elect a chair, at the first meeting following the annual town election.

The legal authority of Select Board members is limited to actions taken by the board at a legally called, posted meeting with a majority of the board present. Motions are voted in favor of, or opposed by, a majority of the board; no one Select Board member can unilaterally approve a motion.

If a board member wants to accomplish specific objectives, the member must find a way to work with the other members of the board and with other boards in town. This may be difficult for a new board member who ran “against the board,” but an effective Select Board member must become an expert in the political arts of courtesy and compromise.

Legal Authority

The Select Board’s formal, legal responsibilities are scattered throughout hundreds of state statutes, as well as in a town’s bylaws, home rule charter and special laws enacted by the Legislature for that particular town.

While the specific role of Select Board members is broad, it varies from town to town. Generally, Select Boards have several important responsibilities under state law:

- The power to prepare the Town Meeting warrant
- The power to make appointments to town boards and offices
- The power to employ professional administrative staff and town counsel
- The power to sign warrants for the payment of all town bills
- The authority to grant licenses and permits

Coordination and Strategic Responsibilities

Apart from legal responsibilities, the Select Board can and should be the group in town that sets policy and strategic direction, coordinates the activities of other boards, and hears appeals and resolves problems that have not been settled at lower levels. If there is a professional administrator, the Select Board members should work through him or her. In small towns that don’t have a professional administrator, the Select Board members should work through department heads. Select Boards are overstepping their bounds if they get involved in the daily operations of a department or try to solve problems that should be handled by the administrator or staff. Select Board members should stay out of day-to-day municipal management, though they can act as facilitators to bring together citizen groups, state legislators, and municipal staff. The board’s time is best spent concentrating on making the whole of town government work.

Leadership Responsibilities

Effective leaders take up-front, visible roles both on a personal level, and with the board as a whole. Leaders make decisions based on facts, data and logic, even when these decisions are

unpopular. They lead by example, not by words, power or manipulation. They look for the root cause of problems. They recognize the difference between the right to take action, and the wisdom of occasionally not taking action.

Most boards are made up of citizens whose philosophies, priorities and personal ambitions differ. An effective board devises ways to work cooperatively – but not necessarily unanimously – toward broad common goals. Teamwork can be developed if individual Select Board members understand that effectiveness is not achieved by individual action, but by a Select Board acting in concert. A critical component of a healthy, productive board is respect among board members. It can take time to earn respect, but Select Board members can do this by speaking and acting in a consistently clear manner, demonstrating empathy and understanding, and owning one’s mistakes and learning from them. Members must be willing to listen carefully to what others are saying, and to disagree in a respectful manner that focuses on the subject matter and does not devolve into personal attacks.

The behavior of the Select Board sets the tone for the town. A board that is frequently stymied by disagreements loses credibility with the public, other town officials and town employees. If members work to overcome differences with integrity and grace, it is far more likely that their lead will be followed.

Taking and Leaving Office

Once someone is elected to a Select Board, the first order of business is to make arrangements to be sworn in by the town clerk. The next step is to become familiar with town government, meet town employees, and learn the logistics of serving as a Select Board member.

A new Select Board member is advised to gather and review a number of resources in addition to this handbook, specifically:

- The town’s charter (if one exists)
- A list of key town officials and their phone numbers
- The phone number of each board member
- An organizational chart of town staff and officials
- Any written procedures that the select board has adopted
- The current year’s budget
- The most recent town report

Select Board members should become familiar with the services and resources offered by the [Massachusetts Municipal Association](#), the [Division of Local Services](#) and the [Executive Office of Housing and Livable Communities](#).

Select Board members may end their town service voluntarily, or they may fail to be re-elected when their term expires. Occasionally, a select board member may be recalled (see

Chapter 3). A Select Board member who chooses to leave office must submit a resignation to the town clerk for it to become official.

Making a Difference

The role of the Select Board is steeped in nearly 400 years of tradition and has played a significant role in creating the communities we live in today. Local government has changed dramatically since colonial times, but citizens still look to Select Board members for leadership and integrity, particularly in difficult times, and take comfort when their elected officials are able to work together respectfully for the betterment of the town. Participating on your Select Board is one of the most important and fulfilling ways to serve your town and have a hand in shaping its future.

Resources

- [Massachusetts Municipal Association](#)
- [Division of Local Services](#)
- [Department of Housing and Community Development](#)

Public Decision Making and Community Engagement

The Open Meeting Law

Much of a Select Board's work is done at public meetings. This is where decisions are made, policies are discussed and set, and the public's business is conducted. The board must adhere to the Massachusetts [Open Meeting Law](#), which, among other things, establishes rules for running a proper meeting in an open and public manner.

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

– [Open Meeting Law Guide](#), published by the Attorney General (2018)

Within two weeks of election or appointment, or the taking of the oath of office, whichever occurs later, all members of public bodies must complete a Certificate of Receipt of Open Meeting Law Materials, certifying that they have received the materials and understand the requirements of the Open Meeting Law and the consequences of violating it.

The Open Meeting Law¹ must not be taken lightly. Running a good, lawful meeting is among the most important things a Select Board can do. When tough decisions have to be made by the board, it is certain that at least some residents are going to be unhappy with the outcome. That outcome will be far easier for even the most disappointed citizens to accept, however, if they see that the process that led to it was fair and legal.

The attorney general's Open Meeting Law Guide includes the following important topics:

- Posting Requirements
- Remote Participation
- Open Session and Executive Session
- Keeping Records (Minutes) of a Meeting
- What Can Select Board Members Can Do Outside a Posted Meeting?
- Filing and Responding to OML Complaints

One particular topic to understand fully pertains to the executive session. The board may not simply enter into executive – or closed – session in an effort to exclude the public because it is discussing a sensitive topic. Most public business can and should be conducted in open session. Executive sessions should be the exception, not the rule. There are 10 specific reasons for which a board may enter into an executive session.² The posted meeting agenda should reflect the expected need for an executive session and the reason for which. When questions arise, town counsel should be consulted for guidance. The Open Meeting Law and its executive session requirements apply to all public bodies, including subcommittees that are appointed by the Select Board.

Conducting Meetings

The following are some recommendations, strategies and considerations for running effective meetings in the public arena.

Role of the Chair

The powers of the chair include preparing the agenda, leading the meeting and calling the agenda items, and recognizing others to speak. This gives the chair enormous control over the way a meeting is conducted. A good chair will make the effort to ensure that the other Select Board members are given an adequate chance to be heard. Being chair of the board does not mean forfeiting the right to vote or express an opinion. The chair must be careful, however, not to dominate the meeting.

The greatest challenge facing a chair is keeping the discussion moving forward. A delicate balance must be established, allowing members to express their views freely, but without getting bogged down in long-winded expressions of opinion. By addressing issues one at a time, in an orderly fashion, and by steering conversations away from irrelevant subjects or personality clashes, the chair can help to build consensus within the board.

The public and the press have a right to be present at any open meeting, but they do not have the right to participate unless the chair recognizes them or a matter before the board constitutes a legal hearing in which the public is permitted to comment. It is important to make every effort to have each issue fully understood, not only by board members but by everyone present.

While there should be a degree of flexibility in the way a board conducts its business, it is a good idea to set out general operating procedures in writing so that all members of the board understand the rules and comply with legal requirements. The objective should be to be fair, to maintain order, and to move the meeting along.

The Chair's Role in Preparing the Agenda

Select Board meeting agendas had virtually no legal significance prior to a major overhaul of the Open Meeting Law in 2010. Under the previous version of the law, the posting of a meeting simply had to say when and where the board would convene. Under current law, the

required notice of a meeting must include *“a listing of topics that the chair reasonably anticipates will be discussed at the meeting.”* Note the imposition of personal responsibility for the chair.

In most towns, the responsibility for preparing the meeting agenda falls to the chair, often with help from professional staff, or to the town manager or other professional staff members. This task includes determining what issues will be up for discussion, what the order of items will be, and what will not appear on the agenda.

Select Board members should set a deadline by which they must receive all requests to have items appear on the agenda. Usually, the agenda is “closed” several days before a regularly scheduled meeting, to allow time for the agenda to be prepared and distributed. Generally, a chair will honor the request of any board member to have an item included on the agenda. If such a request is denied, however, a member can call for a vote of the board to instruct the chair to include the item on the agenda of the next meeting.

Many boards begin the agenda by approving the minutes of the previous meeting. This practice is recommended because it requires that the minutes be prepared promptly and that proper record keeping is maintained. It also reminds all members where they left off in the town’s business and what remains to be pursued.

It is good practice to group items on the agenda into the following three categories:

1. Items about which people will be appearing before the board (e.g., appointments)
2. Licenses, general correspondence, and other items that require action by the board based on written material or reports of the board members themselves
3. Informational material not requiring any action by the board but perhaps causing some discussion (such items are often not listed, but included in the meeting packets as information)

There is no legal requirement to state the time when any particular topic will be discussed, but doing so can be a useful tool to keep the meeting moving along. Some boards arrange the agenda so that items concerning the greatest number of participants and observers will be taken up first. As a courtesy to the attending public, it is advisable to schedule an executive session either at the beginning or end of the agenda.

Parliamentary Guide Considerations

Questions often arise as to what parliamentary rules should be followed in conducting meetings. Often mentioned are [“Robert’s Rules of Order”](#) or some other traditional guide. Municipal attorneys generally consider these traditional and general parliamentary guides more appropriate for fraternal organizations, religious groups, clubs and volunteer associations than for municipal government. Part of the reason Robert’s is not favored for municipal government is that it can restrict effective participation by the members of a board.

There is no statutory requirement that a meeting be conducted under a specific parliamentary guide. Boards are free to develop their own procedures as long as they comply with all

applicable laws. Boards are free to adopt what rules they feel will best facilitate the public's business.

In the absence of a specific guide or framework, the rule of common law would apply. Essentially, common law allows anyone to make a motion, anyone to second a motion, and anyone to speak on a motion. Motions require a majority vote unless the law calls for another quantum of vote.

A well-regarded, practical handbook is "[Suggested Rules of Procedure for Small Local Government Boards](#)," published in 1998 by professor A. Fleming Bell III of the School and Institute of Government at the University of North Carolina. Bell's principles, such as the following, still hold up today:

1. The board must act as a body.
2. The board should proceed in the most efficient manner possible.
3. The board must act by at least a majority.
4. Every member must have an equal opportunity to participate.
5. The board's rules of procedure must be followed consistently.
6. Decisions should be based on the merits, not on manipulation of the rules.

Suggested Rules of Parliamentary Procedure

An agreed-upon procedure helps to maintain order and allows meetings to run smoothly. The following are some suggested rules meant to address various procedural issues that commonly arise at meetings. Boards are welcome to try these for a while and see if they work; if not, they may change them. These are just options, not requirements.

1. Most often, a general discussion takes place and then one member makes a motion when it comes time to take action. (*"I move that the board appoint Kate Smith to the Conservation Commission."*)
2. Any member, including the chair, can make a motion, second a motion, speak on a motion, and vote on a motion (presuming there is no conflict of interest or other prohibition).
3. "Seconds" (*"I second the motion."*) may or may not be required. A board should decide if it wants to have a requirement that there be a second for each motion. Seconds indicate that there is at least some interest in the matter, and can prevent a single member from pushing a personal agenda. If a board requires a second, but no one seconds a motion, then there will be no vote.
4. Presuming a motion is made (and seconded if required), it is then open for discussion.
5. Members must be recognized by the chair or presiding officer in order to speak.
6. First-time speakers should be recognized before giving a second opportunity to those who have already spoken.
7. A substitute motion can be made, or an amended motion can be made, during discussion. If properly made, the substitute motion would be acted on before the main motion. It's best to try to have no more than one substitute motion pending, although the body may agree otherwise.

8. At some point during the discussion when enough debate has occurred, the chair may “entertain a motion.” (“I’ll entertain a motion to appoint Kate Smith to the Conservation Commission.”) Another member may reply, “So moved,” followed by a second.
9. Should a member feel that debate is dragging on and the chair has not called for a motion, the member can say, “I call the question,” which is a motion to end debate and call for a vote. With most small boards and groups, this is usually not necessary, but if it is called, the rule of seconds applies and usually there is no further debate.
10. The chair shall conduct votes on each motion and declare the results.
11. Motions for reconsideration can be made by any member. The traditional rule is that only a person who voted on the prevailing side may make the motion to reconsider, but with small boards this should not be required.

These general rules of procedure may be suspended by action of the board, and a failure to comply with the rules should not affect the validity of any action. This will help in instances where someone is challenging a board’s actions because the board did not strictly comply with its own rules. While compliance is important, government should not be hamstrung by what is often a technicality.

Maintaining Decorum

Most Select Board meetings are calm events, but controversial topics can cause a meeting to become heated. It is the responsibility of the chair to engage in lawful efforts to preserve decorum and prevent personalities, politics and personal attacks from interfering with the business of the meeting.

A Supreme Judicial Court decision in March 2023 [*Barron v. Kolenda*, 491 Mass. 408 (2023)] clarified, however, that a public body may not censure speakers based solely on incivility. In short, “discourteous, rude, disrespectful, or personal speech about governmental officials or governmental actions – is clearly protected” by Article 16 and Article 19 of the Massachusetts Declaration of Rights (as well as the First Amendment to the U.S. Constitution), and cannot be prohibited by policy. The decision reflects in part the notion that any policy wherein the public may praise but not criticize public officials is antithetical to the founding principles of the Commonwealth and the United States. While the court noted that “fighting words” – speech intended to incite violence by its hurtful, obscene or slanderous nature – are not protected, even deeply offensive speech such as anti-Semitic symbols and homophobic signs have rarely risen to the level of “fighting words,” which would allow the government to silence the speaker.

The following are some examples of challenging situations that a Select Board may face:

- An applicant becomes argumentative upon learning that he needs a license or approval from the board, even though the law clearly requires it.
- An attorney representing a client starts an argument with the board or criticizes the board for a policy.
- Members of the public insist on making statements to the board, demand that the board discuss certain matters, or threaten board members.
- Members of the public express their opposition to a matter in a harsh manner.

- Members of the board disagree about the proper way to proceed on a matter.

Some individuals may purposefully try to get a reaction from the board or individual members and then use that response to their advantage. Any record of the meeting could form the basis for an appeal or other legal action. Even if the board may be successfully defended, doing so is costly in terms of time and expense, and the case may well present the board in an unfavorable light to the court and the public.

Boards must resolve to treat all persons and matters fairly. It is also advisable to adopt a code of conduct for the Select Board ([see the MMA Best Practice on this topic](#)) so that all members are on the same page with respect to behavioral expectations of the board.

The MMA and MIIA have published a helpful [Advisory Regarding Public Comment Sessions at Open Meetings](#). The MMA has also held [two webinars on the implications of the SJC's Barron v. Kolenda decision](#).

Removing Disorderly Persons

State law³ does permit a presiding officer to order a person to leave a public meeting for unruly conduct and, if he or she does not leave, to order a constable or other officer to remove the person from the meeting. While it may be tempting to do this at times, it is best not to, except under the most dire circumstances, and then only in consultation with legal counsel. Absent an inability to continue the business of the meeting (e.g., when a speaker or speakers refuse to abide by time limits or to be recognized by the chair before speaking), ordering someone removed from a meeting is fraught with the danger of a costly lawsuit and rarely worth the risk. There are several, better alternative steps a board can take. The best is to take a recess, after which the person rarely continues his or her unruly behavior. If the unruly behavior is related to public comment in an open forum or during a hearing, however, the chair is wise to allow the speaker to conclude before the recess. Another option is to call in a police officer to speak to the person about being disruptive, which usually has the effect of restoring calm. When all else fails, the board should consider adjourning the meeting to another date. While a board may not want to appear to have backed down due to someone's conduct, the wiser path is to avoid a controversy.

Public Comment

There is no requirement under the Open Meeting Law to offer a public comment period during regular meetings, but many boards consider it a good practice to set a time for comments on non-agenda items before, during or at the end of regular meetings, and to set and enforce a time limit for speakers. A standing "public comment" agenda item allows residents to take comfort in knowing that if they wish to be recognized to speak about an issue that is important to them, they can be heard. This practice can involve risks, however. Sometimes people come to speak on matters about which the board has had no advance notice, resulting in time being spent on a matter that requires



A Stoughton resident speaks at a Select Board meeting.

more information. The board may not deliberate on a topic that is not listed as an agenda item, so in most cases the issue will be rescheduled for a future meeting. In addition, during these “open mic” sessions, members of the public may engage in some of the rude, uncivil and sometimes personal attacks referenced above, without affording the board the ability to respond in real time. However, it can also be beneficial for the board to be restricted from engaging in dialogue insofar as it allows the chair to determine whether to address public criticism or comment at a future meeting rather than in the heat of the moment. While care should be taken to discourage speakers from defaming someone who may not have known in advance that they were going to be mentioned, such as a town employee, the *Barron* decision likely precludes a Select Board from censuring such statements.

Public comment sessions can be time consuming. Some boards that permit a public comment period require people to submit relevant information in advance, and then the discussion is scheduled if the board wishes to discuss the matter. Some boards count the people that want to comment during the public session and set a certain amount of time per person. If the allotted time is not enough, the person can ask to be included on a future agenda.

For more guidance on the Open Meeting Law, visit the [Attorney General’s Division of Open Government website](#).

The Public Records Law

The Massachusetts [Public Records Law](#) states that all people have a right of access to public information. This includes the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.

Select Board members should be familiar with the law, and should understand what kinds of records are most likely to give rise to a public records request and the process a town must follow in response to such a request. They should also understand how to avoid running afoul of the law.

The Public Records Law broadly defines “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee” of any Massachusetts governmental entity. Note that these include emails sent and received by Select Board members acting in their official capacity. Minutes of both open sessions and executive sessions are public records.

All Select Board members should read the Office of the Secretary of the Commonwealth’s comprehensive [Guide to the Massachusetts Public Records Law](#) (2022). The guide covers the several exemptions to the law, mostly pertaining to personal information or public safety. The Division of Public Records provides an “attorney of the day” to assist any person seeking information regarding the Public Records Law, at 617-727-2832 or pre@sec.state.ma.us.

Public Hearings

One of the most important tasks of municipal officials is to conduct proper hearings in a fair and impartial manner. All public hearings are public meetings, but not all public meetings are hearings.

A hearing is a formal proceeding held in order to receive testimony from interested parties on a specific topic. The Open Meeting Law applies to hearings, but a hearing is often more involved than a general meeting, so there is a greater risk if it is not conducted fairly and properly. An improperly conducted hearing can be a source of liability as well as an embarrassing situation for local officials.

Public hearings require more advanced notice than regular meetings, and notice must be published in a local newspaper each of two successive weeks, the first not less than 14 days before the day of the hearing. State law outlines specific requirements for providing adequate notice.⁴

Some hearings are routine and non-controversial, such as hearings to issue annual liquor licenses, but some may be very sensitive, such as a disciplinary action against an employee. It is always advisable to consult with town counsel prior to a contentious hearing.

Conflicts of Interest and Bias

The Massachusetts [Conflict of Interest Law](#) is intended to draw a clear line between the public duties and the personal interests of public officials. Generally, public officials and employees are prohibited from using their position for any sort of personal benefit for themselves, their family, or their outside employer. Even a Select Board member who does not receive compensation is considered a “public employee” under Massachusetts law.

The [State Ethics Commission](#) has oversight and educational responsibilities with regard to the Conflict of Interest Law. The Ethics Commission seeks to “foster integrity in public service in state, county and local government, to promote the public’s trust and confidence in that service, and to prevent conflicts between private interests and public duties.”

The Ethics Commission has published a series of [informative primers](#) to help educate public officials on the various tenets of the law, including gifts and gratuities, nepotism, divided loyalties, holding a second public position, and former employees.

Consequences of noncompliance with the Conflict of Interest Law are significant, and actions approved by a board or community could eventually be overturned due to conflict issues. Depending on the circumstance, board members may recuse themselves from deliberation of an issue, or make a disclosure of the situation prior to discussion, which may allow them to

participate. A Select Board member may always discuss a particular set of circumstances with town counsel to see if there is a potential conflict, and then take steps accordingly.

All municipal employees, including Select Board members, must undergo online training and testing on the Conflict of Interest Law within 30 days of taking office, and every two years thereafter.

The Ethics Commission is available to field questions from public officials and employees and to provide free legal advice regarding the applicability of the Conflict of Interest Law at 617-371-9500, or you may send the commission a [request for written advice](#) for a response within 30 days.

Bias exists when someone is so predisposed to accept or reject a matter that he or she cannot reasonably be expected to fairly and impartially adjudicate the matter. Everyone has some degree of bias, and not all bias is invalidating bias. Problems arise, however, when the public believes that a Select Board member is incapable of remaining impartial when required. Therefore, when speaking about a matter that could possibly come before the board in an adjudicatory proceeding, board members must be careful in their public pronouncements. Use general statements such as, "This is a very serious situation, and the board will hold a hearing on the matter to determine next steps. You are welcome to come speak at that hearing if you wish." Select Board members should abstain from participating in a hearing if they are so predisposed that they are unable to fairly adjudicate a matter. It's advisable to seek advice from town counsel on this topic on a case-by-case basis.

Community Engagement

Government public relations can be defined as the practices that promote a favorable relationship with the public. Good public relations occur at many levels. What is said by a Select Board member, from casual conversations at the grocery store to contact with the news media, influences how people perceive the board and town government as a whole. A Select Board member is a symbol of town government and the focal point for people with a wide range of complaints and concerns.

One of the easiest and best public relations tools is simply being accessible. Being the conduit to local government is a key role of Select Board members. Select Board members should let the professional administrators know when and where they can be reached; at a minimum, there should be a number where messages can be left. It is critical that Select Board members make themselves available to speak and meet with citizens in a timely manner. Some boards find it useful to have members take turns being "on duty" to answer citizens' questions during weekdays and weekends.

During the COVID-19 pandemic, many boards did not meet in person, and some continue to meet only remotely. As such, municipalities must adapt and embrace policies and practices that ensure that citizens are not only invited, but are able to participate in local government.

The MMA has held webinars on [municipal strategies for online and in-person engagement](#) and [resident engagement](#), and has adopted a [Best Practice on Strategies for Boosting Community Engagement](#) and a [Best Practice on Strategies for Choosing a Successful Meeting Format](#).

Citizens often form their impressions about town government from their interactions with town employees who answer phones and conduct business face-to-face with the public. While the Select Board cannot monitor the behavior of every town employee, the board can insist on courtesy from town staff and stress with department heads the importance of good public relations.

Some larger towns have standardized their procedures for processing inquiries and complaints. When a citizen calls, the person taking the call refers the matter to the appropriate town employee for a reply and logs each call so that department heads, the professional administrator and the Select Board can review the types of calls that are being received. Such a system enables the Select Board to detect patterns of complaints and to follow up to make sure problems are being taken care of efficiently and effectively.

Citizen Complaints

Citizen complaints are often about matters that are beyond the Select Board's control, but this does not relieve the board of responsibility to provide information and offer assistance. Sometimes, handling complaints involves nothing more than lending a sympathetic ear. Returning phone calls promptly and listening patiently can often prevent a minor complaint from escalating. Some constituent problems can be solved with a quick call to the right town official or employee. When the town cannot solve a problem, citizens should be informed immediately and directed to the best resource.

Complaints about specific town officials or employees are particularly troublesome. It is important to have a written board policy for dealing with complaints about individuals, in order to ensure that everyone is treated fairly. First, the board should make it a policy not to consider this type of complaint at an open meeting as an agenda item – at least until it has been discussed with the party directly concerned and a preliminary investigation has been conducted. This gives the board a chance to weed out frivolous complaints. If the complaint requires further action, it should not be put before the Select Board until the subject or subjects of the complaint have been given prior notice and afforded an opportunity to present their side of the story. This is the only way to avoid the appearance of a serial drama being played out before the board and in the media.

In general, when a complaint requires action, the person bringing the complaint should be given a reasonable estimate of the time needed for resolution, and progress reports should also be given.

On rare occasions, a Select Board member may receive a threatening call or a call from a lawyer who may be planning an action against the town. It is best to keep these conversations brief and immediately consult town counsel for guidance.

Social Media

Social media can be an effective and powerful communication tool in local government, but it can also cause problems with respect to the Open Meeting and Public Records laws. It is important for cities and towns to adopt and actively use some forms of social media, since it is how many people receive much of their information and news. As a general rule, Select Board members must keep their personal, professional, and campaign accounts distinct and separate.

The MMA recommends building a strategy around using social media, and has developed a [Best Practice](#) recommendation with respect to creating a policy. Other helpful resources include the article "[To Tweet or Not to Tweet? Social Media, Public Records and the Open Meeting Law](#)" from the MMA's Municipal Advocate magazine, an [MMA webinar about social media best practices](#), and "[The Opening Meeting Law and Social Media – Potential Pitfalls](#)" from KP Law.

Media Relations

Dealing with the media can be stressful for Select Board members, but it is a necessary and important part of the job. Local media outlets can be a huge asset in disseminating important municipal information, but some can pursue sensationalized stories that towns will want to weigh in on. It is often wise to designate one official spokesperson for the town on a given topic, so that the information given out is consistent. Select Board members must be prepared to deal with reporters for mundane stories as well as the unexpected. The [Institute of Local Government offers tips for newly elected officials](#) on dealing with the media.

Reporters have a job to do. They are paid to be inquisitive and skeptical. It may not be possible to influence what reporters choose to write about, but town officials can help make sure the reporting is balanced and accurate by providing reporters with the information they need. In dealing with the media, honesty is always the best policy. When reporters are given reason to trust, they will usually be fair in their treatment.

Except for decisions made during an executive session allowed under the Open Meeting Law, all decisions of a board must be made at meetings the public is invited to attend and observe. Hopefully, board meetings are covered by seasoned reporters who understand town government. Often, however, boards must deal with inexperienced reporters who have little background in local government. The only way to be sure that a reporter understands what was discussed at a meeting is to seek him or her out after the meeting and explain the issue or problem in more detail.

Even if board meetings are not routinely covered by a reporter, the news media should not be neglected. If a matter of public interest is going to be discussed at a meeting, it's a good idea to inform the local editor or reporter. Press releases, press advisories, and printed statements are all options for notifying the media of an important action.

While it is fine to be friendly with members of the media, a Select Board member is a public official. Anything said at a meeting, or in a conversation with a reporter, is presumed to be “on the record.” There is no right to go “off the record” during the open portion of any public meeting, nor can anyone expect a reporter to disregard any comments made at a meeting.

In a private conversation, a Select Board member may want to brief a reporter on the history of an issue without being quoted. This is acceptable, provided the reporter agrees to any terms before the conversation begins. To eliminate confusion, it is important to first set out explicit ground rules with the reporter. Terms like “off the record” or “for your background only” may mean different things to different reporters, so it’s important to clarify these terms if they are used. In some cases, it may be a good idea to direct a reporter to contact certain additional sources before using information provided privately “for background.”

When speaking on the record, words should be chosen carefully. While it is acceptable to ask a reporter to read back comments, it is often not possible to take back or reword something that has been said. No source can demand to read a reporter’s story before it’s published. Reporters take their constitutional rights seriously, and they will resent anything that implies censorship.

A cardinal rule in successful media relations is to tell the truth, even if the truth is, “I don’t know.” When possible, avoid answering questions with a terse “no comment,” since it may suggest that there’s something to hide. If town counsel has advised against making public statements about a pending lawsuit, for example, the reporter should be told such. Inquiries like these should be referred to town counsel, who may make a statement that would be informative without disclosing confidential information or strategy. If the board has not reached consensus on how to deal with a problem, the reporter should be told that the issue is being discussed, but no decision has been reached. There is no requirement that a public official answer every question asked by a reporter (or anyone else). Select Board members always have the option of promising reporters that they will be notified when a decision about a certain issue is made.

Reporters often want information before it is appropriate to release it. Select Board members should not give in to pressure to make a comment that may be inappropriate and regretted later. The story, however, will often be written whether officials like it or not, and regardless of whether they’re ready to talk. In certain situations, it may be better to release incomplete information than to have it leak out. Such information should be identified as incomplete but the best available at the time.

When a reporter makes a mistake in a story, it is worthwhile to discuss the situation with the reporter, respectfully, and clarify the information so that the error is not repeated in subsequent stories. If a real injustice has been done, a letter should be written to the editor, or a statement should be issued clarifying the information. If a Select Board member believes that he or she is being mistreated by a reporter, one approach may be to refuse to deal with that reporter and to discuss the problem with the reporter’s editor and/or publisher.

Major News Stories

Occasionally, a town may be the site of an event so unusual or sensational that reporters from all over flock to cover it. Once the national media have converged, they are almost impossible to manage. Reporters will be relentless in seeking out information from any and all sources. Select Board members need to be prepared to cope with a sudden invasion of reporters who want to take up valuable time just when the town is trying to respond to a crisis.

If the event is something that the Select Board does not want to discuss in detail (e.g., a town employee has been arrested), the best approach is to prepare a carefully worded written statement and circulate it promptly to the media. A spokesperson should be identified to read the statement on radio and television without being tempted to add his or her own comments. Another effective technique is to hold regular media briefings at a central location, such as Town Hall, where there is room for reporters and television crews to set up their equipment. Reporters are much less likely to stray into inappropriate areas if they know they can get complete, reliable information right where they are.

Resources

Open Meeting Law

- [Massachusetts Open Meeting Law](#)
- [Attorney General's Open Meeting Law Guide](#) (2018)
- [Attorney General's Open Meeting Law web resources](#)

Maintaining Decorum

- [MMA Best Practice Recommendation: Conduct and Civility of Public Officials](#) (2020)
- [MMA and MIA Advisory Regarding Public Comment Sessions at Open Meetings](#) (2023)
- [MMA webinars on implications of the SJC's *Barron v. Kolenda* decision](#) (2023)

Public Records Law

- [Massachusetts Public Records Law](#)
- [Secretary of State's Guide to the Massachusetts Public Records Law](#) (2022)

Conflict of Interest Law

- [Massachusetts Conflict of Interest Law](#)
- [Conflict of Interest Law Primers for Public Employees](#), by State Ethics Commission
- [State Ethics Commission](#)

Community Engagement

- [MMA webinar: Municipal Strategies for Online and In-Person Engagement](#) (2022)
- [MMA webinar: Resident Engagement](#) (2023)

- [MMA Best Practice Recommendation: Strategies for Boosting Community Engagement](#) (2020)
- [MMA Best Practice Recommendation: Strategies for Choosing a Successful Meeting Format](#) (2023)

Social Media

- [MMA Best Practice Recommendation: Considering Social Media Policies in the Context of the Open Meeting and Public Records Laws](#) (2019)
- [MMA Social Media Webinar](#) (2023)
- [MMA Municipal Advocate, "To Tweet or Not to Tweet? Social Media, Public Records, and the Open Meeting Law"](#)
- ["The Open Meeting Law and Social Media – Potential Pitfalls,"](#) KP Law eUpdate (2017)

Media Relations

- [Media Relations Tips for Newly Elected Officials](#), by the Institute of Local Government (2014)
-

Footnotes:

- 1 - [Ch. 30A, Secs. 18-25](#)
- 2 - [Open Meeting Law Guide](#), pp. 11-15
- 3 - [Ch. 30A, Sec. 20\(f\)](#).
- 4 - [Ch. 40A, Sec. 11](#)

Organization of Town Government

City vs. Town Distinction

The basic distinction between town and city forms of government was spelled out by the Massachusetts Supreme Judicial Court in 1854:¹

“The marked and characteristic distinction between a town organization and that of a city is that in the former all the qualified inhabitants meet, deliberate, act and vote in their natural and personal capacities in the exercise of their corporate powers; whereas, under a city government, all this is done by their representatives.”

The issue of what determines a city versus a town was further explored by the Appeals Court in 1978, after Methuen adopted a “home rule” charter providing for a town council to serve as the community’s legislative branch. In [*Chadwick v. Scarth*](#), on the question of whether Methuen is a city or a town, the Appeals Court found that, “the retention of the name ‘Town’ by the municipality is immaterial and ... the substance of the charter which has been adopted controls.” The court ruled that “Methuen clearly has a representative form of government,” which qualifies it as a city.

Note that “representative” in these cases refers to a council that serves as the legislative body in a city, whereas towns have Town Meetings as their legislative body (whether an Open Town Meeting or a representative one).

Generally, in Massachusetts a city is governed by a small elected legislative body, (the council) and an elected or appointed chief executive (the mayor or manager). Towns are governed by a large legislative body (Open or Representative Town Meeting) and a small elected executive board (the Select Board). If a municipality has a Town Meeting, it must be a town. Most towns also have an appointed administrator or manager that serves as the chief administrative officer.

A community might choose to refer to itself as a “town,” but that does not, in itself, mean that it has a town form of government. Agawam, Amherst and Franklin are among the communities that adopted a “city” form of government as defined in state law – either mayor-council or council-manager – but continue to use the designation “town.” (It should be noted that the Massachusetts Constitution precludes any municipality with a population below 12,000 from adopting a city form of government.)

Select Board-Town Meeting Form of Government

The Select Board-Town Meeting form of government, established in colonial times and reaffirmed in various statutes throughout the Commonwealth's history, remains the form of government in nearly 300 of the state's municipalities.

Town Meeting, the legislative body of a town, has responsibility for appropriations (including passing the annual budget), authorizing debt issuance, and enacting local laws, known as bylaws.

State law recognizes two town forms of government: Representative Town Meeting and Open Town Meeting. In both forms, the Select Board serves as chief executive and must have an odd number of members – either three or five in all cases but one – usually serving staggered terms. The Select Board may appoint a town manager or administrator position.

State law² requires that members of the Select Board and the school committee be elected, as well as Town Meeting members in towns with a Representative Town Meeting and the town moderator in towns with an Open Town Meeting. The powers and duties of the town manager or administrator are determined locally; there is no state definition.

The two town meeting forms of government have the following unique characteristics:

1. *Select Board and Representative Town Meeting*

- Town must have a population of 6,000 or more
- Voters elect Town Meeting representatives from town precincts
- Size of Town Meeting determined locally; most are in the range of 200 to 250 voters

2. *Select Board and Open Town Meeting*

- All registered voters may participate in Open Town Meeting
- Open Town Meeting is the only legislative body option available to towns with populations of 6,000 or fewer

Many but not all towns with an Open Town Meeting have a town manager or administrator position. All towns with a Representative Town Meeting have a management position, though this is not a requirement.

For more information about forms of local government in Massachusetts, visit the [MMA's Local Government 101](#) guide.

Definition and Role of Charters

The form of government in a municipality is often determined by the provisions of its charter. The classic definition of the word "charter," when used in connection with municipal

governments, comes from the National Civic League (formerly the National Municipal League) and is found in the league's "[Guide for Charter Commissions](#)," 6th edition (2011):

"A charter is the foundation of a local government and functions as the municipal equivalent of a state or federal constitution, setting forth guiding principles for governance. Composed by citizens, a charter specifies the most fundamental relationships between a government and its community. It establishes the framework for how a local government operates in terms of its structure, responsibilities, functions, and processes."

A charter is different from a bylaw or an ordinance in the same way that, at the state or national level, a constitutional provision is different from a statute. A charter, like a constitution, is the basic law establishing the form of government and distributing the powers, duties and responsibilities to the various units of the government and setting out how and when those powers will be exercised. The charter is the higher form of law, and other actions taken by the government must be subservient to and consistent with it.

The [Home Rule Amendment \[Article 89\] to the Constitution of the Commonwealth of Massachusetts](#) explicitly provides that every city or town in the Commonwealth is entitled to a charter and outlines the process for the adoption, revision and amendment of a charter. The [Home Rule Procedures Act \(Chapter 43B\)](#) further defines the powers of cities and towns to enact their own legislation on many subjects (so long as they do not conflict with federal or state law) without the need to wait for advance approval from the Legislature.

In 1984, the Massachusetts Legislature adopted a number of amendments to the General Laws intended to clarify the intent and the purpose of the Home Rule Amendment. Among these statutory changes was the insertion of a new clause into [Chapter 4, Section 7](#), defining the term "charter" as follows:

"'Charter,' when used in connection with the operation of city and town government, shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B, which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government. Special laws enacted by the general court applicable only to one city or town shall be deemed to have the force of a charter and may be amended, repealed and revised in accordance with the provisions of chapter forty-three B unless any such special law contains a specific prohibition against such action."

The word "charter" may also include the provisions of the General Laws in force relating to that city or town. These statutory provisions may not be mentioned in a municipal charter, but they are automatically read into the charter and become a part of it. This is particularly true in Massachusetts, because the powers and duties of most local offices, including Select Boards, are set forth at length in state law. Note, however, that [Section 20 of Chapter 43B](#) specifically allows a municipal charter to supersede the provisions of state laws relating to municipal charter matters.

Town charters in Massachusetts present a wide variation both in form and substance and preclude practical classification beyond the form of its legislative body, which is either Open or Representative Town Meeting. Some charters deal mainly with the fundamentals of structure and function and omit references to those local offices that are extensively governed by state law. Others specify more or less completely the municipal organization and the powers, duties and responsibilities of the officers, subordinates and agents.



Town Meeting takes place in Lexington.

Ways to Adopt or Revise a Charter

Here are the two pathways for adopting or revising a town charter.

Home Rule Charters

“Home rule” charters, adopted by local voters pursuant to the [Home Rule Amendment](#) and [Chapter 43B](#) (the Home Rule Procedures Act), have generally provided, in one document, a complete description of the local government, its structure, and its operating procedures. The intent of the charter is:

- To identify all major elected and appointed officers, boards and commissions, including their size, composition and terms of office
- To describe the role and responsibilities of a management position
- To provide guidance for financial management practices
- To describe the organization of municipal departments and/or provide a procedure for reorganization of municipal functions
- To address standard practices, such as meeting and record requirements for multi-member bodies
- To authorize the use of recall under certain conditions
- To provide a timeline for actions that may be necessary as the government transitions from its current form to the form as described in the charter

Special Act Charters

“Special act” charters, enacted by the Legislature at the request of a particular town, are often as comprehensive as home rule charters in providing a picture of the town’s structure, while also providing guidance for financial actions, such as the preparation of the operating and capital budgets, as well as recall procedures.

Several towns undertook the “special act” process prior to the adoption of the Home Rule Amendment, at a time when a change in form of government could be achieved only by the

enactment of special legislation. Section 8 of the Home Rule Amendment reaffirms that the Legislature can take such action upon the request of a particular town, so some towns have pursued this route since 1966.

Some towns have used special act charters to create and define a management position, and many of these chose to leave most or all of their government structure intact, including the election of boards, commissions and officers.

Options for Changing Local Government Structure

Select Board members examining the form of government or appointing a town government study committee to consider questions of structure and organization are advised to look for a structure that supports clarity and accountability among and between all town offices, while respecting the premise of voter participation in major decisions.

Many towns continue to operate without a charter under the state's statutes relating to local government organization.³ These statutes address the organization and procedural requirements of Town Meeting, local elected and appointed officers and boards, options for consolidated departments, and municipal finance and financial officers.

State law also provides several routes for towns to make changes in the organizational structure of local government:

1. Election of a charter commission and subsequent adoption of the commission's proposed charter
2. A petition for enactment of special municipal legislation
3. Using bylaws and "permissive" legislation to enact structural change

Below is a brief summary of each of the three routes for changing local government. For a more in-depth review, see "[Several Options Exist for Changing Local Government Structure](#)," from the MMA's Municipal Advocate magazine, which discusses each option in detail. The Department of Housing and Community Development has published a helpful guide: "[Changing Massachusetts Local Government Structure](#)," and the Division of Local Services has published a [helpful one-page guide](#). A Massachusetts Municipal Management Association webinar, "[Form of Government FAQs](#)," addresses common questions that arise when a community is considering a change in governance.

In a Nutshell: Routes for Changing Local Government

Bylaws and “Permissive” Legislation

- Can be used to change certain elected positions or boards to appointed; allow selectmen to act as certain offices; or create position of town administrator
- Changes require town meeting or town election vote

Home Rule Charter

- Elected charter commission prepares new charter
- Charter defines structure of local government
- New charter generally proposes significant changes to structure, such as creation of town manager or administrator position, changing boards or commissions, or consolidating or creating departments
- Requires approval at annual town election

Special Municipal Legislation

- Town submits proposed structural change to Legislature
- Requires legislative approval
- Can be used to create town manager or administrator position

Source: [Municipal Advocate, Vol. 22, No. 2](#)

Town Manager/Administrator

For most towns, the complexity of running town government demands that there be a professional administrator – e.g., town manager, town administrator or administrative assistant – to assist the Select Board. While these positions must be authorized by the town charter, Town Meeting or a special act of the Legislature, it is the Select Board that does the hiring. Depending on the responsibility vested in the position, the professional administrator can have a significant beneficial impact on the ability of Select Board members to do their job and on how the town is run.

A 2022 webinar from the Massachusetts Select Board Association [provides guidance about best practices for hiring a town manager](#). Additional resources include the [International City/County Management Association’s recruitment guidelines](#) (2019), and the [Massachusetts Municipal Management Association’s Massachusetts Recruitment Guidelines Handbook](#) (2008).

The powers, duties and responsibilities of a town management position, by whatever title, are determined and defined locally. Most towns operating under home rule charters, special acts with the force of a charter, or a special act establishing a management position define the duties and authority of such positions. The office of “town manager” or “town administrator” is

not defined in state law, and there is no statutory job description for this role beyond a provision in state law⁴ allowing towns to appoint an executive secretary or town administrator.

The long-held view that town managers have more authority than town administrators has no basis in state law. Some town manager positions have fairly modest authority, and some town administrators have significant authority.

The “strong town manager” reference is also a matter of perspective or individual town experience with the position. Some ways in which the position could be considered “strong” are the extent of appointment authority, authority for the direction of the budget and capital plan process, and assumption of certain duties previously assigned to the Select Board (e.g., approval of payments).

Each community has approached this question differently, and the expectations for these positions by town leaders have evolved over time, so there are myriad job descriptions for such positions. Examples from which to draw ideas are readily available on town websites that include bylaws and charters.

State law⁵ specifies that a town can enter into an employment contract with the manager or administrator.

Resources

City vs. Town Distinction

- [Warren & others v. Mayor & Alderman of Charlestown](#)
- [Chadwick v. Scarth](#)
- [MMA Local Government 101 Guide](#)

Definition and Role of Charters

- [National Civic League Guide for Charter Commissions](#) (2011)
- [The Home Rule Amendment](#)
- [The Home Rule Procedures Act \(Chapter 43B\)](#)

Options for Changing Local Government Structure

- [MSA webinar: Trends in Municipal Charter Change](#) (2022)
- [MMA Municipal Advocate: Several Options Exist for Changing Local Government Structure](#)
- [Changing Massachusetts Local Government Structure](#), by Department of Housing and Community Development
- [How to Make Organizational Changes to Local Government](#), Division of Local Services (2023)
- [“Form of Government FAQs,”](#) Massachusetts Municipal Management Association webinar (2023)

Town Manager/Administrator

- [MSA webinar: Best Practices for Hiring a Town Manager](#) (2020)
 - [International City/County Management Association Recruitment Guidelines](#) (2019)
 - [Massachusetts Recruitment Guidelines Handbook](#), by Massachusetts Municipal Management Association (2008)
-

Footnotes:

- 1 - [Warren & others v. Mayor & Aldermen of Charlestown](#)
- 2 - [Ch. 43B, Sec. 20](#)
- 3 - [Ch. 39-44](#)
- 4 - [Ch. 41, Sec. 23A](#)
- 5 - [Ch. 41, Sec. 108N](#)

Administrative and Regulatory Responsibilities

Town Meeting

The most significant responsibility of the Select Board related to Town Meeting is the preparation of the warrant, which is essentially the agenda for the meeting. Every Town Meeting must be called by a warrant that states the time and place of the meeting and lists all the items of business (“articles”) to be acted on at the meeting. The Select Board governs what appears in the warrant as well as the order of the articles.

The Select Board is in charge of “opening” and “closing” the warrant, which provides the time period for the insertion of warrant articles. How long the Town Meeting warrant must be open, and how long before Town Meeting it must be opened, are usually addressed in a town’s bylaws. In some cases, Select Boards may vote to reopen the warrant after it has been closed. Under state law, the warrant must be signed and issued by the Select Board at least seven days before an annual Town Meeting and at least 14 days before a special Town Meeting.¹ The way in which the warrant is publicized may be prescribed by the individual town, or it may be done in any manner approved by the Attorney General’s Office.

Select Board members may add warrant items by several means: by their own volition, by request of another town board or committee, or, in the case of the Annual Town Meeting, by written petition signed by at least 10 voters. Only those articles of business that have been included in the warrant may be legally acted upon at the Town Meeting.

The Select Board should take care when preparing the warrant to be sure that it is clearly worded, and that it contains a complete description of all subjects to be taken up at the meeting. A well-prepared warrant will do more to ensure that the meeting goes smoothly than anything else. Select Boards should work closely with their town manager and town counsel to prepare the wording of the warrant.

The format of the warrant will differ from town to town. Some town warrants provide a separate article for the appropriation of money to each town department, while most lump the appropriations for all town expenses under one omnibus budget article. Articles that are similar should be placed together, so that the Town Meeting does not cover the same ground more than once. This may be difficult, however, in communities where the order of articles is selected randomly.

When to Call a Town Meeting

Every town in Massachusetts must hold an annual Town Meeting in February, March, April, May or June, unless some other month is designated by special law or by a provision in the town's home rule charter.²

In addition to the annual Town Meeting, special Town Meetings may be called at any time, typically for reasons not anticipated or readily accommodated by annual Town Meetings, such as necessary budgetary transfers or the purchase of land. Select Boards must call a special Town Meeting if they receive a written request, on a form approved by the Office of the Secretary of the Commonwealth and signed by 200 voters or 20% of all registered voters in the town, whichever is fewer.³ It is possible that Select Boards can call a special Town Meeting within an annual Town Meeting, and more than one special Town Meeting may be held or commence on the same date. Separate warrants must be used for each meeting. Some historic reasons for holding special Town Meetings were eased by the "[Municipal Modernization Act](#)" (Chapter 218 of the Acts of 2016), including local options for specialized revolving funds and expenditures.

Some towns, by bylaw, custom or home rule charter provision, have provided that the Town Meeting have two regularly scheduled sessions, one session in the spring and one in the fall. The intent is to focus attention on financial matters in the spring and allow for more deliberations on non-financial matters in the fall.

State law allows Town Meetings to be held in more than one location at the same time, as long as the places are connected by a public address system with loudspeakers to allow all Town Meeting attendees to hear and be heard.⁴ If a Town Meeting becomes so crowded that people are prevented from participating, the moderator may consult with the Select Board members who are present at the meeting and call a recess for not more than 14 days, until better facilities become available.⁵ It may be advisable to plan for additional rooms being available in case of overflow crowds.

Rules requiring in-person Town Meetings were suspended during the COVID-19 pandemic, allowing for towns to experiment with online or "remote" Town Meetings in a number of variations. These suspensions have required cooperation of the town moderator, the Select Board and, ultimately, Town Meeting itself to determine that an in-person meeting would pose a risk to public health. The [special rules have been extended through March 2025](#), and the Legislature is considering a variety of proposals to provide for hybrid and remote Town Meetings on a permanent basis.

Election Responsibilities

The Select Board's primary election responsibilities include calling elections, appointing election personnel from lists of candidates supplied by the major political parties, and

designating voting precincts. The conduct of state and national elections is regulated by state law. Local elections are governed by both state law and a town's charter or bylaws.

Towns may hold their annual elections on the same day as the business portion of their annual Town Meeting or on a separate day. Towns generally hold their annual elections a week or more before or after the annual Town Meeting. The majority of Massachusetts towns use official ballots prepared by the town clerk in conformance with state law to elect local officials.

Board of Registrars of Voters

Most towns have a board of registrars of voters, which is responsible for registering voters, making lists of residents, certifying nominating papers and petitions, processing absentee voter applications, and administering election recounts. The board consists of the town clerk and three other people appointed by the Select Board. Members represent the two major political parties.

A few towns have created a board of election commissioners⁶ consisting of four members appointed by the Select Board for four-year terms. This board has all the powers and duties of a board of registrars of voters and all the powers and duties of the Select Board and town clerk that relate to caucuses, primaries and elections, except for giving notice of elections and fixing the dates and hours of elections. Two members must represent each of the two major political parties, selected from lists of qualified voters submitted by the town committees of the two major political parties.

Voting Precincts

Following the decennial U.S. Census, Select Boards in towns with more than 6,200 residents are required to divide the town into voting precincts.⁷ This is optional in smaller towns, where the Town Meeting may direct the Select Board to establish voting precincts. Each voting precinct must contain a similar number of inhabitants, but no more than 4,000 people. Select Boards have administrative responsibilities such as designating the polling places for each precinct.

Voting Procedures

In towns that use official ballots, the Select Boards call elections with notices or warrants that specify the offices to be voted for and the time when the polls will be open and closed. Parameters for voting hours are specified by state law.⁸ The type of voting equipment to be used is determined by the Select Board and town clerk, and must be approved by the secretary of state.

Appointing Boards, Commissions and Committees

The Select Board has the important responsibility of appointing people to serve on town boards and commissions. Depending on a town's organization and the interest of its citizens in civic life, fulfilling this duty can be a major undertaking.

The appointing authority of the Select Board may be vast or limited, depending on how the town is organized. Other elected boards and committees, the Town Meeting moderator, and the professional administrator all have some appointment responsibility, but the Select Board has the power to appoint more local officials than does any other person or group. Select Board members must ensure that the appointment process is always open and fair. All appointed committees are subject to the [Open Meeting Law](#), so it is a good practice to make all appointees aware of their legal obligations at the time of their appointment.

Certain town officers, such as the Town Meeting moderator and members of the school committee, are required by law to be elected. State law, town bylaws and Town Meeting may authorize the Select Board to appoint others, including committees that report to the Select Board. Select Boards can appoint their own advisory committees. Usually these committees study a particular function or area and advise the Select Boards of their findings. It is important for members of advisory committees to understand that the Select Board makes the ultimate decision.

Some towns seem to have a steady supply of committed, qualified people willing to serve on town boards, but more often than not, Select Board members struggle to find good candidates to fill certain vacancies. Getting new people to serve on town boards and committees is essential to the vitality of a town, but it doesn't happen by chance. The best way to create interest is to educate people about their town government – how it functions, what it does, and how they can become involved.

Several towns publish and circulate a citizens' resource guide that gives a brief description of each office, board, committee and department within the town, along with a list of volunteer opportunities. Another approach is to hold an annual open house at town hall to familiarize residents (especially new ones) with town operations and to solicit their involvement. Most of the time, board members just need to brainstorm and ask around for candidate names, and then do a lot of individual asking. While it's important not to badger anyone, it can require asking more than once to get a "yes" from a good volunteer board member.

Choosing an Appointee

Who is appointed to serve on a town board can be just as significant as who is hired to fill a full-time, paid town position. State law or town bylaws set out specific qualifications for membership on certain boards or commissions, but most decisions are up to the Select Board. While there is no one right way to choose an appointee, the following are some suggestions:

- Seek a mix of skills. Don't assume that every member of the board of health must be a physician, or every member of the youth commission must be under 30. The most effective boards often have members from a range of professions and perspectives.
- Seek diversity in age, gender, sexual orientation, gender identity, race, political party, neighborhood, property owners vs. renters, and length of residency.
- Be clear about job requirements. Many boards require a substantial time commitment, including attendance at evening meetings and, sometimes, weekend obligations. Make sure appointees understand what will be expected of them.

- Seek a cooperative spirit. Boards function best when their members are willing to compromise. People who hold unshakable opinions or are argumentative can paralyze a board. Such persons can also cause other members to resign and can discourage others from even applying.

Unless otherwise provided by law or bylaw, a person need not live in town to accept an appointment to public office. However, if the town tells the appointee at the time of appointment that he or she must move into town within a specified time period, then his or her failure to do so means that he or she has voluntarily vacated the office.⁹

The Appointment Process

In many towns, Select Boards appoint board members so their terms of office expire at the same time each year. The board should keep a calendar of appointments to know when the terms of different board members will expire, and it is a good idea to publish committee appointments and their termination dates in the annual town report. When possible, Select Boards should interview candidates during a public meeting before making decisions on the appointments.

Appointments should be made by majority vote of the Select Board unless otherwise specified by law or bylaw, and should be confirmed in writing with a letter to the appointee. All appointees must take an oath of office before assuming their duties, and must receive online training regarding the [Conflict of Interest Law](#).

Most appointed positions authorized by state law are for one-year or three-year terms. In many cases, the board may want to renew appointments for another term, but reappointment time provides a good opportunity to review the job being done by the appointee, and by the board in general, and to make any necessary adjustments.

When appointing committees for a specific purpose, a termination date should always be set beforehand. The lifespan of temporary committees can always be extended, but committees without a firm date of dissolution are often difficult to terminate.

Relations Between Select Boards and Appointed Boards

Once appointed, town boards and commissions must be free to act on their own without interference. If the committee was appointed to advise the Select Board on a certain matter, a clear understanding should be set forth as to what, if any, independent authority the committee may have.

It is important that the Select Board maintain close communication with other town boards and departments. Some towns circulate copies of board minutes to all town departments and agencies. Many towns make the minutes of all board meetings available on the municipal website.



Stoughton Town Manager Thomas Calter speaks at a Select Board strategic planning retreat meeting.

One way of improving coordination among town boards and departments is to schedule meetings several times a year with all department heads and board and committee chairs. These meetings can provide a good forum for discussing larger town issues that cannot be solved by one agency. Select Board members may also choose to attend the meetings of other town boards on occasion to remain informed.

Vacancies

Members of town boards sometimes resign in the middle of a term, creating a vacancy. The town clerk must be notified in writing for a resignation to become effective.¹⁰ If there is a vacancy on a board of two or more members, the remaining members must give written notice to the Select Board within one month.¹¹ The Select Board and the remaining board members must, after one week's notice, fill the vacancy by a majority vote of those voting. The Select Board must fill the vacancy themselves if the remaining board members fail to give notice within the required time. Other provisions for filling vacancies might be contained in other statutes or in the town charter or bylaws, so these should be consulted in the event of a vacancy.

In the case of a vacancy in the office of accountant, collector or treasurer, or if that person is unable to fulfill the duties of office, the Select Board may make a temporary appointment.¹² The board may also appoint a temporary highway surveyor, road commissioner or tree warden under similar circumstances.

If there is a vacancy in the office of town clerk at the time of a Town Meeting, or if the town clerk is absent or unable to serve, the Town Meeting must appoint a temporary clerk by ballot.¹³ If a town clerk is needed to perform duties other than those at the Town Meeting, the Select Board must appoint, in writing, a temporary town clerk. If the Select Board appoints an acting town clerk, the chair of the board must notify the secretary of state's office.

Vacancy on the Select Board

If there is a vacancy on the Select Board, and the town charter does not provide otherwise, the remaining members shall call a special election to fill the vacancy if the board gets a request in writing signed by 200 registered voters or 20% of the total number of registered voters in town, whichever is less, provided that the request is filed at least 100 days before the next annual election.¹⁴

Terminating Appointees

The freedom of the Select Board to remove appointees depends on the basis of its authority to appoint them. The power to appoint does not always include the power to remove, so when dealing with these issues it is imperative to consult town counsel. Even if the board has the right to remove someone, it cannot be done for improper purposes. Claims that a removal was discriminatory or in violation of civil rights are very costly and disruptive to local government, even if the removal prevails in the end.

In most towns, the Select Board is the local licensing authority, with the ability to issue licenses and permits for a broad range of activities, such as the sale of alcoholic beverages, lodging houses, automobile dealers, parking lots, the storage and sale of gasoline, restaurants, and many other purposes as outlined in [Chapter 140](#). This authority must be exercised strictly in accordance with the provisions set out in the applicable law and in a fair and impartial manner in order to avoid court challenges and potential liability.

There is a distinction between a license and a permit.

A license grants permission to engage in a specific activity, or to make use of property in a way that might otherwise be unlawful, or that requires regulation, or protects the public health, safety and general welfare. Select Boards may issue only those licenses specifically authorized by state law.

A permit may be issued by a Select Board for certain activities that fall under the broad police powers of the board. For example, permits may be issued for parades or to allow merchants to hold sidewalk sales.

A license is ordinarily issued for use over a substantial period of time, whereas a permit is generally for a short duration.

A person does not have an automatic right to a license merely by applying for one. An applicant must show that all necessary requirements and qualifications have been met and that a granting of the license is in the public interest. If the board refuses to grant a license, the decision must be for sufficient reasons. The decision to deny a license application or to refuse to renew a license cannot be arbitrary or capricious. Depending on the particular license, there may be specific standards that need to be met to grant the license, or to deny it or decline to renew it. Any adverse ruling must be fair and reasonable and based on evidence presented either against or in favor of the license.

As a general rule, licenses are privileges. They are not the property of the license holder. Several Massachusetts courts have ruled, however, that under certain conditions, a license can come close to being a property right and cannot be taken away without due process of law. This is especially true if the license holder can show that the license is essential to his or her livelihood, or that constitutional rights are involved.

Licensing Procedures

Licensing procedures should be clear and uniform, both to ensure that applicants are treated fairly and to make the job of reviewing applications a little easier. Hearings, when required, should be held promptly. Some towns compile license requirements and procedures in a single manual – a set of licensing rules and regulations. When possible, licenses should be renewed at the same time each year.

Some licensing statutes clearly require a public hearing in connection with the granting, denial, revocation or suspension of a license. Other laws do not explicitly require such hearings. Even if a hearing is not required by law, it is often a good idea to hold one, especially if there is any hint of controversy over the license application.

The usual procedure is for the Select Board to review applications at a regular meeting, unless a separate hearing is required by law or requested by the applicant. In general, hearings that follow the basic format outlined in Chapter 2 will be in conformance with state law. As part of the hearing, a license applicant may be required to produce records, documents and other evidence to show that he or she is qualified to hold the requested license and that the activity and location of the proposed use are consistent with the public good.

A town may refuse to issue or renew certain licenses until an applicant settles any unpaid local taxes. Also, if a licensee falls behind in its financial obligations to the town, the Select Board or official issuing the license can deny renewal and can also schedule a hearing to revoke it due to the outstanding sums owed the town.

Violations

Select Boards also have the responsibility to ensure that adequate inspections are made by the proper town officials to make certain the license is being properly used. If a Select Board learns of a violation, it must provide the license holder with written notice that states specific facts relating to the violations and the time and place of any hearing to consider suspending or revoking the license.

Licenses and Zoning

Courts have repeatedly rejected attempts by cities and towns to use their licensing authority to outlaw such things as adult entertainment or video games. Courts have, however, upheld the right of communities to restrict certain activities by means of their zoning bylaws. State law gives towns the right to zone adult bookstores as a land use.¹⁵ Making the best use of the town's licensing and zoning authority requires close cooperation between the Select Board and the planning board. Select Board members should always check with planning officials and the zoning enforcement officer prior to issuing a new license to make sure the activity for which the license is being granted is a permitted use. Some boards use a license input form that is sent to a variety of relevant department heads for their input on any license application.

Alcoholic Beverages

[Chapter 138](#) authorizes the local licensing authority to issue licenses for the sale of alcoholic beverages. All liquor licenses (except one-day special licenses) are subject to the final approval by the state's [Alcoholic Beverages Control Commission](#). Select Boards may make their own rules regarding the sale of liquor, but all local rules must be in conformance with state law and ABCC regulations. At the end of each licensing year, the board must file a report with the ABCC showing the number of licenses granted that year, fees charged, any violations of law by any licensees, and any findings or actions taken on those violations.¹⁶

The number of licenses that are permitted in a town depends on its population,¹⁷ unless additional licenses are allowed by special legislation or unless the number of licenses is grandfathered. Towns that have a temporary increase in population during part of the year are authorized to issue additional, seasonal licenses. Special, one-day liquor licenses may be issued to the responsible owner or manager of an indoor or outdoor activity or enterprise.

Under no circumstances may a liquor license be issued to a person who has been convicted of a state or federal narcotics charge or certain other federal charges.

Both the Select Board and the ABCC have the power to suspend, cancel or revoke licenses. If the Select Board does so, the licensee may appeal to the ABCC. All commission rulings can be appealed in court. The Select Board may modify, suspend or cancel any license issued, but only after a hearing.

Common Municipal Licenses and Permits Issued by Select Boards

Alcoholic beverages: [Ch. 138, Sec. 2](#)

Auctioneers: [Ch. 100, Sec. 2](#)

Automatic amusement devices: [Ch. 140, Sec. 177A](#)

Automobiles: [Ch. 140, Secs. 58](#) and [59](#)

Class I, new car dealer

Class II, used car dealer

Class III, junk dealers

Billiards, pool and bowling alleys: [Ch. 140, Sec. 177](#)

Blasting operations: [Ch. 148, Sec. 19](#)

Boarding and lodging houses: [Ch. 140, Sec. 23](#)

Boats (conveyance of passengers): [Ch. 140, Secs. 191](#) and [192](#)

Boats (rental): [Ch. 140, Sec. 194](#)

Cable television: [Ch. 166A, Sec. 3](#)

Clubs and associations dispensing food and beverages to members: [Ch. 140, Sec. 21E](#)

Coffee and tea house: [Ch. 140, Sec. 47](#)

Common victuallers: [Ch. 140, Sec. 2](#)

Entertainment: [Ch. 136, Sec. 4](#)

Dancing schools: [Ch. 140, Sec. 185H](#)

Entertainment provided by inn holder or common victualer: [Ch. 140, Sec. 183A](#)

Explosives, storage, manufacture and sale: [Ch. 148, Sec. 13](#)

Ferris wheels: [Ch. 140, Sec. 186](#)

Food vehicles, lunch carts: [Ch. 140, Sec. 49](#)

Fortune tellers: [Ch. 140, Sec. 185I](#)

Hawkers, transient vendors: [Ch. 101, Secs. 5](#) and [17](#)

Junk collectors or dealers: [Ch. 140, Sec. 54](#)

Lodging houses: [Ch. 140, Secs. 23](#) and [30](#)

Moving buildings in a public way: [Ch. 85, Sec. 18](#)

Parking lots: [Ch. 148, Sec. 56](#)

Pawnbrokers: [Ch. 140, Sec. 70](#)

Picnic groves: [Ch. 140, Sec. 188](#)

Pinball machines: [Ch. 140, Sec. 177A](#)

Sale of articles for charitable purposes: [Ch. 101, Sec. 33](#)

Second-hand dealers: [Ch. 140, Sec. 54](#)

Shellfish: [Ch. 130, Sec. 52](#)

Skating rinks: [Ch. 140, Sec. 186](#)

Soft drinks: [Ch. 140, Secs. 21A](#) and [21B](#)

Taxi cabs: [Ch. 40, Sec. 22](#)

Theatrical events, public exhibitions: [Ch. 140, Sec. 181](#)

Adult-Use Marijuana

The legalization of marijuana is done at the state level, but cities and towns have the authority to define how cannabis businesses can operate within their boundaries.

While the [Cannabis Control Commission](#) is required by law to engage in the licensing process for Medical Marijuana Treatment Centers and Marijuana Establishments, a municipality may implement its own licensing process, as long as it does not conflict with state laws and regulations governing these establishments.



The law allows, but does not require, municipalities to pass bylaws and ordinances governing the time, place, and manner of the operation of Marijuana Establishments, as well as businesses dealing with marijuana accessories. These bylaws and ordinances may not be unreasonably impracticable, meaning the local laws cannot be so difficult to comply with that they would subject licensees to unreasonable risk, or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent business person would not operate a Marijuana Establishment.

A municipality may pass a bylaw or ordinance limiting the number of Marijuana Establishments to 20% or more of the number of retail liquor licenses issued pursuant to [Chapter 138, Section 15](#) (sale for off-premises consumption) in that municipality without going to the ballot. For example, if a municipality has granted 100 liquor licenses, it may set a limit of 20 marijuana retailers within its borders. When calculating 20% of the city or town's Section 15 liquor licenses, if the calculation results in a number less than one, the Cannabis Control Commission recommends that the municipality round up to one retailer. If the calculation results in a fraction greater than one, the commission recommends rounding up to the nearest whole number.

Under state law, a Marijuana Establishment may not be located within 500 feet of a pre-existing public or private school providing education for any grades kindergarten through 12. Municipalities may adopt an ordinance or bylaw to reduce this distance requirement.

A municipality may regulate, by bylaw or ordinance, signage regarding marijuana-related uses, but the ordinance or bylaw may not impose a standard more restrictive than those applied to retail establishments selling alcoholic beverages within the municipality.

In August of 2022, the state enacted the [most significant change to Massachusetts cannabis law](#) since the legalization of adult-use marijuana in 2017. A number of provisions in the new law ([Chapter 180 of the Acts of 2022](#)) affect municipal host community agreements. The law eliminates the inclusion of community impact fees in host community agreements after the first eight years of a licensee's operation. The law gave the Cannabis Control Commission new authority for review and approval of host community agreements – not only at license application but also at each license renewal.

In the fall of 2023, pursuant to the 2022 cannabis law, the CCC updated the state's regulations governing adult and medical use of marijuana. The changes broaden the CCC's authority over host community agreements and apply retroactively to existing host community agreements. When they take effect in March of 2024, the regulations will allow the CCC to review new and existing host community agreements for compliance. The new regulations also create significant new requirements for municipalities to address equity in the industry. There are also new requirements around community impact fees, including reporting requirements that the MMA has asserted are overly burdensome and stringent. An [MMA webinar with attorney Nicole Costanzo](#) of KP Law discusses the regulatory changes and their impact on host communities.

What Municipalities Can't Do

A city or town may not prohibit or inhibit the transport of legal marijuana through its locality. Local laws cannot subject licensees to unreasonable or impracticable demands or require an increased investment of risk, money, time, or any other resource or asset.

Contracting and Procurement

The subject of contracting and procurement is complicated. The dollar thresholds are adjusted periodically, so a town must be certain it is working with the latest information. The [Office of the Inspector General](#) offers many online resources on this topic.

Contracting Authority

Towns enter into contracts for a variety of purposes. Contracts are made in the name of the town and under the authority granted to the town by state laws and town bylaws. Typically a town manager or other chief administrative official serves as the procurement officer. In general, authorization to sign contracts must be set forth in town bylaws, the town charter, or by vote of the Town Meeting. Additionally, a contract is not valid unless all the necessary legal requirements are met, and there is a prior appropriation.

A town may also enter into an agreement with one or more other governmental units to jointly perform services or undertake any activity that the town could undertake independently. These are generally referred to as inter-municipal agreements,¹⁸ and the Select Board may authorize such contracts.

There are several different statutory schemes governing public bidding procedures for municipal contracts. The primary laws are the [Uniform Procurement Act \(Chapter 30B\)](#), the law

relating to public works contracts,¹⁹ and the law relating to public building construction.²⁰

The Uniform Procurement Act

The Uniform Procurement Act governs the general bidding procedures for the procurement of all town supplies and services costing above a certain amount specified by law unless the particular contract is contained in the list of exemptions, such as solid waste, engineering, insurance contracts, legal services, and certain professional service agreements. For procurements under the current dollar threshold, sound business practices are to be followed. The [School Operational Efficiency Act of 2022](#) amended Chapter 30B to increase thresholds for school purchasing only.

If the chief procurement officer determines that selection of the most advantageous offer requires a comparative judgment of other factors as well as price, the town may issue a request for proposals (RFP). This procedure requires the submission by each offerer of separately sealed price and non-price proposals. The non-price proposals are opened first and evaluated and ranked in accordance with published evaluation criteria. After the evaluation, the price proposals are opened and a contract may be awarded to the person offering the most advantageous proposal, taking into consideration price and the evaluation criteria.

Chapter 30B also requires a public proposal process for the disposition or acquisition of interest in real property, if the value of the real property interest exceeds a statutory amount, which occasionally is changed by the Legislature.

Public Works Contracts

Public works infrastructure projects include water, sewer, landfill closures, and road and bridge work. Generally, state laws governing construction, reconstruction, alteration, remodeling, or repair of any public works project require sealed bids when a contract is valued at more than the statutory amount. When such a contract costs more than an amount in the most recent statutory amendment, it must be awarded in accordance with the public bidding procedures of [Chapter 30, Section 39M](#). This provision requires the preparation of written specifications and an invitation for bid, advertising of the contract in accordance with established procedures, and the award of the contract to the lowest responsible and eligible bidder.

Public Building Projects

If the contract involves the design, construction, reconstruction, installation, demolition, maintenance or repair of any building by the town, the process to be used depends on the estimated costs. For projects estimated to cost in excess of the current statutory limit, the contract must be awarded in accordance with the filed sub-bid law.²¹ This law requires the preparation of written specifications and an invitation for bid, the separate solicitation of filed sub-bids and general bids, advertisement of the contract in accordance with established procedures, and the award of the contract to the lowest responsible and eligible bidder. A building is defined as any structure with four walls and a roof, not including sewer or water pumping stations.

Construction Materials Not Involving Labor

Municipalities may use the bid procedures contained in [Section 5 of Chapter 30B](#) for contracts for construction materials if the purchase entails no labor.²² The bid procedures of Chapter 30B, Section 5, differ slightly from those of [Chapter 30, Section 39M](#).

Strategic Planning (Goal Setting)

In many ways the Select Board functions as the board of directors for the municipality. In this role, Select Boards should embrace a process – and set aside dedicated time – for strategic planning, in order to establish long-term goals and monitor implementation. This process can be particularly helpful when a community is thinking about a new public building, an economic development plan, more recreation opportunities, or other goals that might seem out of reach.

Strategic planning is the process of assessing where you are, identifying where you want to be, and clarifying the steps that need to be taken in order to achieve those community goals. The investment of an extra meeting or two can provide a roadmap for the future of your community. It's an opportunity to discuss and agree upon a collective vision and values as a community.

Starting the process can feel overwhelming and time-consuming, but it doesn't have to be. One approach used by some communities to initiate the process is an off-site board workshop on a Saturday or a weeknight when the board does not regularly meet. This allows a board and the community's chief administrative officer to meet in a more casual, collegial setting in order to work collaboratively to set goals and strategize about implementation, with the added benefit of team building. A retreat is typically called for the specific purpose of strategic planning, with a focused discussion and a clear end time. Keep in mind, however, that the retreat is still subject to the Open Meeting Law.

It is key to have one person – a board member or maybe an outside professional facilitator – who "owns" the process and ensures that the board does in fact follow through with the agreed upon goals.

A strategic plan doesn't need to be more than a few pages, and should outline these main ideas:

- What is the vision you have for your town? (This statement should reflect an idealized vision, if money were no object.)
- What are your concrete goals as a board for the next five years?
- What are the specific actions that need to be taken in order to achieve the stated goals?
- How will you measure whether you are successful in achieving the goals?

A strategic plan gives focus to how board members – and sometimes staff – spend their time. Once the plan is established, the board should make time on a quarterly basis during its regular meeting agenda to revisit the strategic plan and check in on progress. The board should also commit to reviewing and revising the plan as necessary, and whenever new

members join the board. This helps to minimize surprises and make needed course corrections as appropriate.

The International City/County Management Association offers a free, 31-page "[Retreat as Management Tool](#)" report that discusses the steps to success to help in planning a productive retreat.

Insurance and Liability

Towns have exposure to a range of risks that require a combination of self-insurance and insurance, including:

- Assets, property and equipment (e.g., public buildings, vehicles, and new construction)
- Police protection (e.g., police car accidents, arrests, incarcerations, juvenile detention, unlawful impoundment, civil rights violations)
- Fire protection (e.g., apparatus accidents, incident command failures, improper training or supervision)
- Code enforcement (e.g., acting beyond scope of authority, failure to follow procedures)
- Public health (e.g., negligent care and professional liability)
- Roads (e.g., potholes, exposed or defective manholes, vehicle and equipment accidents, improper traffic signals, sidewalks, trees and debris)
- Water and sewer (e.g., broken or leaking lines, water quality, construction accidents, damage to underground utilities, backup of sewer lines, improper maintenance)
- Parks and recreation (e.g., inadequate maintenance of facilities, accidents during lawn mowing or tree trimming, accidents during supervised sports)
- Workers' compensation (e.g., employee injuries, protecting lost wages and medical bills)
- Injured on duty (public safety employees' protection for lost wages and medical bills under [Section 111F of Chapter 41](#))
- Cyber liability (e.g., property damage, third-party liability and related expenses)
- Professional liability (e.g., protecting management decisions and employment practices for public officials and school boards, law enforcement liability related to wrongful acts)
- Public official bonds (as required by the Department of Revenue, by position)
- Umbrella/excess liability (to extend limits for all liability lines of business)

Towns also should consider:

- Pollution liability: coverage for liability resulting from accidents such as a chemical spill
- Ambulance drivers or attendants malpractice

In addition, towns provide health, dental, disability and life insurance as part of their employee benefits package, as defined by [Chapter 32B](#). For these benefits, towns may be self-funded, fully insured, or a combination of the two.

It is essential that towns carry adequate coverage across all lines to protect them against claims and to help them recover from any damages to town property. Generally, a town budget does not have the capacity to absorb a major loss, and bond rating agencies view insurance coverage as a key element of sound fiscal management.

The Tort Claims Act

The Tort Claims Act²³ provides that municipalities are liable for the negligent or wrongful acts their employees committed within the scope of their employment. In most circumstances, government employees are immune from individual liability, though there are circumstances where immunity may not apply and they may be open to individual liability.

Under the Torts Claim Act, a town employee who was negligent would be immune from liability, but the town would be liable for up to \$100,000 per plaintiff. Those who intend to sue under the Tort Claims Act are required to present a written claim to an executive officer of the town within two years of the date of the cause of action and the lawsuit itself must be filed within three years. [Section 8](#) of the law provides that a town may purchase insurance to cover damages incurred under the act. The law, however, specifically prohibits indemnification if the employee acted in a grossly negligent, willful or malicious manner. The Tort Claims Act also establishes circumstances under which a town would not be liable for claims arising out of the conduct of its employees. An employee who commits assault, battery, false arrest, false imprisonment, slander, libel, or intentional infliction of emotional distress could be prosecuted personally.

Risk Management

Since all local governments have exposure to risk, it is important to develop programs that protect the community from loss. Methods of protection include the purchase of insurance; minimizing or eliminating the risk (e.g., closing a beach when it is unsafe to swim); and reducing risk by systematically making operations safer (e.g., establishing rigorous safety training programs for employees who encounter hazards in their work). The process used to identify and evaluate possible areas of loss and to reduce or control losses is called risk management. Risk management may be applied to property, liability, workers' compensation, and employee benefit programs.

An effective risk management program should include the following:

- Survey town facilities and practices to identify potential risks.
- Reduce or eliminate exposures.
- When possible, transfer exposure to other parties.
- If the exposure cannot be eliminated, estimate possible loss and frequency.
- Select a practical level of insurance.
- Monitor the town's insurance portfolio.
- Re-evaluate the risk management program annually, and make sure the town is collecting the right information.

The [Massachusetts Interlocal Insurance Association](#) offers many online resources to help communities manage their overall risk, including loss prevention and loss mitigation.

Defects in Public Ways

One area of potential municipal liability arises from the maintenance and repair of public ways. State law²⁴ requires public ways to be “reasonably safe and convenient” and provides for personal injury or property damage claims arising from defects due to a lack of repair or insufficient railings. For a claim to be successful, the defective condition must be the sole cause of the alleged injury. If negligence by the plaintiff or another party contributed to the injury, the claim is invalid. The law is not applicable to any defect (such as a sewer backup or water main rupture) that resulted in damage to private property, since the public way is not involved. If an injury occurs due to ice or snow on the road, the town would not necessarily be liable, as long as the road was otherwise safe and convenient.

Self-Insurance (Self-Funding)

Self-insurance involves establishing a special fund to meet expected losses, rather than paying for losses as they occur. This fund can be invested by the town before money is paid out as claims. A town may decide to self-insure for certain types of risk, such as workers’ compensation, or for a range of risks, including property, general liability and employee benefits. A town may use a combination of insurance options with retentions and deductibles, but it is critical to seek professional advice. Even with retentions and deductibles, funds should be budgeted to meet these obligations.

Self-insurance programs may be financed with a reserve fund, which must be adequate to pay all projected losses, costs and attorneys’ fees. The fund should not be more than the town would have paid for conventional insurance. State law²⁵ specifically allows towns to set up reserve funds for workers’ compensation and property losses, but not for liability losses.

A self-insured municipality usually protects itself from unlikely, but potentially costly, claims by taking out a limited form of insurance from a private insurer. This insurance may take the form of excess insurance or a product called “reinsurance.” If losses in a given year exceed the negotiated amount, either because of an unusual number of claims or an unusually large claim, the reinsurance policy covers the excess.

Self-insurance is not widely used or considered a best practice. Administering the program and the reserve funds can be cumbersome for staff.

Group Self-Insurance (Self-Funding)

State laws allow cities and towns to form workers’ compensation and property and casualty self-insurance groups. The nonprofit [Massachusetts Interlocal Insurance Association](#) (MIIA) provides a range of insurance services to member communities of the Massachusetts Municipal Association. The [Division of Insurance](#) provides strict oversight regarding statutory, regulatory, financial and operational requirements.

Select Boards have a role in acquiring, renting and disposing of most town property. All town property that has not been placed in the care of any particular town board, officer or department by Town Meeting vote or bylaw is under the control of the Select Board. Most actions concerning town property must be approved by Town Meeting. In the case of disposing of or changing the status of open space, state law establishes a specific process. (For more on this, see Chapter 8, Public Lands and Article 97.)

Acquiring Town Property

Towns may acquire property by gift, tax foreclosure, purchase or eminent domain, subject to provisions in their charters or any special acts of the Legislature. Acquisitions by purchase or eminent domain must be authorized by a two-thirds vote of Town Meeting.²⁶ In addition, the Town Meeting must appropriate money to acquire the land.

Towns may purchase or take land only for a clearly identifiable public purpose, and the Town Meeting's action may be invalidated if the land was taken for a non-public purpose. Courts have held that towns may acquire property and lease it to others, but only if the property will be used for the public purpose for which it was acquired.

Towns may acquire interests in land outside of their own boundaries, typically for water supply or for public utilities. In highly developed towns, acquisitions outside town boundaries may become increasingly common for uses such as cemetery space. A town is not required to pay property taxes on land it owns in another municipality, but state law requires that the municipality be paid an amount in lieu of taxes.²⁷

A town cannot become the owner of an interest in land without giving its consent. When a town buys a piece of property, that consent is implied by the purchase price or other considerations. Other deeds of property to the town (or to "the inhabitants of the town") must be accepted and approved by the Select Board. References to "sewer easement," "drainage easement," or "water easement" on a recorded plan, for example, are not valid unless they are accompanied by a document accepted by the Select Board. This safeguard is designed to ensure that the town doesn't end up with property it doesn't want.

Eminent Domain

It is rare for towns to use eminent domain, or the right of a government to take private property for public use without the consent of the owner. When land is taken by eminent domain, the owner has a right to protest the town's determination of what the property is worth. If an owner wins a land damage suit, the town must pay the judgment, with interest, on any amount above the tendered amount.

There may be occasions when taking land by eminent domain is the best alternative, such as when a town is unable to settle on terms with a property owner, or when it is impossible to identify everyone with interests in a property. Town counsel can ensure that legal procedures are strictly followed.

Towns are required by law to compensate the party whose interests are being taken, and the award of damages must be supported by at least one appraisal.²⁸ State law²⁹ allows the town to recover all back property taxes owed to the town on the property during eminent domain

proceedings. The collector should give written notice of the claim in the amount of the lien for taxes before any award of damages is paid.

The process of taking property by eminent domain requires the Select Board to execute and, within 30 days, to record an "order of taking" in the appropriate registry of deeds. Following the recording of the order, a "notice of taking" must be given to the property owner, stating the purpose and extent of the taking, the amount of damages awarded, the time and place where the payment of damages will be made, and the time within which a petition for damages may be filed in the Superior Court.³⁰ Some takings require that the town help to relocate occupants and businesses dispossessed by its action.³¹ Town counsel should be consulted for any and all aspects of an eminent domain project to ensure compliance.

Transferring, Selling and Leasing Town Property

Once town officials determine that property under their control is no longer needed for a particular public purpose, they should notify the Select Board requesting a Town Meeting warrant article. If authorized by a two-thirds vote of Town Meeting, the Select Board may transfer the control or management of the property to another town department or for another municipal purpose.³² Select Boards may choose to lease town buildings but for not more than 30 years.³³

Public Disclosure

It is allowable to meet in executive session when considering the purchase, exchange, lease or value of real property in cases where an open discussion might compromise the town's negotiating position.

Appraisals of land are exempt from public disclosure for a limited period of time under the public records law.³⁴ The law states that appraisals of property that have been, or will be, acquired are confidential until a final agreement is entered into, until any litigation relative to the appraisal has been terminated, or until the time for filing litigation has expired.

Town counsel should be involved in any property acquisition to ensure that the proper procedure is followed and that the town is getting a good title to the property.

Flags on Municipal Flagpoles

Towns are sometimes asked to fly flags on town property in support of specific groups or causes. In a 2022 decision in a case involving the denial of a flag request by the city of Boston, the [U.S. Supreme Court ruled](#) that municipalities may not arbitrarily approve or reject individual requests, but may create policies that would limit flag flying to government-approved messages. Towns are advised to consider a flag bylaw or policy to ensure control over what flags may be flown on town flagpoles, and to take an active role in the selection of flags and/or the crafting of messages on flags. If a town does not have a policy in place, it may be legally difficult to deny a citizen request to raise a flag that the town deems unacceptable or inappropriate. (In order to ensure compliance with the Supreme Court decision, the [Boston City Council adopted a new ordinance](#) that requires a City Council resolution or mayoral proclamation in order for a flag to be raised.)

Utilities and Franchise Activities

The [Department of Public Utilities](#) is responsible for regulating utilities in Massachusetts, while towns have selective control over the placement of poles and transmission lines. Companies wishing to relocate utility poles must apply to the Select Board, which will hold a public hearing on the request. The Select Board may permit an increase in the number and height of wires and the alteration of the poles and abutments. Additionally, poles normally erected by one utility are used by other utilities.



Flags outside of Lexington Town Hall.

The Select Board does not control the construction of transmission lines, except where those lines cross a street. Electric companies are required by law to apply to the Select Board for permission to construct transmission lines on, under, or across a public way. The Select Board must hold a public hearing, and it may grant a location for a line specifying its location, the kind of poles or abutments, the number of wires and the height to which cables or wires may run. A utility may appeal a denial or a failure to act to the DPU.

The Select Board may also allow the construction of telephone, telegraph, cable television, or electric lines upon, along or under streets for private use. Once constructed, the line and the poles and structures connected with it become the property of the town and are subject to regulation and control by the Select Board.³⁵

Municipal Light Departments

Towns are permitted to establish their own gas and electric companies, and there are about 40 municipal light departments that supply electricity to local customers. Many of these departments have joined the nonprofit [Massachusetts Municipal Wholesale Electric Company](#).

In 1996, the Federal Energy Regulation Commission ruled that the wholesale power market must be open to competition and that public utilities owning transmission lines must provide open access. Municipal electric departments are not subject to the same regulations as investor-owned utilities, but they have been encouraged to provide choice of electricity suppliers in their communities. Deregulation also allows for electricity load aggregation.

Recently, some towns have established municipal light plants to operate municipal broadband systems.

Boundaries

Every five years, two or more Select Board members (or their designees) are required by law³⁶ to locate the town boundaries and record with the Select Board and the town clerk the boundary markers they were able to find and those they were not. A copy of the record must be sent, by registered mail, to the town clerks and Select Boards of all contiguous towns. Select Boards are free to decide the manner of carrying out this mandate, but there should be evidence to support any determination. Boundaries may be located by reference to definite locations and geographical features, such as bodies of water, highways, state lines, and monuments. Evidence can include maps and documents, wide acceptance supported by local assessment and taxation, the performance of governmental functions, and local understanding and practice.

Contiguous towns are required by law to share the cost of erecting permanent stone monuments to mark their common boundaries. If the border is a non-navigable stream, the true boundary lies along its centerline. In seacoast towns, the boundary line between adjoining towns changes with the natural changes of the shoreline.

If there is a dispute between towns over the true location of their common boundaries, the state [Land Court](#) has the power to decide where the line falls. In making that determination, the Land Court will generally consider manmade and natural monuments to be more authoritative than written descriptions, courses and distances. The Legislature has the sole power to change boundaries between towns.

Resources

Appointing Town Boards, Commissions and Committees

- [Open Meeting Law](#) resources from the Office of the Attorney General

The Appointment Process

- [Summary of the Conflict of Interest Law for Municipal Employees](#) (mass.gov)

Alcoholic Beverages

- [Alcoholic Beverages Control Commission](#)

Adult-Use Marijuana

- [Cannabis Control Commission](#)

2022 Marijuana Law Update

- [MMA webinar with attorney Nicole Costanzo](#) of KP Law discusses regulatory changes and their impact on host communities (2023)

Contracting and Procurement

- [Office of the Inspector General](#)

Contracting Authority

- [Public Procurement and Chapter 30B Programs](#), Office of the Inspector General

Strategic Planning (Goal Setting)

- "[Retreat as Management Tool](#)," International City/County Management Association (2001)

Insurance and Liability

- [Massachusetts Interlocal Insurance Association](#)
- [Division of Insurance](#)

Utilities and Franchise Activities

- [Department of Public Utilities](#)

Municipal Light Departments

- [Massachusetts Municipal Wholesale Electric Company](#)

Boundaries

- [Land Court](#)

Diversity, Equity and Inclusion at the Local Level

In recent years, there has been a new emphasis placed on implementing Diversity, Equity and Inclusion concepts, policies and practices in the workplace and in the world. Excerpts from the Massachusetts Municipal DEI Coalition's 2022 [DEI Guide](#) provide an introduction to these values with respect to municipal government:

"While Diversity, Equity, and Inclusion are interconnected concepts, they are also distinct values that municipal leaders should actively seek to understand, define, and incorporate into their daily practice. An individual's definition and understanding of diversity, equity and inclusion will reflect how that person approaches their role in the workplace and in the world. At its best, DEI is a part of everything we do, every environment we create, every transaction and interaction that we have. It is a lens through which we see the world, make choices, and build relationships."

"In this moment, when so many people understand the importance of DEI, we must push toward structural and sustainable change in our municipal governments. We must create spaces of belonging for those that have been left out of governmental policies and institutions, or actively and intentionally harmed by them. We must reimagine DEI as a core function of government, not an afterthought or the job of just one individual. We must come to think of DEI as everyone's responsibility."

Support from the MMA

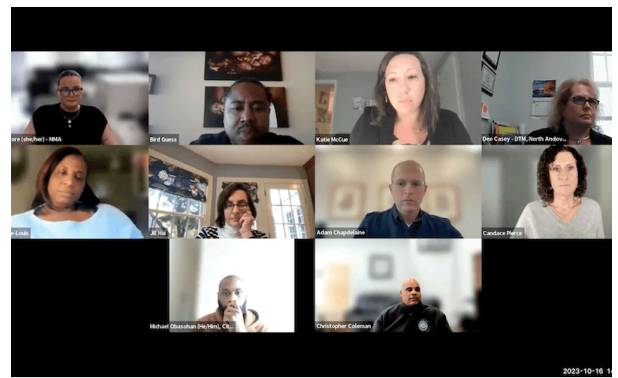
The MMA aims to support municipalities in incorporating DEI values into their practices, policies and cultures, and making it a core function of local government. Select Board members can play a critical role in furthering this work within town halls and throughout their communities.

In the fall of 2022, the MMA formed a DEI Advisory Committee, composed of current and former elected and appointed officials, to research the most effective ways to connect MMA members with resources, education and training for those interested in engaging in this work. The DEI Advisory Committee drafted and adopted a [framework outlining the DEI perspective and setting goals](#), which focused on increasing and enhancing DEI efforts within the *internal* operations of local government, including boards and committees serving a community.

The DEI Advisory Committee also conducted a survey of municipalities across the Commonwealth about the extent of their DEI work. Ninety-four of the 119 responding communities reported that they have begun to strengthen their DEI efforts, including addressing human resources policies, training employees, developing mission statements, and similar activities. The remaining communities identified obstacles to getting started, but many expressed an interest in overcoming these barriers.

In 2023, the DEI Advisory Committee contracted with [Racial Equity Group](#) to develop a strategic plan to expand and enhance DEI work within the internal operations of local government. They will also develop a digital toolkit of DEI resources for municipalities. The MMA will be providing specific training and tools to help Select Board members engage in DEI work when the implementation of the DEI strategic plan begins in 2024.

To learn more about MMA's commitment to this issue, [see this MMA Executive Director's Report](#), published in March 2023.



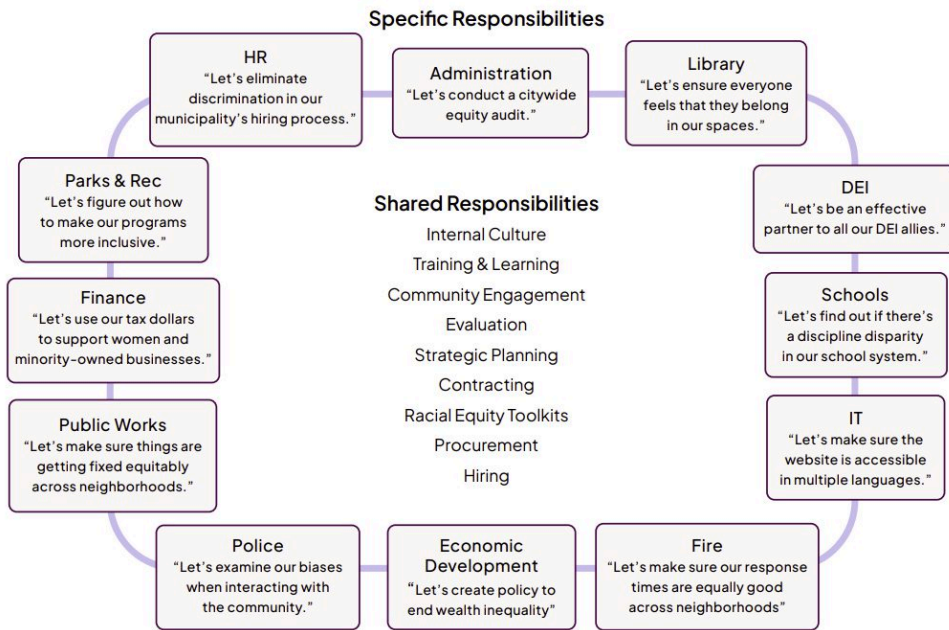
Racial Equity Group CEO Bird Guess conducts a training session with the MMA's DEI committee: (top row, l-r) Lily Rancatore, MMA; Guess; Katie McCue, MMA; North Andover Deputy Town Manager Dee Casey; (middle row, l-r) Sharon Select Board Member Kiana Pierre-Louis; Lexington Select Board Member Jill Hai; MMA Executive Director Adam Chapdelaine; Candace Pierce, MMA; and (bottom row, l-r) North Adams Councillor Michael Obasohan; Westwood Town Administrator Christopher Coleman.

Engaging in DEI Work in Towns

Some towns are taking a leadership role with Diversity, Equity and Inclusion, while others have not yet been able to make it a priority for a variety of reasons. By understanding the benefits and opportunities of a comprehensive approach to DEI, and then implementing a DEI strategy, a Select Board can advance the interests of the town as a whole.

The [DEI Guide](#) created by the Massachusetts Municipal DEI Coalition – made up of DEI practitioners working for municipalities, with funding from the Metropolitan Area Planning Council – includes a range of tools to help communities.

The DEI Guide covers how to get started with DEI work and the many factors to consider, including tips on considering whether your municipality is ready to hire a DEI leader. It's important to note, as the guide points out, this work isn't something that a DEI officer can do alone; everyone in a municipality has a role to play. A chart published in the DEI Guide (and added below) outlines shared DEI responsibilities and specific DEI responsibilities across town departments.



Resources

- [DEI Guide](#), Massachusetts Municipal DEI Coalition (2022)
- [MMA's Municipal DEI Initiative](#)
- [DEI builds stronger, healthier communities](#), MMA Executive Director's Report, March 31, 2023

Financial Management

Sound decision-making by the Select Board requires an understanding of the main components of the town's financial management. The town's finances may limit or frame the ability of a Select Board to achieve its objectives. To be an active participant in financial policy-making, and to be effective in maintaining a sound financial position for the town, each Select Board member should have a basic understanding of the following areas:

- Organization of local financial functions and responsibilities
- Budgeting
- Sources of revenue
- Assessment administration
- Proposition 2½
- User fees
- School finance
- Capital budgeting and capital planning
- Debt
- Accounting and financial reporting
- Cash management

Coordinating the activities of the various elected and appointed boards and officers involved in municipal finance is often a significant challenge for Select Board members.

The Division of Local Services offers excellent municipal finance guidance for town officials in its [Municipal Finance Training and Resource Center](#), including its [Resources for New Officials](#).

Finance Roles and Responsibilities

As the chief executive officer for the town, the Select Board should play a major role in formulating financial policy. Generally, the Select Board will participate in the town's financial planning and budget process, provide leadership in the development of the capital improvement plan, and monitor the town's financial performance. Select Board members should consult their town charter to understand the allocation of roles and responsibilities for finance and budgeting matters.

Professional staff, typically appointed by the Select Board, oversee the town's day-to-day operations and finances. These appointees may include a town manager or administrator, a

finance director, a town accountant, and a town treasurer.

Regarding specific finance activities, the Select Board should:

- Participate in the budget process by developing budget guidelines, reviewing budgets, and evaluating proposals for expenditure of funds
- Participate in broad policy development on issues that will have a major impact on town finances (e.g., a new school, authorization of debt, use of the stabilization fund)
- Ensure the development of a capital improvement program
- Monitor financial performance

The Select Board also has statutory authority for certain financial matters, including:

- Signing bonds or notes when the town issues debt
- Signing warrants for the payment of bills
- Classifying property by use, for taxation purposes
- Setting water and sewer rates and other fees, unless this authority is assigned by bylaw to another board or official
- Placing a Proposition 2½ override or debt exclusion question on the ballot

Certain substantive areas of municipal finance are often the responsibility of other town boards or officials, but Select Board members should acquaint themselves with these areas in order to carry out their own responsibilities in making and coordinating financial policy and preserving a strong financial position for the town.

Finance Committee (or Advisory or Warrant Committee)

The finance committee – or, in some towns, the advisory or warrant committee – is a town’s official fiscal watchdog. Its primary, statutory responsibility is to advise and make recommendations to Town Meeting on the budget and other areas of finance. One of the finance committee’s most important functions involves making transfers from the town’s reserve fund (a contingency fund normally created as part of annual budget appropriations) to other line items in the budget for extraordinary or unforeseen occurrences.

While the finance committee plays a vital role, it is within the executive authority of the Select Board, and/or professional staff, to prepare the town’s budget. The board has ultimate responsibility to the residents for this service. The finance committee’s responsibility is to review the budget submitted to them and to make recommendations regarding the budget to the town’s legislative body: the Town Meeting.

Day-to-Day Financial Management

There are several key appointed positions that manage town finances on a day-to-day basis. The Division of Local Services offers online training and resources regarding the following positions:

- [Town accountant](#)
- [Treasurer](#)
- [Tax collector or town collector](#)

- [Assessors](#)
- [Finance director](#)

Department Heads

As budgets have evolved from lists of projected expenditures to statements of programs, services and expected outcomes, department heads have become more central to the budget process. In most communities, department heads develop budget requests that describe the service impacts of proposed spending levels. Town Meeting expects department heads to justify their requests by linking departmental spending to program benefits.

Town Meeting

Town Meeting is the legislative body and appropriating authority of a town. As such, it approves the annual budget, thereby authorizing specific expenditures. Town Meeting must also approve the issuance of debt and the use of free cash. During the course of the fiscal year, special Town Meetings may be convened to refine the budget or to transfer funds. (See Chapter 4 for more on Town Meetings.)

Organization of Finance Functions

In recent years, communities across Massachusetts have moved from a fragmented structure of independently elected officials toward coordinated departments of municipal finance. Many have also chosen to appoint financial officers who traditionally had been elected and to combine the positions of treasurer and collector. Communities have several options to accomplish these changes.

[Section 11 of Chapter 43C](#), a local-acceptance statute available to municipalities with populations below 150,000, was enacted in 1987 to authorize the creation of several consolidated municipal departments, including the department of municipal finance. Communities may bring the question of adopting a consolidated department to the voters via a petition of 10% of the municipality's voters, or by a vote of the Select Board to place the questions before the voters.

The department of municipal finance would be instituted via adoption of a bylaw containing the following features:

- The position of director of municipal finance would be established, to be appointed by the chief executive officer (Select Board or town manager/administrator).
- The director of municipal finance may serve as auditor, accountant, comptroller, treasurer, collector, or treasurer-collector, but may not serve "as both accountant, auditor or comptroller and treasurer, collector or treasurer-collector."
- The director of municipal finance would be appointed for a term of three to five years.
- The bylaw would describe the functions of the consolidated department, which may include the functions and responsibilities of all municipal finance offices (accountant,

treasurer, etc.), purchasing, and information services. Towns would determine the extent of responsibilities of the department in the bylaw.

- The director of municipal finance would appoint employees of a consolidated department, subject to approval of the appointing authority, unless the charter provides otherwise.
- Such a bylaw may be adopted, revoked or rescinded only at an annual Town Meeting.

Another option to consolidate a department of municipal finance is the administrative organization provision of a [home rule](#) charter. Some of these provisions are detailed and establish a department structure within the charter, while others extend to the Town Meeting, via bylaw, a general authority to reorganize. Several charters include a specific provision for the creation of a division or department of finance.

Yet another route is submitting a special act, or [home rule](#) petition, to the Legislature to create a consolidated finance department or a department of budget and finance. Some of these acts include the functions of treasurer, collector and accountant, while others also include purchasing, information services, insurance administration, and coordination of the budget preparation process. While several include the assessing function, some retain the board of assessors as an independent board. Almost all of these acts call for the appointment of a finance director by the Select Board, referencing education, training and experience as criteria for selection.

Many special acts have been enacted in recent years changing the positions of treasurer and collector from elected to appointed status; in many instances, the positions are also combined. The vast majority of these acts allow incumbents to complete the terms for which they were elected before the appointment and consolidation of positions is effective. Several such acts also required local voter acceptance before the act's provisions took effect.

The Budget Process

The process of developing and adopting a town budget typically starts in late summer or early fall and runs until the spring annual Town Meeting.

According to the Division of Local Services, major milestones in the budget process often include the following components:

- A joint meeting of the Select Board, finance committee, and school committee to review revenue projections and reach consensus on overall expenditure levels, use of reserves, and allocation of resources generally
- Distribution of budget guidelines to department managers so they can begin to prepare their appropriation requests
- Deadlines for submission of departmental appropriation requests and for preparation of a working budget document
- Completion of meetings with department managers to review requests

- Adjustments to revenue projections
- Formulation of the initial budget recommendation by the town manager/administrator, finance director, or finance committee (depending on government structure)
- Budget approval by the Select Board
- Budget review by the finance committee with a deadline to ensure the printing and distribution of the Town Meeting warrant in sufficient time for review by Town Meeting members and residents

These steps culminate in the presentation of an annual budget recommendation to Town Meeting.

“Throughout the process, decision makers should recognize and adhere to formal financial policies, such as those guiding the use of free cash and stabilization reserve funds and establishing debt levels,” the DLS states.

Division of Local Services guidance for town officials about the budget process includes:

- A one-page “[Annual Budget Process in Towns](#)” overview, updated in January 2020
- “[Overview of the Municipal Budget Process and Key Concepts](#),” updated in April 2022

Budget Formats

The Commonwealth does not prescribe a mandatory budget format for towns, therefore no two town budget documents are alike. The Department of Revenue’s Division of Local Services has determined, however, that towns may rely for guidance upon [Section 32 of Chapter 44](#), which sets forth the budget format for cities. The DLS’s “[Overview of the Municipal Budget Process and Key Concepts](#)” also offers some general guidance.

Line-Item Budgets

A line-item budget presentation for each department will likely focus all attention on expenditures, not the results of expenditures. Monitoring expenses and appropriations at the line-item level will require vigilance to limit spending to each specific appropriation. Since every budget is a set of initial estimates, and because circumstances change during the year, reserve fund transfers and supplemental appropriations may be necessary to respond to mid-course corrections.

Categorical Budgets

A budget that groups department line items into categories, such as personnel services and other expenses, offers greater flexibility, but imposes somewhat rigid controls. Such specific Town Meeting appropriations within each department prevent the department head, town manager/administrator, or Select Board members from managing for results. The manager has no discretion to determine the most effective and efficient ways to achieve desired results and deliver services within the total amount of departmental resources.

Single-Appropriation Budgets

A budget format that presents a single appropriation amount for each department, or program, simplifies the process of monitoring and making adjustments during the year. Management can focus on delivering services, rather than on accounting details. In some instances, however, this format may grant more flexibility and authority than the Town Meeting wishes to convey.

Group or Departmental Appropriation Budgets

A budget presented and voted as appropriations for groups of departments, for broad programs, or even for the entire town government gives broad spending discretion to the Select Board and/or management team. Town Meeting must have confidence in the ability and commitment of these administrators to provide the level and quality of services promised by the budget. Group budgets should only be contemplated where the accounting system is capable of providing reports to monitor expenditure detail.

Maximum control is achieved by appropriating funds for "objects of expenditure," or line items. Spending cannot exceed the amount appropriated for the specific item. Managers gain flexibility when appropriations encompass multiple line items or even multiple departments and programs. Such a system permits over-spending line items and even departmental budgets, as long as total expenditures do not exceed the amount appropriated.

The discussion of the tension between appropriation control and managerial flexibility applies only to non-educational budget elements.

Non-Departmental Budgets

Most towns separate budgetary items that are not the responsibility of any one department. These expenses include items such as employee benefits, including Medicare, retirement contributions and health insurance premiums, debt service, liability insurance, and requests such as reserve fund appropriations.

In general, the level of detail supporting these requests should reflect the magnitude of the request and its relationship to elements of the operating budget. As the cost of employee benefits has grown relative to wages, some towns allocate such costs to the appropriate operating departments or programs. If the budget request fails to relate benefit costs to department or program costs, an analysis is necessary to demonstrate the full cost of the department or program.

Off-Budget Items

There is a need to consider some items as part of the budget even though Town Meeting does not appropriate funds for such obligations. For example, a balanced budget must include [Cherry Sheet assessments](#), court judgments, overlay reserves (for future property tax abatements), and deficits required to be raised in the next year's tax rate.

Revolving Funds

A revolving fund receives its income from selling goods and services to users or participants in a program and expends funds to cover the costs of such goods or services. The intent is

for such activities to break even financially, and the revolving fund is a mechanism that allows for fluctuations in levels of activity.

Revolving funds exist under specific statutory authority¹ and operate without approval or appropriation by Town Meeting. Revolving funds are commonly used for park and recreation programs, school athletic programs, community adult education and continuing education programs, and school lunch programs. A revolving fund must be authorized annually by Town Meeting.

Adopting the Budget

To meet the minimum legal requirements for approving a budget, Town Meeting must vote appropriations for salaries and wages and for expenses of each town department. In addition, Town Meeting must vote each year to approve the salaries for elected officials.

In some instances, town bylaws may prescribe specific aggregations of line items for appropriation purposes. More typically, there is no such stipulation. Regardless of the details of each appropriation, Town Meeting must approve any transfers of funds between separate appropriations for all departments, except the town's school appropriation.² If Town Meeting appropriates a sum for a reserve fund, then the finance committee may transfer funds from this reserve to specific departments within statutory limitations.

School Budgets

Education is typically a town's largest service, but state law limits Town Meeting's latitude in setting the school budget, which is presented to Town Meeting as a single amount. Town Meeting has no authority to divide elements of the school department's budget, make line-item amendments, or direct expenditures to specific purposes within the budget. Town Meeting can only vote on a bottom-line budget for the schools and cannot compel the school committee to spend this allocation for specific purposes. To pass a regional school budget, Town Meeting must appropriate the assessment proposed by the regional school district. An appropriation for any amount less than what the regional school proposes constitutes a rejection of the regional school budget.

Select Board members should strive to have open communication between the town and the school department to ensure that the town can comply with school spending requirements while staying within the revenue constraints of the state's Proposition 2½ law. (See School Finance section below.)

Sources of Revenue

Forecasting anticipated revenues for the coming year establishes the framework for preparing a town budget. Towns primarily raise revenue from four sources: property taxes, state aid, local receipts, and other available funds.

Property Taxes

Taxing the value of real estate (land and structures) and personal property (equipment owned by commercial entities) accounts for the largest share of all local revenue, though the exact percentage of revenue from these sources varies widely among municipalities. The amount of property tax revenue a town can raise is governed by a state law known as Proposition 2½³, which limits the amount of property taxes that may be raised in any year to 2.5% of a community's full assessed valuation and limits the total increase in the property tax levy to 2.5% (plus a factor for growth in the tax base resulting from new construction and improvements to existing properties). The law also allows for raising additional taxes through overrides and debt exclusions. (See more on Proposition 2½ below.)

Property taxes for each fiscal year are due quarterly (in towns that have adopted the local-option statute) or semiannually, on November 1 (subject to deferral if tax bills are sent out late) and May 1. In quarterly towns, preliminary tax payments are due on August 1 and November 1, with payment of the actual tax bill (after credit is given for the preliminary payments) in installments on February 1 and May 1 (if actual tax bills are mailed by December 31). Interest accrues on delinquent taxes at the rate of 14% per annum.

State Aid

Each year, the Department of Revenue issues a two-page document to every city, town and regional school district known as the [Cherry Sheet](#). This document lists the various categories and amounts of state aid to be provided, as well as any offsets and charges from the state, county and special district assessments. Thus, the Cherry Sheet reflects state aid for the coming year, minus deductions for intergovernmental charges. The Cherry Sheets are updated regularly as the various state budget proposals are released and passed. (Note: Reimbursements from the Massachusetts School Building Authority are not shown on the Cherry Sheet, but can be found on the [MSBA website](#).)

Cherry Sheet payments are generally made on a quarterly, semiannual or annual basis, depending on the aid category. Cherry Sheet charges are usually deducted from the quarterly payments.

Cities and towns can't be absolutely certain of the levels of state aid they will receive until the state budget for the fiscal year, which begins on July 1, is enacted by the Legislature and signed by the governor. In order for the local budget process to proceed in an orderly fashion, reasonable revenue estimates must be made six to eight months earlier. Lacking firm estimates of state aid for the coming year, towns may use their current year's Cherry Sheet as a starting point for estimating these revenues. In some years, the Legislature provides early information about the likely distribution of education aid (known as [Chapter 70](#)) and other state aid accounts (the largest of which is Unrestricted General Government Aid). There are a number of state aid accounts that can change significantly from year to year.

Local Receipts

Each town determines the extent to which programs and services will be supported by fees and charges. Towns may also levy and collect taxes and fees within the provisions of state statutes. Local receipts collected by the community include, but are not limited to, the following:

- Motor vehicle excise
- Water and sewer charges
- Penalties and interest charges for services
- Departmental revenue
- License and permit fees
- Fines and forfeits
- Investment income
- Hotel/motel tax (where adopted)
- Meals tax (where adopted)

After local taxes, user fees and license and permit fees account for most local receipts. While a user fee cannot be a way of instituting a "hidden tax," state law allows towns to establish user fees to recover all of the direct and indirect costs of providing certain services. Local receipts often account for as much as 20% of a town's revenues. For purposes of setting the tax rate, estimated local receipts cannot exceed actual receipts for the prior fiscal year without Department of Revenue approval.

User Fees and Enterprise Funds

Property tax revenues derive from a tax rate and property values, with little or no link to the cost of specific government services. In contrast, user fees and charges support the provision of a specific municipal service, with the users paying for the service based on the cost of providing it. The Division of Local Services' ["User Fees"](#) guide provides an overview.

An enterprise fund accounts for the income, expenses, assets and liabilities of financing specific services to the public, where the governing body intends to recover the costs of providing the services through user charges. Governmental units operate and finance these service activities in a manner similar to a private business or enterprise. Rates and user charges are established, either as part of the budget process or as a separate, formal rate-setting procedure to cover direct and indirect costs, including depreciation of assets, expenses, replacement or improvement of assets, and efforts to retain earnings for future capital investments. An [Informational Guideline](#) from the Division of Local Services provides more details.

Other Available Funds

["Free cash,"](#) also referred to as an unappropriated fund balance, is a factor in every budget cycle. The Department of Revenue certifies amounts of free cash resulting from closing the financial books as of June 30, the end of the fiscal year. Generally, the calculation incorporates the following:

- Surplus revenue (revenue collections in excess of estimated revenues)

- Budget turn-backs (unexpended appropriations)
- Prior year's free cash (the fund balance from last June 30 that had not been appropriated for the current year's budget)
- Outstanding property taxes from prior years that were collected

A town's free cash, or "budgetary fund balance," is funds that are unrestricted and available for appropriation. Town Meeting may appropriate from free cash during a given fiscal year, but depleting free cash may cause a community to face tighter financial times in the future.

Because it is a one-time revenue source, it is best to avoid using free cash for the operating budget, and preferable to use it for one-time expenditures, such as equipment or capital projects.

Some communities maintain a more formal "rainy day" fund, called a stabilization fund (analogous to a bank account). Town Meeting can appropriate, or "make deposits," into this fund for use at some future time. Although a stabilization fund is used mostly as a reserve to fund capital improvements, it can be used for any legitimate municipal purpose. A two-thirds majority at Town Meeting is necessary to appropriate to or from this fund.

Many financial advisors and rating agencies recommend that a town maintain a free cash and stabilization fund balance equal to at least 5% of total revenue. This level can serve as a reserve for use in financial emergencies. It is also used by the bond rating agencies in evaluating a community's financial condition.

Miscellaneous revenue and other funds include federal and state grants, gifts, funds from the sale of assets, insurance proceeds in excess of \$20,000, transfers from other town accounts (such as a parking meter fund), and other reserve accounts permitted by state law.

Assessment Administration

The board of assessors is responsible for overseeing real and personal property valuations, upon which the property tax, and property tax revenue, are based. Any delay or error in the valuation of property or the issuance of tax bills can result in the need to issue tax anticipation notes.

The Department of Revenue must certify that a town's property valuations are at full value every three years. To comply with this mandatory certification requirement, towns must revalue their property so that it accurately reflects the market. Property assessment and revaluation don't affect the town's total tax levy, but often redistribute the tax burden. To make sure this is done fairly, the assessors must carefully evaluate the local real estate market. Property revaluation typically redistributes the tax levy among different types of residential property, different neighborhoods, and different classes of property (such as residential, industrial and commercial).

Assessors are responsible for carrying out a program of equalization on a continual basis in order to maintain assessments at full and fair cash value. Property may be reassessed during non-certification years to reflect full and fair cash value, provided that the resulting values are consistent within each property class, as well as among all classes of property. Interim year adjustments should be made when statistics demonstrate that assessments are not uniform throughout the community. The results of any equalization program should enable assessors to maintain fair and equitable assessments.

Classification of Property

Each year, the assessors must classify all real property within the town into one of four real property classes (residential, open space, commercial and industrial), using guidelines established by the Department of Revenue. The Select Board then adopts a residential factor, which determines the percentage of the tax levy to be borne by each class of real property and by personal property (movable goods and materials not affixed to real estate), according to a statutory allocation formula calculated by the Commissioner of Revenue (under [Ch. 58, Sec. 1A](#)). The formula establishes the limits within which a town may shift the tax burden from residential and open space property to commercial, industrial and personal property, to allow multiple tax rates.

Under a single tax rate system, if residential property totaled 81% of a community's taxable property, and open space accounted for 4%, then 81% of the community's tax levy would need to be raised by residential property taxes, 4% would be raised by open space taxes, and the remaining 15% would be raised by taxes levied on commercial, industrial and personal properties. State law, however, allows a town to increase the levy share of the commercial, industrial and personal property classes by as much as 50% in order to reduce the tax burden on residential and open space property, so long as the residential and open space classes raise at least 65% of what their share would be if the town had a single tax rate.

State law provides relief for those communities when the maximum shift results in a residential share that is larger than it was in the prior year. Those communities may increase the commercial/industrial share of the levy by as much as 75%, if the residential class would not be reduced to less than 50% of its single tax rate share by doing so. This residential share, however, cannot be less than the residential share in any year since the community was first certified at full and fair cash value.

The Select Board may also adopt an open space discount and may grant residential or small commercial exemptions as part of the classification process.⁴ Decisions on these exemptions must be preceded by a public hearing.

The Select Board may apply a discount of up to 25% to open space. The open space discount reduces taxes on property classified as open space and shifts those taxes onto residential property. The purpose of this discount is to encourage preservation of undeveloped land.

The Select Board may also grant a residential exemption of a dollar amount that cannot exceed 20% of the average assessed value of all residential class properties. The exemption reduces, by the adopted percentage, the taxable valuation of each residential parcel that is a

taxpayer's principal residence. Granting the exemption raises the residential tax rate and shifts a portion of the residential tax burden from moderately valued homes to apartments, summer homes and higher-valued homes. A residential exemption is one way that resort areas (such as Cape Cod and the Berkshires) can provide some tax relief for permanent residents.

Another option under classification is the small commercial exemption,⁵ for commercial parcels occupied by businesses with average annual employment of not more than 10 people during the previous calendar year and a value of less than \$1 million. The Select Board may choose an exemption that reduces the taxable valuation of each eligible parcel by up to 10%. Qualifying small businesses are certified to the assessors annually by the Executive Office of Labor and Workforce Development. The exempted taxes are shifted to other commercial and industrial taxpayers through an increase in their tax rates.

Finally, a community may add water and sewer project debt service costs to its levy limit or levy ceiling for the life of the debt, as long as it reduces water and sewer rates by the same amount. The water and sewer debt exclusion is adopted by a majority vote of the Select Board and may include all or part of existing and subsequently authorized water and sewer debt, or just the residential share of that debt.

Setting the Property Tax Rate

A town's tax rate is the amount of its annual property tax levy stated in terms of a unit of its tax base. To set a tax rate, a municipality must submit a "Tax Rate Recapitulation Sheet," also called "the recap," to the Division of Local Services' Bureau of Accounts. The recap displays the town's entire budget plan for the fiscal year and summarizes all anticipated expenditures.

For more, visit the Division of Local Services' [Tax Rate Setting](#) website.

Proposition 2½

Proposition 2½ does not limit appropriations, only property taxes, and no other statute requires that the local appropriating authority adopt an annual expenditure within a specified revenue figure. Since the levy limit, local receipts, state aid, and other revenues that support the budget are not fixed at the time the annual budget is adopted, compliance with Proposition 2½ cannot be determined until the tax rate is set several months into the new fiscal year. At that time, the budget must be balanced within the levy limit.

Overrides and Debt Exclusions

For prudent reasons, communities attempt to adopt expenditure budgets in the spring, within reasonable estimates of property tax and other revenues likely to be available for the year. Nevertheless, budgets with a higher level of appropriations than supported by estimated revenues could be in place at the beginning of the fiscal year. Appropriations are valid spending authority in such cases until they are rescinded by the local appropriating body. Departments may continue to spend at appropriated levels, even when spending cuts will probably be needed to bring the budget into balance. Alternatively, additional revenue may

be sought by placing an override or debt exclusion before the voters. Approval of the referendum would bring the budget into balance and allow a tax rate to be set. Defeat of such a referendum, however, does not cause the rescission of the budget as a whole, or any particular appropriations made for the purposes described in the question. Difficulties can occur in resolving any differences in the spending decisions made by the appropriating body and taxing decisions made by the voters. This can create uncertainty in the delivery of municipal services and delays in setting the tax rate.

For more, visit the Division of Local Services' [Proposition 2½ and Tax Rate Process website](#), or see its publication "[Levy Limits: A Primer on Proposition 2½.](#)"

Contingent Appropriations

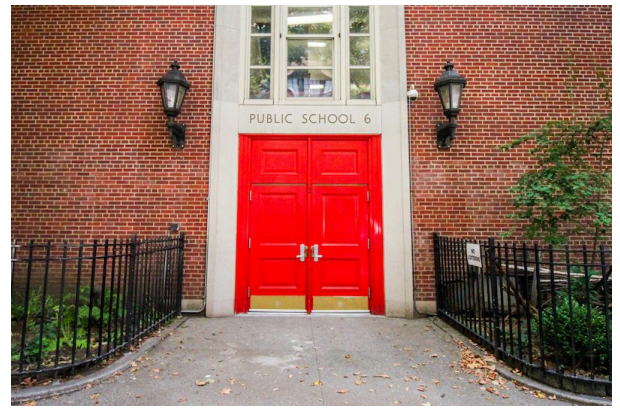
Towns can use another budgeting option that eliminates the need for Town Meeting to take further action on the annual budget or special purpose appropriations after a referendum. When voting specific appropriations, Town Meeting can decide that those appropriations will take effect only if additional property tax revenues to support them are approved by the voters (i.e., the appropriations are contingent upon later approval of a Proposition 2½ referendum question). Voter action on the referendum, which must take place within 45 days, then determines whether those appropriations are effective grants of spending authority for the year.

The use of contingent appropriations is governed by state law.⁶ Town counsel should be consulted for the proper wording of contingent appropriations and the timing of the election for voter approval of a referendum question to fund a contingent appropriation.

A contingent appropriation vote simply conditions the effectiveness of the appropriation on the approval of a referendum question within a certain time period. It does not place a question on the ballot. The power to place Proposition 2½ questions on the ballot rests solely with the Select Board in towns. The board may choose not to place a question on the ballot for any or all contingent appropriations voted by Town Meeting. The board can also decide to place a question on the ballot for an amount less than the contingent appropriation. In that case, approval of the question would make the appropriation effective only to the extent that the appropriation is funded.

A separate referendum question is not required for each contingent appropriation. The Select Board may include several appropriations within one question. Alternatively, the board can use so-called "menu" or "pyramid" approaches, if the appropriations are for operating, or other noncapital, purposes. The only limitation is that the purpose of each contingent appropriation that a referendum question is intended to fund must be described in the question in the same manner as the appropriation vote.

The financing of K-12 public education is governed by a complex system of laws, regulations and funding programs that have a major impact on local revenues and the overall municipal budget. Not only is the school budget typically the largest item in the local general appropriations budget, it is also one of the most challenging to understand, analyze and explain to Town Meeting and to local voters.



The state and federal governments set rules for services, such as special education and vocational education, that must be provided and funded locally, and the state sets minimum levels for basic local educational spending. In addition to mandated spending, there is also significant discretionary spending on schools determined by local officials and voters that reflects local needs and priorities.

There are many different types of education programs with varying rules. Finance and procedural rules for school departments that are part of town government are different in many ways from the rules governing regional school districts. There are educational collaboratives that provide specialized services, and there are private residential and day schools for special education students. There are also rules governing programs that provide parents with educational options for their children, including charter schools, “school choice” and vocational education.

The end result is a complex finance landscape, with consequences for municipal and school budgets that can challenge even the most seasoned municipal official.

Chapter 70 and Local Contribution Requirements

The landmark Education Reform Act of 1993 established a school funding structure designed to ensure that all students have access to an adequate education as required by the Massachusetts Constitution.

The reform act, codified in part as [Chapter 70](#) of the General Laws, established the “foundation budget,” which represents the minimum amount needed to provide an adequate education for all students. A separate “foundation budget” is calculated for each school district and updated annually to reflect inflation and changes in enrollment. Chapter 70 sets a minimum local revenue contribution for each city and town toward the foundation level of spending based on local wealth characteristics, with any remaining amount needed to reach the foundation spending level provided by Chapter 70 school aid – the largest source of state aid in municipal operating budgets.

Chapter 70 school aid and local contribution amounts for a fiscal year are typically calculated by the Department of Elementary and Secondary Education in early January to be included in the governor’s budget recommendation, which is filed in late January. The amounts reflect the operation of the law and sometimes changes that may be proposed as part of the governor’s budget recommendation. These amounts may be used to help prepare municipal and school budgets, although changes are often made during the legislative budget process in the spring

that change local contribution and aid amounts. In some years, the Legislature provides a measure of certainty to the local budget process by adopting a Local Aid Resolution that commits the House and Senate to minimum school and local contribution amounts.

Chapter 70 school aid amounts are included on preliminary and final Cherry Sheets prepared by the Division of Local Services. The division releases preliminary Cherry Sheets beginning with the governor's budget recommendation and updates them throughout the budget process until the final state budget is signed by the governor.

School Choice

The [school choice](#) program allows children to attend school in districts other than the district serving the city or town in which they reside.⁷ All districts with available "seats" must accept out-of-district students for the school year unless the local school committee adopts a resolution for that year withdrawing from the program.

Under the school choice law, a tuition amount for each student is deducted from the Chapter 70 school aid allocated to the sending district (where the child resides) and paid to the receiving district (where the child attends school). The tuition amount for a fiscal year is equal to 75% of the per student expenditure in the prior year, but not more than \$5,000, except for special education students, for whom a special increment augments that tuition. The Department of Elementary and Secondary Education requires school choice tuition revenue received by a district to be deposited into a school choice revolving account, where the funds are then available for expenditure by the school committee without further appropriation.

Estimated tuition payments to receiving districts and estimates of assessments on sending districts are included on the town's Cherry Sheet. The amounts may change over the course of the year as enrollments change and are finalized and special education amounts are finalized.

Charter Schools

State law⁸ authorizes the Board of Elementary and Secondary Education to grant charters to schools that are separate from standard municipal and regional schools. The board may grant a charter to a board of trustees for a school independent of the local school committee, called a Commonwealth charter school, or it may grant a charter for a school that is part of the local school district, called a Horace Mann charter school. There are three different types of Horace Mann schools.

Under the charter school statute, a tuition amount for each Commonwealth charter school student is deducted from the Chapter 70 school aid allocated to the sending district (where the child resides) and paid to the charter school that the child attends. Each Commonwealth charter school receives tuition payments from the sending school district based on a state-calculated tuition rate. The tuition includes separate foundation budget (operational) and facilities (capital) amounts. The foundation budget amount is calculated based on the foundation factors used for the distribution of Chapter 70 school aid, with certain exclusions. Each tuition rate is increased based on how much the local district spends above the foundation level of spending. Each tuition rate is further increased by a state-set per pupil capital spending amount. The state treasurer makes monthly payments to Commonwealth

charter schools, funded by reducing each sending district's Chapter 70 school aid allocation by a commensurate amount.

All students who reside in the local school district in which a charter school is located must be provided transportation by the district in the same manner that transportation is provided to district students in the same grade or as is required by the student's individualized education program under the special education law.

Horace Mann charter schools are funded through the local school district under the terms of the school's memorandum of understanding. The budget for a Horace Mann charter school, as acted on by the local school committee, may be spent by the charter school board of trustees as it sees fit without any further approval.

Estimates of charter school sending district assessments are included on the Cherry Sheet prepared by the Division of Local Services. The amounts may change over the course of the year, as enrollments are updated and finalized and as other parts of the charter school tuition calculation change. The charter school assessment is not subject to appropriation at the state or local level. It is the largest Cherry Sheet assessment item.

Under charter school law, municipalities and regional school districts are entitled to temporary reimbursement of a portion of the deducted Chapter 70 school aid used to pay tuition to charter schools. This amount, which is subject to state appropriation, is also included as a receipt on the Cherry Sheet. This line item can also change over the course of the year.

The regulations governing the charter school system can be found on the [DESE website](#).

Out-of-District Vocational Education

Under [Chapter 74](#), a local student may attend a vocational technical school district other than the municipal or regional district that serves the city or town where the student resides. If a city or town does not offer a particular vocational technical education program that a student desires, either in the local high school or in the regional vocational school, the student may attend, under a non-resident option, any vocational technical high school or other high school in the state that offers the program. The student's municipality of residence must pay the vocational school a tuition fee set by the Department of Elementary and Secondary Education. If the student's municipality of residence is a member of a local regional vocational school district, the tuition fee shall be paid by the district.

Under [Section 8A of Chapter 74](#), the sending district must provide and pay for the transportation of the student. The district is entitled to state reimbursement to the full extent of the amount expended, subject to state appropriation.

Cherry Sheets do not include an assessment for tuition and transportation costs or a receipt item for any transportation reimbursements that may be appropriated in the state budget. These are separate revenue and expense items for the municipality or regional school district budget.

Students may also attend another vocational technical high school through the school choice program at a high school that accepts school choice students. Students attending another vocational technical high school under the school choice program can elect any vocational technical program offered by that school.

The regulations governing out-of-district vocational education can be found on the [DESE website](#).

Special Education Circuit Breaker

State law⁹ provides for state reimbursement of a portion of the educational expenses for high-cost special education students, a provision commonly known as the [Circuit Breaker Program](#).

The general rule is that for each student the state's share is equal to 75% of educational expenses that exceed four times the state average per pupil foundation budget amount. For students without a parent or guardian living in the Commonwealth, and for any non-resident student placed in a school by certain state agencies, the state's share is equal to 100% of instructional costs in excess of four times the state average per pupil foundation budget. Reimbursements are subject to state appropriation and are prorated in the event of underfunding. Transportation costs are not reimbursable under the Circuit Breaker Program.

There are special rules for administering circuit breaker finances. School districts must exclude the estimated reimbursement expected under this program when preparing a budget recommendation for the upcoming fiscal year.

Cherry Sheets do not include an assessment for tuition and transportation costs or a receipt item for any transportation reimbursements that may be appropriated in the state budget. These are separate revenue and expense items for the municipality or regional school district budget.

Reimbursements paid under this program are deposited in a Special Education Reimbursement Fund and may be spent by the school committee without further appropriation for any special-education-related purpose in the year received or in the following fiscal year. Districts are also permitted to pre-pay tuition crossing fiscal years.

In addition to the regular circuit breaker reimbursements, the "extraordinary relief" program provides assistance to districts experiencing a significant increase in their special education costs. Under this program, districts may file an additional claim form in February for the current year's estimated expenses. If the expenses have increased by 25% or more over the prior fiscal year, then the district will be eligible for an additional extraordinary relief payment to help fund the increase.

Circuit breaker claims are audited by the Department of Elementary and Secondary Education, and adjustments are made to future payments in the event of disallowed costs.

Capital Planning and Budgeting

Planning for and financing the replacement of a town's infrastructure is an enormous task that requires active involvement by the Select Board. Evaluating assets and their expected useful lives, projecting replacement costs, examining financing options, determining bonding levels, estimating user fees and tax levies and evaluating the impact on property owners are all important steps in the process. The "[Capital Improvement Planning Guide](#)" from the Division of Local Services will help Select Board members understand this process.

Municipal Debt

Although debt issuance is the responsibility of the treasurer, Select Board members should understand the process because of its long-term impact on town finances. This understanding will help board members evaluate the variety of debt financing options and policies available to the town. By working closely with the treasurer during the debt planning and issuance process, the board can develop plans and policies that are consistent with the town's budgetary constraints and financial policies. The "[Understanding Municipal Debt](#)" guide from the Division of Local Services will help Select Board members understand the municipal borrowing process.

Other Post-Employment Benefits (OPEB)

Employees of towns are often eligible for certain benefits after their employment has ended. A pension is the most common type of post-employment benefit. The term "other post-employment benefits" (OPEB) covers all retiree benefits other than pensions. For eligible town employees, this would include both health and life insurance benefits. In some cases, OPEB may also include an eligible spouse or a surviving spouse. Eligibility for retiree benefits are defined in [Chapters 32](#) and [32B](#).

Towns may establish an OPEB Trust, which is designed to hold the funds needed to cover the future benefits due its retirees. (The Division of Local Services has published an [FAQ document on OPEB Trust Funds](#).)

Plan assets are:

- Segregated from other town funds and restricted in their use
- Dedicated to providing plan benefits to retirees and beneficiaries
- Legally protected from creditors

In addition, town contributions to the trust are irrevocable.

An actuarial valuation of a town's OPEB liability must be performed every two years.

Financial Accounting and Reporting

An accounting system documents financial transactions and is the basis for meaningful financial reports. Financial reports summarize town revenues and expenditures and allow Select Board members to evaluate financial performance.

Accountants and auditors in the Commonwealth currently use either one of two accounting systems or both systems at the same time.

The statutory system is the older of the two recommended accounting systems. It uses a single fund (i.e., one general ledger) to record all transactions that occur during the course of the year. While the statutory system is allowed, it is no longer recommended.

The Commonwealth's Uniform Municipal Accounting System is a multi-fund accounting system, based on the national Generally Accepted Accounting Practices for governmental units. Because GAAP principles are accepted and used nationally, it is possible to understand the figures and compare them to those from any other municipality. This accounting system recognizes the variety of activities performed by a municipality in several funds.

Town accountants are increasingly sensitive to national governmental accounting models. While UMAS continues as a guide, the state also looks to outside agencies, such as the [Governmental Accounting Standards Board](#) to establish the principles of accounting and reporting to be followed in Massachusetts. Over the last 20 years, GASB has issued several "statements" requiring outside auditors to include such financial findings as fixed-asset reporting, management financial summary statements, and other post-employment benefits analysis. Select Board members should be aware of these findings in their audits and understand what they mean for their communities.

Financial Reporting

The basic elements of the accounting system – general ledger, general journal, and detailed subsidiary ledgers for revenues and expenditures – must be maintained and kept up-to-date, since they are the foundation of monitoring appropriations and revenues and preparing financial reports. This is the responsibility of the town accountant or comptroller.

Some important financial reports that Select Board members should monitor include a year-end balance sheet, monthly budget reports, and audited financial statements. The balance sheet shows a town's financial position at the end of the fiscal year, summarizing assets, liabilities and fund equity, and it is used by the Department of Revenue to calculate a town's free cash. Many communities have systems that produce monthly reports that show expenditures by department and purpose in relation to budgeted amounts. This type of report can be used by the Select Board or finance committee to monitor spending, in order to ensure that the budget is not exceeded.

Schedule A is a statement of revenues, expenditures, fund balances and other financing sources and uses. It is prepared at the end of the year for the most recently completed fiscal year, sent to the Department of Revenue, and entered into the Municipal Data Bank. Information from the Data Bank can be used to compare spending patterns, revenue structures, and financial position across communities. Information from Schedule A is used by the Legislature, the U.S. Census Bureau, and local government officials interested in analyzing the scope of services provided and using the data to help make policy decisions.

Municipal Audits

An audit is an independent examination of a municipality's financial transactions and accounts to determine whether a town's financial statements are "fairly presented." The audit process involves a review of fiscal procedures and controls, the establishment of audit scopes, the conduct of tests, and independent confirmation and calculation of assets and liabilities.

Independent annual audits in Massachusetts have been commonplace since the mid-1970s. Audits are mandated by the federal government for those communities receiving in excess of a specific amount of federal aid. In addition, the bond market expects audited financial statements to support debt sales, and bond-rating agencies rely on audited financial statements when assigning a bond rating to a community. The "[Annual External Audits](#)" guide from the Division of Local Services provides more detail.

Cash Management

Cash operations involve the procedures by which money is collected, deposited into a bank, and disbursed to pay salaries and other operating expenses of town government. These activities are the statutory responsibility of the town treasurer. The "[Cash Flow Forecast And Short-Term Borrowing](#)" guide from the Division of Local Services provides more detail.

Resources

Finance Roles and Responsibilities

- [Division of Local Services](#)
- [Municipal Finance Training and Resource Center](#), Division of Local Services
- [Resources for New Officials, Introduction to Municipal Finance](#), Division of Local Services

Day-to-Day Financial Management

- [Municipal Accounting and Auditing Training and Resources](#), Division of Local Services
- [The Role of the Treasurer in Municipal Finance](#), Division of Local Services
- [Municipal Collections Training and Resources](#), Division of Local Services
- [The Role of the Assessor in Municipal Finance](#), Division of Local Services
- [The Role of a Finance Director](#), Division of Local Services

Consolidated Department of Municipal Finance

- [What is Home Rule?](#), Division of Local Services

The Budget Process

- "[Annual Budget Process in Towns](#)," Division of Local Services, January 2020
- "[Overview of the Municipal Budget Process and Key Concepts](#)," Division of Local Services, April 2022

State Aid

- [Cherry Sheet Manual](#), Division of Local Services
- [Massachusetts School Building Authority](#)

User Fees and Enterprise Funds

- "[User Fees](#)" guide, Division of Local Services, February 2016
- [Informational Guideline on Enterprise Funds](#), Division of Local Services, April 2021

Other Available Funds

- [Free cash](#), Division of Local Services, January 2020

Setting the Property Tax Rate

- [Tax Rate Setting](#) website, Division of Local Services

Proposition 2½

- [Proposition 2½ and Tax Rate Process website](#), Division of Local Services
- "[Levy Limits: A Primer on Proposition 2½](#)," Division of Local Services

School Choice

- [Inter-District School Choice website](#), Department of Elementary and Secondary Education

Charter Schools

- [Charter school regulations](#), most recently amended by the Board of Elementary and Secondary Education in June 2021

Out-Of-District Vocational Education

- [Out-of-district vocational education regulations](#), most recently amended by the Board of Elementary and Secondary Education in June 2021

Special Education Circuit Breaker

- [Circuit Breaker Program](#) website, Department of Elementary and Secondary Education

Capital Planning and Budgeting

- "[Capital Improvement Planning Guide](#)," Division of Local Services, January 2020

Municipal Debt

- "[Understanding Municipal Debt](#)," Division of Local Services, January 2020

Other Post-Employment Benefits (OPEB)

- [FAQ on OPEB Trust Funds](#), Division of Local Services, October 2019

Financial Accounting and Reporting

- [Governmental Accounting Standards Board](#)

Municipal Audits

- "[Annual External Audits](#)" guide, Division of Local Services, January 2020

Cash Management

- "[Cash Flow Forecast And Short-Term Borrowing](#)" guide, Division of Local Services, January 2020

Footnotes:

- 1 - [Ch. 44, Sec. 53E1/2](#)
- 2 - [Ch. 44, Sec. 33B](#)
- 3 - [Ch. 59, Sec. 21C](#)
- 4 - [Ch. 40, Sec. 56](#)
- 5 - [Ch. 59, Sec. 5I](#)
- 6 - [Ch. 59, Sec. 21C\(m\)](#)
- 7 - [Ch. 76, Secs. 12B, 12C](#)
- 8 - [Ch. 71, Sec. 89](#)
- 9 - [Ch. 71B, Sec. 5A](#)

Human Resources, Personnel and Labor Relations

Government depends on people to accomplish its work. Careful attention to human resources law and practice will help Select Boards ensure that people are properly hired, trained, evaluated and compensated, while also avoiding the cost and distraction of personnel disputes.

Human resource challenges faced by municipalities are similar to those faced by other employers, but with two main differences: the prevalence of unions in the public sector and the unique challenges of addressing sensitive personnel issues in a public arena. (The Open Meeting Law [see Chapter 2] includes specific provisions that apply to personnel issues, and failure to adhere to them can be damaging to the town.) Issues relating to discrimination, sexual harassment and compliance with numerous labor laws are highly technical. Day-to-day human resources management should be addressed by professional staff, and Select Board members should expect them to maintain an employment environment that is in full compliance with all applicable state and federal laws.

The Select Board serves as the final decision maker for the town on many of these challenging issues. The town charter may spell out whether the hiring authority for a particular position is the Select Board or the town manager or administrator, and the hiring authority is typically the one with the authority over discipline and termination. In cases where a personnel action is within the authority of the town manager or administrator, Select Board members should be cautious not to intrude on that person's authority, as doing so could cause a breach of contract or violation of the town charter. When it comes to making decisions, Select Board members should always rely upon the advice of competent professionals, such as the town manager or administrator, human resources staff, and legal counsel.

Resources for Select Board Members

Town Manager or Administrator

The professional town manager or administrator is the person primarily charged with addressing personnel and labor relations issues. While a substantial portion of the manager or administrator's time will be devoted to the budget and other priorities identified by the board, municipal government is a service industry, and much of his or her time will be devoted to

issues related to managing the personnel that deliver those services. A town manager or administrator should be highly competent in the area of labor and personnel issues and should keep the Select Board informed of any significant issues that arise. Due to the sensitive nature of personnel issues, an individual Select Board member's comments or intervention could further complicate an already challenging situation. Unless and until the time is appropriate for the Select Board to act, members should work through the manager or administrator and avoid direct involvement.

Human Resources Professional

The number and complexity of human resource issues warrant the employment of human resources professionals to support the town manager or administrator, a practice followed by many communities. A human resources department will generally oversee payroll, benefits, compliance with labor and employment laws, employee assistance programs, and other employment-related issues. In some smaller communities, payroll and other benefits may be administered by individual departments, but this can create inconsistencies. Consolidation of these functions into a human resources department is considered a best practice.

Legal Counsel

Liability arising from making an improper decision on a labor or employment matter can be substantial for a town. There is also potential liability for individuals, including Select Board members, who can be sued personally under certain circumstances. Select Board members must consult with qualified counsel on labor and employment matters, and then follow the advice of counsel.

Labor and employment law is a wide practice area, as is municipal law. There are many practitioners who focus on municipal labor and employment issues, and many towns who consult with these specialists. Labor counsel will advise the Select Board and town manager or administrator during contract negotiations, provide guidance on human resource and personnel issues that arise, and represent the town in labor- and employment-related litigation.

It's worth noting that most municipalities have insurance coverage for civil rights claims, public officials' liability, and employment practices liability coverage, and the town's insurer generally retains the right to select outside counsel for claims that may be covered by insurance, including employment-related claims. Even if counsel is retained by the insurer, however, the attorney represents the town and is responsible to the town as the client.

In many areas of law, the parties go their separate ways at the end of a dispute, with one side having won and the other side having lost. The nature of labor and employment law is different. At the end of a dispute, the parties must maintain a positive working relationship. The goal is not to win at all costs, but to build and maintain a productive and collaborative relationship.

Categories of Employees

Some professional employees enter into personal services contracts with their appointing authority. Town managers and administrators, police chiefs, fire chiefs and other high-level managers are commonly contract employees. These contracts should always be reviewed by counsel, as they can be the subject of contentious and expensive litigation. There is statutory authority for entering into a contract with some officials, and a local charter or bylaw may grant the authority to enter into contracts with others. In the absence of statutory or charter authority to do so, towns should tread carefully in entering into contracts with other officials.

The overwhelming majority of municipal employees in Massachusetts are members of unions organized under [Chapter 150E](#). Generally speaking, teachers, police officers, firefighters, and public works employees are members of unions. It is also common for clerical and library employees to be union members. An increasing number of supervisory employees are joining or forming unions, which creates special challenges because they may have subordinates in the same union.

Many communities establish the wages and benefits of nonunion employees through a personnel bylaw, which may be created under [Chapter 41, sections 108A](#) and [108C](#). It is common for department managers to be covered under such a bylaw, as well as other specialized employees that do not fall within employee categories that are unionized. Administrative employees assigned to the office of the Select Board and town manager or administrator are considered “confidential” employees under Chapter 150E and should not be union members. The confidential status pertains primarily to their access to information relating to collective bargaining.

In order to provide a wide array of services, towns also rely on a range of seasonal and temporary employees, as well as those that are only called upon on an intermittent basis, such as call firefighters. It is common for the wages and benefits (if any) of these employees to be covered by a personnel bylaw.

Contract Employees: Professional Managers

Personal services contracts are a common source of litigation for municipalities, with potentially costly and contentious disputes. Controversies arising out of these contracts can take months or years to resolve. They become tremendously expensive, even if the town prevails. A dispute arising out of the contract and relationship with a town manager or administrator can also inhibit the town’s ability to hire a permanent replacement for the duration of the controversy. For all of these reasons, great care should be given to negotiating the terms of the contract. Counsel should be responsible for drafting the document.

Some of the most critical contract areas are:

- Length or term of the agreement
- Wages (including a schedule for salary increases)
- Hours

- Performance appraisals
- Basis for separation or termination of the employee

The agreement should have a specific end date, and any clauses that result in automatic renewal or rollover of an agreement should be closely scrutinized. These clauses can extend a contract if the Select Board fails to act or notify the employee that the board does not wish to extend the contract.

Wages and other benefits should be clearly stated in the contract and should not be tied to what other employees receive for wage or benefit increases. The contract should also provide the Select Board or appointing authority with the ability to evaluate the performance of the employee. These employees are often highly paid, and the contract should provide a means of measuring their effectiveness.

It is also recommended that the contract state specifically whether the professional managers are exempt employees under the federal [Fair Labor Standards Act](#), indicating that the employee is required to work as many hours as is required to complete the necessary work. Employees who are exempt do not accumulate compensatory time (“comp time”) on an hour-by-hour basis, nor are they eligible for overtime.

The terms for separation or termination of the employee are the most critical element of the agreement. If there are no provisions for automatic extensions, the contract and the employee’s service generally end on the last day of the agreement. In some cases, a hearing by the appointing authority may be required to remove an official, due to a statute or charter provision.¹ An appointing or hiring authority may also include terms that allow for termination for malfeasance, including off-duty conduct, and poor performance. These terms should be spelled out in clear and concise terms so that all parties understand what types of conduct and performance are expected.

The negotiation of successor contracts or extensions create special challenges for Select Board members, particularly when dealing with the town manager or administrator. If the board and the manager or administrator have a successful and productive working relationship, negotiating a contract extension or renewal can be awkward for both parties. Before any negotiation, the board should meet without the manager or administrator present and have a candid discussion of what the members hope to achieve. Salary is often the most difficult issue, since salaries paid to these professionals are considerably higher than what most people earn. Failure to provide a competitive salary for a manager or administrator can result in the town losing a successful and valuable professional to a neighboring town. In calculating a salary for a professional manager, Select Board members should consider the cost of losing a qualified person.

Collective Bargaining

Collective bargaining is the process that governs the relationship with organized employee groups; it is not limited to contract negotiations.

Organized employees have a right to bargain over wages, hours and conditions of work pursuant to [Chapter 150E](#), which covers municipal employees and is similar in most respects to the National Labor Relations Act. Under Chapter 150E, it is illegal for municipal and state employees to strike. The statute identifies two principal parties: the employer and the employee organization or union. For non-school unions, the employer is represented by the Select Board. For school unions (e.g., teachers, aides, custodians), the employer is the school committee. Pursuant to [Section 1 of Chapter 150E](#), the town manager or administrator or other representative of the Select Board is a voting member of the school committee for the specific and limited purpose of collective bargaining.

The union is the sole and exclusive representative for its members, and issues relating to wages, hours and conditions of work must be negotiated with the union, not with individual employees. Employee unions are commonly part of a statewide or national union.

The parties are required to engage in "good faith" bargaining, which imposes an obligation to be reasonable in their respective positions. This obligation was defined in *School Comm. of Newton v. Labor Relations Commission* [388 Mass. 557, 572 (1972)]: "The duty to bargain under G.L. Ch. 150E is a duty to meet and negotiate and to do so in good faith. Neither party is compelled, however, to agree to a proposal or to make a concession. 'Good faith' implies an open and fair mind as well as a sincere effort to reach a common ground. The quality of the negotiations is evaluated by the totality of the conduct."

If one party has allegedly engaged in "bad faith" bargaining, the other party may file a charge of prohibited practice with the [Department of Labor Relations](#). Some common allegations include refusing to negotiate or schedule meetings, circumventing the union leadership, and "regressive bargaining," such as lowering a wage offer without substantial justification for doing so.

As the employer under Chapter 150E, the role of Select Board members is analogous to that of management in the private sector. Elected board members also serve as representatives of their constituents, which can include employees who are members of town unions. The dual role of executive and elected official can result in confusion as to where a board member's loyalty should lie, especially during contentious contract negotiations. It is best to view the role as protecting the town's interests as a whole. Collective bargaining does not have to end with a victory for one side and a defeat for the other. Negotiating responsible wages and benefits is in the interest of both parties. Collective bargaining agreements with overly generous wages and benefits can become unsustainable during lean economic times. The price of unsustainable contracts is ultimately borne by employees when layoffs and other reductions become necessary.

Contract negotiation, or interest bargaining, is a process that can last more than a year – or sometimes two or more – especially during lean economic times. While the Select Board typically operates as the employer under the law, the board is usually represented at the bargaining table by the town manager or administrator and/or counsel. The union will almost

always be represented by a professional negotiator or by an employee who has substantial experience in bargaining, so a Select Board member who actively participates in negotiations can put the town at a significant disadvantage, particularly if he or she has no collective bargaining experience. If board members are going to participate in contract negotiations, they should understand that it is a complex process, particularly when negotiating wages or other financial increases. It is best to rely on the town manager or administrator to play a primary role.

The most important role of the Select Board in contract negotiations is establishing the parameters or goals for the negotiations. Generally, this means starting several months before a collective bargaining agreement expires, working with the town manager or administrator and financial professionals to establish fiscal parameters, identifying the amount of revenue projected to be available, and calculating the true cost of wage or benefit increases.

The financial package typically involves a cost-of-living adjustment (COLA), applied to all wage categories. The COLA negotiated with town unions constitutes one of the biggest variables in the town's budget, and a single percentage point can mean the difference between maintaining staff and services and being forced to lay off employees.

Select Board members should also strategize with respect to other objectives they wish to accomplish during collective bargaining, such as lowering the cost of benefits or clarifying areas that have been the subject of disputes or grievances. Once the board develops a bargaining agenda, those charged with negotiating at the table will have clear objectives and parameters, which can dramatically simplify the bargaining process. The Open Meeting Law allows the Select Board's meetings about collective bargaining strategy to be confidential (executive session). Disclosing confidential material to others is a violation of the state's conflict-of-interest law,² not to mention that such disclosure can undermine the town's bargaining position.

Board members should include department managers as a resource in the strategy process, to consult on proposals that may restrict their ability to assign staff or manage their operation. Subtle changes in contract language can have serious implications.

If the Select Board is representing a responsible fiscal position, it is important to have patience and accept the fact that it may take time to bring negotiations to a conclusion. The best strategy when bargaining gets bogged down is to continue to meet and to attempt to explore creative solutions, such as reworking some of the long-term obligations contained in many contracts. Those obligations may include sick leave buyback or longevity payments. Reducing the cost of long-term obligations in exchange for short-term salary increases can make sense for both the town and its unions.

Impasse

Despite the best efforts of both parties, the collective bargaining process can sometimes reach an impasse. When this occurs for municipal police and fire unions, the state's [Joint Labor-Management Committee](#) may be petitioned by either party to intervene. The initial steps of the intervention include mediation by a professional JLMC staff mediator, and

potentially by volunteer management and union representatives from other communities. If mediation fails to resolve the dispute, the matter can proceed to arbitration, which is typically conducted by a panel that includes a management representative, a union representative, and a neutral arbitrator. After a hearing, the panel will issue an award, which must be submitted to Town Meeting or the town council for appropriation. As the employer under Chapter 150E, the Select Board is obligated to support the award of the panel, but Town Meeting can vote to reject the award.

If unions other than police or firefighter unions reach an impasse in negotiations, they can petition the Massachusetts [Department of Labor Relations](#) for mediation or fact-finding. The DLR has professional mediators who will attempt to work with the parties to achieve a mutual agreement. There is, however, no arbitration process to resolve unsettled contract disputes with non-police and fire unions.

Impact Bargaining

Select Board members may also be confronted with the issue of what is known as impact bargaining: the obligation to bargain with a union over the impact, on employees, of changes the employer wishes to make during the term of a collective bargaining agreement. The most common issue that requires impact bargaining is layoffs. When a town is forced to lay off employees, there is an obligation to bargain with the union over the impact the layoffs will have on union members. Generally, impact bargaining involves listening to the concerns of the employees regarding the proposed changes and considering any proposals that may mitigate the impact of the change. If proposals are made, the town should consider them as part of good faith bargaining and offer counter proposals. Impact bargaining is frequently triggered by a demand to bargain by the union, which should be sent to the Select Board. A demand to bargain should be referred to counsel, since the town will generally need guidance as to its obligations, depending on the circumstances that resulted in the demand.

The Grievance Process

Union employees have the right to file grievances, or complaints, with the town. The Select Board generally has a formal role in the grievance process, which is governed by the terms of the collective bargaining agreement. Grievances are generally defined as a dispute regarding interpretation of a specific term of the collective bargaining agreement. Some collective bargaining agreements state that a grievance can be any complaint, even if it pertains to non-contract issues. Employee discipline can be subject to the grievance process, as the employee is claiming that there was not “just cause” for the discipline imposed. Most collective bargaining agreements include language that state that the employee cannot be disciplined unless there is “just cause” for that discipline.

Typically, the grievance process calls for the union or the individual employee to file a grievance with the department manager. If the employee is not satisfied with the answer at this first step, he or she may proceed to the next step in the process, usually the town

manager or administrator. If the employee remains unsatisfied with the decision, he or she may file a grievance with the Select Board. If dissatisfied with the outcome of *that* hearing, the union (not the individual employee) can bring the matter to arbitration. The arbitration process, including the means for selection of a qualified neutral arbitrator, should be described in the collective bargaining agreement.

A grievance hearing before the Select Board should, as part of the collective bargaining process, be conducted in executive session. Board members should receive all relevant documentation in advance of the hearing, including the answers issued at the department and town manager/administrator levels. At the hearing, the union and/or the employee should be allowed to present their case. Board members may then ask the department head to explain the action that triggered the grievance, and his or her position. Following any questions by Select Board members, it is recommended that the board take the matter under advisement and consider its decision. The Select Board may deliberate while the union and/or employee are present, but it is not obligated to do so. Since a written decision may provide the basis of defense should the matter proceed to arbitration, it is recommended that draft decisions be written by the town manager/administrator or by counsel. After review of the draft answer, the Select Board should vote on the grievance.

Seasonal, Intermittent and Temporary Employees

Towns provide a very wide variety of services, many of which are seasonal in nature. The wages for these employees (and benefits, if any) should be addressed in a personnel bylaw or classification plan, to ensure consistency. Seasonal employees may be eligible for unemployment benefits at the conclusion of their seasonal service unless they are employed for less than 16 weeks and the Department of Unemployment Assistance certifies their position as seasonal. The town may also employ intermittent employees such as call firefighters or auxiliary police officers, whose wages and benefits should also be included in the personnel bylaw.

Civil Service

In many communities, the Select Board is the appointing authority under the state's civil service law.³ Most often, that role involves the appointment and promotion of police officers. In some communities, the Select Board can be appointing authority for firefighters as well.

The goal of civil service is to assure employees that employment decisions, including promotion and discipline, are not improperly motivated by politics and are not "arbitrary or capricious." Typically, applicants for initial appointment or for promotion become eligible by taking an exam and then being placed on a list based on their score. Placement on the list can also be affected by status as a military veteran, especially if the veteran is disabled. It is

increasingly common for civil service police and fire departments to employ assessment centers for promotions, since an assessment center is generally viewed as a more comprehensive means of evaluating applicants.

The role of Select Board members may include interviewing eligible candidates. After a review of all relevant data, including background information, résumés and the candidate's placement on the list, the board should select the best candidate. The appointing authority is not bound to choose the person who is placed highest on the list. If a candidate is bypassed for appointment or promotion by a person lower on the list, however, the town must justify the bypass. That justification would typically include documenting the perceived strengths of the candidate selected and documenting the perceived weaknesses of a candidate who was bypassed.

As the appointing authority, the Select Board may also be called upon to review serious discipline – usually suspensions of five days or more – or termination. As is the case for sustaining discipline under a union contract, the town must show that there was just cause for the discipline.

Personnel Matters and the Open Meeting Law

Of the 10 purposes for which a public body may meet in executive session under the Open Meeting Law,⁴ the first three are most relevant to personnel or labor relations issues. (See Chapter 2 for a thorough discussion of the law.) They are:

1. "To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual." (The rights of an individual set forth in this paragraph are in addition to the rights that he or she may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.)
2. "To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel."
3. "To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares."

Issues related to collective bargaining, including grievance hearings, are covered under exceptions 2 and 3, and the chair should note, prior to going into executive session, that the meeting is to hear a grievance with the specified union.

Discussions of professional performance or competence, including performance appraisals, are not permitted to take place in executive session. The law also makes evaluation documents completed by individual members of the Select Board a public record. If the board conducts a performance review or evaluation of an employee, and the results of that review lead the board to consider discipline or discharge, the board may then go into executive session under exception 1, after complying with the appropriate notice requirements.

One of the most precarious aspects of executive session is that board members, in the absence of the public, media and local access cable cameras, may let their guard down and discuss persons or issues not declared by the chair to be the subject of the executive session. Such a discussion can have serious consequences, especially if it were found to have violated the rights of an individual not present for the meeting. If a board were found to have violated an individual employee's rights by discussing him or her during an executive session without fulfilling the posting and notice requirements in exception 1, a subsequent action to terminate the employee, even if lawfully done, could be overturned, with back pay, by the Office of the Attorney General. Given the potential risks involved with discussing personnel matters in executive session, it is recommended that no board consider executive session until the matter has been reviewed in detail with counsel.

Health Insurance

Health insurance is a mandatory subject of bargaining under [Chapter 150E](#). [Chapter 69 of the Acts of 2011](#), known as the municipal health insurance reform law, made changes in the process for negotiating health insurance benefits with employees. The most significant changes were that the law allows the Select Board, after local adoption of [Chapter 32B, sections 21-23](#), to enter into an expedited negotiation process with unions and retiree representatives to make modifications ("plan design changes") to existing plans, or to join the Group Insurance Commission (GIC), which provides health insurance for state employees. The law created a process by which communities could negotiate these changes with a coalition of union representatives and a retiree representative.

Prior to the enactment of Chapter 69 of the Acts of 2011, towns had to bargain plan design changes (such as changes to copayments and annual deductibles) with each individual union. The process was time-consuming and difficult, and as a result most municipalities were offering plans that were more expensive than those offered to private sector employees in Massachusetts.

Many communities have adopted Chapter 32B, sections 21-23, and have been successful in negotiating changes in their health insurance plans. The law mandates that a portion of the resulting savings be shared with employees and retirees, and many communities elected to use those savings to mitigate the impact of the changes on those employees and retirees most adversely affected by changes such as higher copayments and deductibles. Ultimately,

the reform law has provided cities and towns in Massachusetts with a means of more effectively controlling the increasing cost of providing health benefits.

Pensions

Select Boards have no official role in administering the pensions of municipal employees. Under state law,⁵ municipal employees may have their pensions overseen by a local retirement board or by a county retirement board. These boards manage the assets and liabilities of the pension fund and issue assessments to the town based upon actuarial analysis of the projected cost.

Employees hired after 1996 contribute 9% of their regular (non-overtime) wages, with an additional 2% for amounts in excess of \$30,000 per year. That amount far exceeds the contribution of their private sector counterparts toward Social Security. The municipality pays about 2% of pension costs for retirees. It is important to understand that the pension system calls for payment of a fixed benefit to eligible retirees based upon the age and years of service of the employee.

Over the years, the Legislature has enacted a series of changes to pension laws, most of which are intended to eliminate overly rich pensions or loopholes that allow some individuals to collect substantial pensions without having made significant contributions.

There are also provisions for employees who are permanently disabled by accidents while on duty. Those employees can qualify for retirement benefits equal to 72% of their wages.

Worker's Compensation and Injured-on-Duty Claims

The Massachusetts workers' compensation law, [Chapter 152](#), covers most municipal workers, as well as private sector employees. Many communities are insured for workers' compensation claims (as is true in the private sector as well).

Full-time police officers and firefighters are not covered by Chapter 152 for injuries that occur while on duty, but are covered under [Chapter 41, Section 111F](#). One of the differences between traditional workers' compensation benefits and Section 111F benefits is that injured police officers and firefighters receive 100% of their pay while out due to injury, as compared to roughly 60% for employees on traditional workers' compensation. Another critical distinction is that there is no state agency responsible for administration and adjudication of claims for police and firefighter injuries, as is the case for other employees, who pursue claims through the [Department of Industrial Accidents](#).

Resources

Contract Employees: Professional Managers

- [Fair Labor Standards Act](#)

Collective Bargaining

- [Department of Labor Relations](#)

Impasse

- [Joint Labor-Management Committee](#)

Workers' Compensation and Injured-on-Duty Claims

- [Department of Industrial Accidents](#)
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Footnotes:

- 1 - Regarding removal of a fire chief, for example, see [Ch. 48, Sec. 42](#).
- 2 - [Ch. 268A, Sec. 23](#)
- 3 - [Ch. 31](#)
- 4 - [Ch. 30A, Secs. 18-25](#)
- 5 - [Ch. 32](#)

Public Safety and Emergency Services

Ensuring the safety of residents is a primary focus of municipal government. A Select Board's relationship with emergency service operations depends on how a town is structured. In some towns, the responsibility for running police and fire departments rests largely with the chiefs. In others, the Select Board or town manager retains authority to approve rules and regulations and appoint personnel. In towns without a manager, Select Board members need to understand how the security of the town's residents is being protected, in order to ensure that emergency service personnel are carefully selected, well-trained and properly equipped, and to monitor procedures and practices used to carry out this critical function.

Police Departments

Unless otherwise specified in the town's charter or by a special act of the Legislature, the Select Board is the appointing authority for the chief of police and other police officers, and may enter into an employment contract with the police chief.

The Select Board's legal relationship with the police department varies depending on the statute under which the department is organized. Under [Chapter 41, Section 96](#), the Select Board is granted the power to appoint police officers to serve at their pleasure. As long as the police are not subject to civil service, or the collective bargaining agreement does not specify otherwise, the Select Board may remove the chief or other officers for cause, after a hearing, at any time during their appointments.



Under the so-called "weak" police chief statute,¹ the Select Board appoints a police chief to run day-to-day operations and may appoint any other officers the board deems necessary. Under this statute, the Select Board may make regulations for the police department. Where a collective bargaining agreement provides a standard for discipline, [Section 133 of Chapter 41](#) provides that, after completing a one-year probationary period, police officers must be reappointed unless the appointing authority has just cause, or whatever standard the collective bargaining agreement specifies for discipline, and then only after a due process hearing.

Under the so-called “strong” police chief statute,² the Select Board appoints the police chief, and the chief has the power to make regulations for the department, subject to the Select Board’s approval. While the Select Board still has the ultimate authority over the department, a greater degree of management and policy-making responsibility falls to the chief. The police chief is in control of the police officers and the property used by the department. The chief assigns officers to their respective duties.

Another statutory option³ is a commissioner of public safety, who acts as both police chief and fire chief. The Select Board has the authority to appoint a commissioner of public safety, and the commissioner may appoint a deputy as police chief and one or more deputy fire chiefs, subject to the approval of the Select Board. In practice, some communities have simply appointed a commissioner of public safety without accepting the state law. In most cases, the same person is appointed both as police chief and fire chief.

Appointment, Training and Removal – POST

The [Peace Officer Standards and Training \(POST\) Commission](#) was established under a 2020 criminal justice reform law to focus on efforts to improve public safety and increase trust between members of law enforcement and the public. The POST Commission is charged with creating a mandatory certification process for police officers, as well as processes for decertification, suspension of certification, or reprimand in the event of certain misconduct.

The authority to appoint (hire), discipline and promote police officers in departments governed by civil service is controlled by various provisions of [Chapter 31](#). In non-civil service departments, the terms of any applicable collective bargaining agreement apply to discipline and occasionally to at least some aspects of promotions. Appointments are a managerial prerogative, meaning the appointing authority may decide whether to fill a vacancy as well as what hiring process and qualifications will apply. Appointments may also be controlled by any applicable provisions of the personnel bylaws.

Appointments and promotions under civil service are subject to competitive examinations and certain minimum qualifications. Even non-civil service hiring, however, is subject to a variety of state and federal requirements. For civil service departments, it is important to recognize that the [Massachusetts Human Resources Division](#), which supervises and administers the public safety examination process, is willing to alter the promotion process and allow examination processes other than traditional written examinations.

Non-civil service departments, while not required to follow any statutory hiring or screening procedures, often purchase commercially available written entry and promotional examinations or use written examinations in combination with other processes (such as assessment centers) in making appointments or promotions.

State law prohibits any person who has been convicted of a felony from being appointed as a town police officer. Permanent, full-time officers must attend (approximately 800 hours) a police basic recruit academy approved by the [Massachusetts Municipal Police Training Committee](#) prior to exercising any police powers. Police officers must also receive regular in-service training as determined by the Municipal Police Training Committee. State law requires

police officers to reside within a certain distance of the limits of the town where they work, though towns may require, by bylaw or collective bargaining agreement, that all regular police officers hired after August 1, 1978, live within the town limits.

Reserve Force

Towns that are not under civil service and have an organized police department may establish a reserve force by accepting the applicable section of law. Reserve officers are appointed in the same manner as regular members of the police department. They are subject to rules and regulations of the Select Board and may be removed by the Select Board for any “satisfactory” reason. A town may opt to put reserve officers under civil service. In civil service departments, appointments to the intermittent or reserve force are governed by civil service and appointments to the regular force come first from members of the reserve or intermittent ranks.

Holding Cells

Towns with 5,000 or more residents are required by law to maintain a “secure and convenient” holding cell for people in police custody. The Select Board is required to appoint a keeper of the holding cell, who is responsible for the care and custody of those detained there. The holding cell must be accessible at all reasonable hours to the State Police, sheriffs, constables, and police officers for legal and proper uses, and there are strict requirements for the way holding cells must be equipped and operated. These requirements protect those who are held in custody as well as the town (from liability resulting from an injury or suicide). Holding cells and police stations also must comply with health, safety and sanitation regulations of the Department of Public Health. The Select Board is responsible for seeing that the regulations are enforced.

Firearms

Massachusetts has adopted a [host of gun control laws](#) to protect public safety and health, and has the lowest rate of gun deaths per capita in the country, according to the [U.S. Centers for Disease Control](#).

The authority to license a firearm lies with the local police chief, as opposed to a state-level entity. This oversight is important because local police departments are familiar with their residents. In deciding whether to grant a license, the chief must determine whether the applicant is a suitable person to possess a firearm, and, if so, whether he or she can demonstrate a proper purpose for carrying one. The decision is virtually never overruled by a court, which can do so only if the chief’s decision is found to be arbitrary or capricious or an abuse of discretion. Only a handful of states in the country allow this type of local licensing authority.

The police chief also issues licenses for people to sell, rent or lease firearms, shotguns, rifles and machine guns, to carry on the business of a gunsmith, or to sell ammunition. When issuing or renewing these licenses, the police chief must give notice of his or her action to the state public safety commissioner.

Fire Departments

The appointing authority for fire department personnel, as well as the structure of a town's fire safety operation, varies according to the statute by which it was established.

Under the so-called "weak" fire chief statute,⁴ which is similar to the law governing "weak" police chiefs, the fire department is under the direction of the Select Board. The Select Board appoints a fire chief and other fire personnel and fixes their compensation. The Select Board may make suitable regulations governing the fire department and its personnel, and the board may remove the chief and other personnel at their discretion – if such personnel are not under civil service, do not have an employment contract, or are not covered by a collective bargaining agreement. The fire chief controls town property used by the department as well as the department's officers and other personnel. The fire chief is the forest warden.



Yarmouth fire station.

Under the so-called "strong" fire chief statute,⁵ the Select Board appoints a fire chief, who in turn appoints a deputy and other fire personnel. Unless otherwise specified in an employment agreement, the fire chief may be removed by the Select Board for cause at any time, after a hearing. Similarly, unless a collective bargaining agreement provides otherwise, the fire chief may remove fire department personnel for cause at any time, after a hearing. Under this law, the chief has "full and absolute authority in the administration of the department," makes rules and regulations, and reports to the Select Board from time to time. The fire chief also fixes the compensation of permanent and call members of the fire department. For collective bargaining purposes, the Select Board is deemed the employer and negotiates the benefits for firefighters (either directly or through its designee, such as a town manager or labor counsel). Oftentimes, the fire chief is part of the management negotiating team. The appointment of the fire chief in any town or district with a population of 5,000 or fewer may be for a period of three years.

In civil service departments, whether under a "weak" or "strong" fire chief, all appointments, promotions, removals and discipline of employees must be done in strict compliance with civil service laws, which are intended to provide for a merit-based employment system and procedural safeguards for employees.

Fire districts may be organized in any town not having an adequate fire department. The district may establish its own fire department, headed by a chief engineer.

Forest Fires

The Select Board is required to annually appoint a forest warden, who is responsible for putting out forest fires. The forest warden is most often the fire chief. Money appropriated by a town for the prevention of forest fires is spent by the forest warden under the supervision of the Select Board.

Mutual Aid – Police and Fire

Towns must enter into agreements with neighboring cities or towns to provide police, fire or other mutual aid. Compensation and travel expenses are typically paid by the city or town making the request for mutual aid, unless the mutual aid agreement provides otherwise. On request, Select Boards in towns that border or include federal government reservations may authorize their police force to lend assistance.

Another form of a mutual aid agreement is an inter-municipal agreement, created under [Section 4A of Chapter 40](#) (sometimes called a “4A agreement”). Such agreements, whereby a community provides services or assistance to another, require the approval of the Select Board and can be for a variety of functions. Some communities use these agreements for animal control services.

A variation of inter-municipal agreements is a public safety mutual aid agreement under [Section 4J of Chapter 40](#) (sometimes called a “4J agreement”). These provide for emergency assistance in times of a public safety incident, which is defined as “an event, emergency or natural or manmade disaster, that threatens or causes harm to public health, safety or welfare and that exceeds, or reasonably may be expected to exceed, the response or recovery capabilities of a governmental unit including, but not limited to, a technological hazard, planned event, civil unrest, health-related event and an emergency, act of terrorism and training and exercise that tests and simulates the ability to manage, respond to or recover from any such event.”

Mutual aid agreements under [Section 8G of Chapter 40](#) involve just the parties to the written agreement.

Under a 4J agreement, the text of the agreement is the statute, and assistance can be requested from or provided by any of the communities that have opted to join. A 4J agreement is, however, limited to public safety assistance. A town that is a party to a 4J agreement can request assistance from any other community that is a member directly, or through the [Massachusetts Emergency Management Agency](#), which acts as a coordinating agency for 4J participants.

Emergency Management

Towns should have an emergency management organization, led by an emergency management director who is appointed by the Select Board or town manager. The director may be any public official, but is most often the fire chief or police chief. Local organizations are part of a statewide network, under the leadership of the [Massachusetts Emergency Management Agency](#). The federal Stafford Disaster Relief and Emergency Assistance Act ("[Stafford Act](#)") provides for assistance and coordination among federal, state and local governments in times of disaster, and Select Board members should be familiar with the Federal Emergency Management Agency's [National Incident Management System](#). Typically, local organizations are most active during natural disasters, providing shelter and emergency power generation to residents.



Flooding along the Ipswich River

Although Select Board members are not responsible for directing emergency management operations, they must understand the various issues affecting the administration of their town before, during and after an emergency. In the beginning of such events, the focus is on providing safety and protection to the public. An important tool that towns can employ is an enhanced 911 system, which improves emergency response time for police, fire and emergency medical services. Under a separate law,⁶ Select Board members are enabled to initiate emergency spending in times of war, public emergency or distress, in order to maintain, distribute and supply a sufficient supply of food, other common necessities of life, and temporary shelter. The [Division of Local Services provides guidance on this emergency power](#).

The emergency management director should oversee and implement an Emergency Response Plan, in order to be prepared when a disaster occurs. An emergency response plan must identify and answer pertinent questions relating to preparing and protecting the community, and will vary from town to town depending on traits specific to that town (e.g., coastal, urban, etc.). The following broad questions should be raised:

- Who has the *authority* to do what in times of disaster?
- What are the *personnel* rules in times of disaster?
- What are the special rules in *contracting* during times of disaster?
- What *actions* can the government take during an emergency to provide for public safety and welfare?
- What are the *miscellaneous* legal issues that need to be considered?

The [MEMA website](#) offers more information about emergency management. Another tool to assist with emergency management is the creation of a [Community Emergency Response Team](#) (CERT). The CERT program was created by the Federal Emergency Management Agency to educate volunteers about disaster preparedness for the hazards that may occur where they live. CERT offers a consistent, nationwide approach to volunteer training and organization that

professional responders can rely on during disaster situations, allowing them to focus on more complex tasks. Roughly 100 municipalities have CERT teams.

Emergency Medical Services

Most towns make some provision to ensure that their residents have access to emergency ambulance and medical services. There's a range of models for providing these services. Towns may contract with a private ambulance service or enter into agreements with other governmental units to provide joint fire, rescue and ambulance services. Many towns subsidize volunteer ambulance groups or provide emergency medical services through their police or fire departments. There are various levels of service, including basic life support (BLS) and advanced life support (ALS). Towns often bill residents for ambulance services and collect from insurers and/or the recipients of the services.

Animal Control

Dog and other animal complaints are among the least favorite responsibilities of Select Board members. In many communities, Select Board members have had to sit in a quasi-judicial role and adjudicate complaints of dangerous or vicious dogs, which can result in orders of banishment or the more drastic order of euthanasia. State law grants towns the authority to enact bylaws regulating dogs and grants licensing authority for dogs to the town clerk.

Complaints of nuisance (such as excessive barking) or dangerous dogs (attacks on persons or other animals, or the placement of a reasonable person in imminent threat of physical injury or death) are typically the responsibility of the Select Board, although the law permits a town to designate another party to be the "hearing authority." At times, a Select Board can solve a dog problem simply by acting as a mediator between the dog owner and the person bringing the complaint. If the problem is more serious, however, the Select Board must, after conducting an investigation, including a public hearing, find that the complaint is not valid, or that the dog is a nuisance dog or a dangerous dog and issue appropriate orders regarding its restraint or confinement. Any decision may be appealed within 10 days to the district court. The town can also seek appropriate court orders for the restraint or confinement of the dog pending an appeal.

The Select Board must annually designate one or more [animal control officers](#), who may be police officers or constables, or contract with a domestic charitable corporation to perform the duties of animal control officers. These officers must also attend a state-approved training program. Animal control officers, who may not be licensed animal dealers, are primarily responsible for dealing with animal complaints.

Licensing Explosive, Flammable and Hazardous Materials

In most towns, the Select Board will issue licenses, pursuant to local bylaws, for the storage, handling, manufacture and sale of petroleum products, explosives, gunpowder, dynamite, fireworks and other flammable materials. Bylaws must be approved by the state [Board of Fire Prevention](#), which also regulates these materials.

Licenses are granted for the property on which the flammables or explosives are being kept or used, and they may be transferred to new property owners if the property is sold. As the licensing authority, the Select Board has fairly broad discretion to grant or withhold these licenses, after a hearing, and to impose conditions on their use. For example, factors other than fire hazards (such as traffic congestion) may be considered when deciding whether to grant a license. Courts have upheld the right of towns to prohibit self-service gas stations, for example.

For a license to be issued, it must have the endorsement of the head of the local fire department. Licenses may be revoked after notice and a hearing by the licensing authority, or by the state fire marshal. They may not be revoked arbitrarily, however. The general oversight of explosives, flammables and hazardous materials is usually handled by the fire department. For more information, visit the [Department of Fire Prevention](#).

Resources

Police Departments

- [Peace Officer Standards and Training \(POST\) Commission](#)
- [Massachusetts Human Resources Division](#)
- [Massachusetts Municipal Police Training Committee](#)

Firearms

[Massachusetts law about guns and other weapons](#) (mass.gov)

Emergency Management

- [Massachusetts Emergency Management Agency](#)
- [National Incident Management System](#)
- [Division of Local Services guidance on emergency expenditures](#)
- [Community Emergency Response Team](#) information from FEMA

Animal Control

- [Animal Control Officer Resources](#), Massachusetts Department of Agricultural Resources

Licensing Explosive, Flammable and Hazardous Materials

- [Board of Fire Prevention](#)
 - [Department of Fire Prevention](#)
-

Footnotes:

- 1 - [Ch. 41, Sec. 97](#)
- 2 - [Ch. 41, Sec. 97A](#)
- 3 - [Ch. 41, Secs. 21](#) and [101](#)
- 4 - [Ch. 48, Sec. 42A](#)
- 5 - [Ch. 48, Sec. 42](#)
- 6 - [Ch. 44, Sec. 31](#)

Land Use Planning and Community Development

Planning

Towns face many important decisions regarding land use, planning, conservation and development. There are many factors to consider, including the adequacy of water supply and sewage disposal systems, the transportation network, and the potential need for new facilities and changes to municipal services. Towns have the authority to control land use and subdivisions, and to ensure that sound environmental standards are applied. Considerations may include the protection of water supplies and other natural resources, the conservation of open space, traffic and noise mitigation, and working with neighboring towns to ensure the protection of shared resources.

Some towns have planning offices and a professional town planner while others rely on the efforts of the planning board to propose zoning bylaws that will best reflect the town's preferences for growth and conservation. Other local boards and offices involved in land-use planning and decision-making include the board of health, conservation commission, industrial development commission, zoning board of appeals, water board, sewer commission, building inspector, and historical commission.

Many planning boards are elected, but the Select Board is often the appointing authority for most of the other relevant boards and commissions. Interviews should reveal the candidate's philosophies on development, any possible conflicts of interest, and their understanding of their roles. Several strategies for achieving coordination include: appointing one member of the Select Board to serve as a liaison with the planning board and/or organizing occasional "roundtable" discussions among the relevant boards. Planning board members are encouraged to attend [Citizen Planner Training Collaborative](#) workshops, trainings, and annual conference, and review resources such as their [Guide to Massachusetts Land Use](#).

Another good resource to aid in local planning efforts is the relevant [regional planning agency](#). There are 13 in Massachusetts, ready to assist communities with a variety of planning needs.

Another excellent tool is the [MassGIS](#) interactive map website. This Geographical Information System can provide cities and towns with local, regional and statewide data, metrics and benchmarks depicted in a visual mapped format. GIS technology offers greater information

transparency and access by citizens, more effective asset management, and the ability to visualize current metrics while planning for future projects.

Master Plans

Master plans are visionary documents that guide communities into the future and help connect local planning with larger-scale regional planning. Topics should include housing, open space, natural resources, recreation, transportation, public facilities, and commercial/industrial activity. Master plans include demographic and population projections, which help with planning for growth, resource protection, and prioritizing resource allocation. Local master planning efforts are typically driven by the planning board, as mandated by the subdivision control law, but require robust public participation from a whole host of stakeholders, including Select Board members. The [master planning statute](#) charges the planning board with drafting a master plan and subsequently adopting the plan. There is no requirement for a public hearing or ratification by the local legislative body, but both are recommended best practices and should be done voluntarily.

Towns often conduct studies of specific community growth and development issues, such as affordable housing, revitalization of a downtown district, protection of natural resources, or proposed locations for new or expanded public facilities. These may be found within the master plan or as stand-alone studies.

Zoning

Nothing influences the physical development of a town like its zoning. Municipalities use their zoning bylaws and general bylaw powers to accomplish important public purposes, addressing issues such as wetlands, wells and water supplies, chemical use and storage, sand and gravel operations, storage tanks, erosion, pollution and noise. Towns should use their master plan principles as guidance when adopting zoning bylaws as a way to give clarity and direction for a community's goals for the future.

Zoning bylaws typically divide the town into districts to guide land-use patterns that promote harmony and protect the public. Zoning bylaws will define permitted uses of land, prohibited uses of land, and uses of land that either may be allowed "by right" (with just a building permit) or by special permit and/or site plan review. Generally, a land use must be specifically allowed or it is presumed to be prohibited. The town's zoning will also address required dimensions, such as the size of lots, frontage distances along streets, and heights and locations of buildings on lots in the various districts. A zoning variance provision is provided for in every local bylaw. Zoning bylaws generally provide for special permits, and they may also feature site plan reviews, and, in certain circumstances and for a limited duration, zoning moratoria.

The state's [Zoning Act](#) specifies the procedures, format, rights and duties that towns must follow. The law's requirements include the development of a zoning map; submission of any proposed zoning bylaw to the Select Board, which must transmit it to the planning board within 14 days; a public hearing on any proposed zoning amendment prior to a Town Meeting vote; and adoption or amendment of bylaws by vote of the local legislative body (Town Meeting).

In many communities, the building inspector serves as the zoning enforcement officer.

Floodplains

Floodplain protection is a part of local zoning under the Zoning Act. In roughly 80% of municipalities, this involves a floodplain zone – a type of “overlay district” where some uses are banned (e.g., building, filling and/or excavating) and others, if they meet specified criteria, require special permits from a special-permit-granting authority. This method of land-use control to protect public health and safety became popular due to related restrictions imposed by the Federal Emergency Management Agency flood insurance program.

Special Permits

Some specific uses are allowed under special permits issued by a town’s “special-permit-granting authority.” Uses subject to special permits could include multi-family developments, mixed-use developments, certain developments at higher density, and uses of concern to the community because of public safety or health considerations (e.g., parking lots, gas stations).

The special-permit-granting authority sets certain conditions, safeguards and limits on the proposed projects. The special-permit-granting authority may be the planning board, the zoning board of appeals, the Select Board or the zoning administrator. Apart from amendments to the town’s charter, towns cannot create a new board for this purpose. Zoning bylaws, however, can specify different boards to serve as the permit-granting authority for different types of permits. Depending on how a town’s zoning bylaws are drafted, the issuance of special permits may be discretionary or may be required.

The zoning bylaw relating to special permit procedures may designate that other town boards also participate in the review of the application and then make recommendations to the authority. The process for special permit issuance includes a public hearing held within 65 days after the application is filed. Under the [Housing Choice Act](#), certain types of permits involving housing can be decided by majority vote. (See *Housing Choice Legislation* below for more on this law.) Select Boards are advised to work with town counsel to ensure that legal deadlines for holding hearings and making decisions are met. A special permit decision may be appealed to the zoning board of appeals or town clerk.

Subdivisions

A subdivision is the division of a tract of land into two or more lots where the new lots do not have adequate frontage on a qualified way (a road), thereby necessitating the construction of a new way. Subdivision control regulations define the layout, specifications and construction of sewers and streets that are built by the developers but generally turned over to the town. In some cases, subdivision roads are not formally accepted and remain as private roads maintained and plowed by the homeowners.

The planning board is primarily responsible for the administration of the subdivision control law, although the board of health and conservation commission also have regulatory authority if the subdivision has an environmental impact. Planning boards have the authority to adopt regulations governing the design and construction of roads, drainage systems and utilities servicing subdivisions.

The planning board must base its decision on the regulations in place at the time that the developer submits a subdivision plan. Perceptions of the development as unpopular, too large, or incompatible with the area are not adequate justification for the denial of a plan. Only inconsistency with the board's own regulations can serve as the basis for approval or denial.

Scenic Roads

The [Scenic Roads Act](#) permits towns to designate any road, other than a state highway, as a scenic road, which means the town must give written consent before any work can be done that involves the cutting or removal of trees or the alteration or removal of stonewalls. The designation must be requested by the planning board, conservation commission or historical commission. Some communities have adopted local zoning or general bylaws that provide more clarity on standards and procedures, mandate permits, and give a local board power to disapprove or impose conditions.

Billboards and Signs

Billboards are regulated by the Massachusetts Department of Transportation's [Office of Outdoor Advertising](#), but they may also be regulated by local zoning or other bylaws. Billboard owners must be issued a state permit annually for each billboard. State regulations prohibit approval of a billboard determined to be in violation of either state or local laws.

Signs other than billboards may be regulated locally, and this area of responsibility can become controversial among residents. Some believe there should be no restrictions imposed by the town, others want complete uniformity. Some towns have a sign commission, and some have adopted sign bylaws that are enforced by the building inspector. Sign requirements of all types are typically found in a section of the local zoning bylaw. If the town is concerned about maintaining a historic character in the commercial area and has a historic district commission, the commission may include sign standards in its regulations for the district. Towns should be mindful that sign regulations can raise concerns about restricting First Amendment free speech rights, and should consult with counsel on the latest interpretations of what regulation is allowed.

Community Development and Affordable Housing

Community development encompasses an array of programs, plans and activities that a town undertakes to improve housing, infrastructure, commercial activity, civic engagement, environmental resources, transportation, recreation, and related issues. Any activity leading to revitalization of the town, or a specific area in town, falls within the definition of community development.

Most, if not all, community development projects will include an affordable housing component. In recent years, the creation of affordable housing has become a primary focus in municipalities of all sizes. Due to underproduction of housing of all types for decades,

Massachusetts faces a lack of diverse housing options and insufficient inventory. This is especially felt by low- to moderate-income individuals and families.

In an attempt to increase affordable housing across the Commonwealth, the state in 1969 enacted the [Comprehensive Permit Law \(Chapter 40B\)](#), which reduces barriers to development found in local municipal approval processes and zoning bylaws. Generally speaking, Chapter 40B requires communities to have at least 10% of their year-round housing inventory designated as low- to moderate-income housing. The Massachusetts [Executive Office of Housing and Livable Communities](#) maintains the [Subsidized Housing Inventory](#), which is used to measure a community's inventory of housing designated as meeting the requirements of Chapter 40B. Adding units to the inventory can include approval of comprehensive permits that are filed with the local zoning board of appeals. The [Massachusetts Housing Partnership](#) offers a [Housing Toolbox](#) for communities and technical assistance for local boards, including a [Chapter 40B Handbook for Zoning Boards of Appeal](#), general guidance on the law, and special counsel to assist with reviewing application materials and drafting the permit.

Housing Choice Legislation

The legal thresholds for passing zoning bylaws related to increasing the production of housing were changed in 2020 by amendments made to the Zoning Act that were part of an economic development law. The [Housing Choice](#) amendments include:

- Changes to Section 5 of the Zoning Act to reduce the number of votes required to enact certain kinds of zoning ordinances and bylaws from a two-thirds supermajority to a simple majority
- Changes to Section 9 of the Zoning Act regarding voting thresholds for the issuance of certain kinds of special permits.

[The state offers guidance on zoning bylaw voting thresholds.](#) It is important to work with town counsel to ensure that voting parameters for adoption are clear.

MBTA Communities

The [Housing Choice Act](#) established new obligations for the 177 designated [MBTA communities](#) in Massachusetts. [MBTA communities](#) – defined by reference to sections 1 and 6 of Chapter 161A or in accordance with any special law relative to the area constituting a transit authority – must have at least one district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. A district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by Section 40 of Chapter 131 and Title 5 of the State Environmental Code established pursuant to Section 13 of Chapter 21A; and (ii) be located not more than half



The city of Newton, whose Green Line stations include Newton Centre, was one of 12 rapid transit communities that adopted zoning changes by the year-end deadline under the MBTA communities law.

a mile from a commuter rail station, subway station, ferry terminal or bus station, if applicable. Implementation of this requirement is underway and being overseen by the Executive Office of Housing and Livable Communities, which has [issued compliance guidelines](#). Towns are advised to consult with the EOHLC and their regional planning agency on potential technical assistance options and best practices for implementing these requirements.

Housing Authorities and Housing Trusts

State law enables any city or town to create a housing authority. A town must determine, by vote at an annual or a special Town Meeting, that a housing authority is needed “for the purpose of the clearance of substandard, decadent or blighted open areas or the provision of housing for families or elderly persons of low income or engaging in a land assembly and redevelopment project, including the preservation, restoration or relocation of historical buildings.”

The procedure for obtaining approval from the state for a housing authority is the same as for a redevelopment authority. Board members must be residents, and the authority is autonomous from the Select Board.

Local or regional housing authorities administer housing programs for low- and moderate-income individuals and families, the elderly and/or disabled. Housing authorities may also administer state and federal rental voucher programs, which provide a subsidy for income-qualified individuals and families to live in market-rate housing. The housing authority can offer insight into the service needs of residents of housing authority properties (e.g., public transportation, health care, adult education, library services).

In 2005, the state [enacted a law](#) that simplified the process whereby towns can establish a [Municipal Affordable Housing Trust Fund](#) to address housing needs. An Affordable Housing Trust Fund, which differs from a housing authority, allows municipalities to collect funds for affordable housing, allocate funds out of the general municipal budget into a trust fund, and use the funds to create and preserve affordable housing. Many communities that have adopted the Community Preservation Act also have established affordable housing trusts that can work with the local Community Preservation Committee to accomplish municipal housing goals, at times without the constraint of a Town Meeting vote.

Select Board’s Role in Community Development and Affordable Housing

The Select Board’s involvement in community development often focuses on working to develop local support through neighborhood groups, civic organizations, nonprofit entities and residents to design a community development strategy, which will address issues such as desired locations of development or redevelopment, priority concerns, available funding sources, timeline for meeting goals, and types of assistance needed. If the board is unable to lead such an effort, it may appoint a committee to study available options, hold public hearings, consult with the area’s regional planning agency, and possibly visit other towns that have conducted community development activities and report back to the Select Board with recommendations for a comprehensive strategy. The Select Board will serve as a primary source of information for the public about the community development strategy, so it needs to stay involved as the strategy evolves.

In most communities, community development is an ongoing process. The town also needs to consider the maintenance of facilities or infrastructure after any grant funding is used for construction, as most grant programs do not provide funds for ongoing costs. Identification of priorities, the full cost and service consequences to the town after project completion, and the town's growth intentions all factor into the community development effort.

By working with other town boards as well as community and neighborhood groups, the local or regional chamber of commerce, and faith-based organizations, Select Board members will see several different perspectives about the community's needs and priorities. Developing a strategy can be a good opportunity to bring these groups into an effective and productive working relationship with the town, while fostering cooperation among the groups and organizations themselves. Some communities hire consultants specializing in community development to help the town determine its immediate and long-term priorities.

Economic Development

A subcategory of community development is economic development, which may reference any activity with a focus on job creation, job retention, increased commercial activity, or efforts to attract business and industry. Communities may vote to create specific entities to oversee economic development, such as an industrial development finance authority, an economic development and industrial corporation, a redevelopment authority, or a development and industrial commission.

Successful economic development requires a plan that considers issues of employment, current and planned transportation infrastructure, industry or business mix, resource availability (e.g., water and sewer services), land-use patterns, local and regional competition, the desire for growth, and the town's ability to respond to new growth. Growth may help the tax base, but it's important to consider the service consequences. A large industrial employer, for example, may require increased inspection time from the fire department due to its use and storage of hazardous chemicals. A shopping mall or plaza may add to local traffic, require an increase in police patrols, and exert competitive pressure on established downtown merchants. It's important to weigh as many of these costs and benefits as can be identified in the preparation of an economic development strategy.

Select Board members should be informed of business interests in the area, grant or loan programs for which the community may be eligible, and the pace of economic activity in the region. Downtown merchants can offer their perspective on the types of economic activity that would help the downtown thrive.

Redevelopment Authorities

State law¹ enables any city or town to create a redevelopment authority. A redevelopment authority is not a town department or committee, but a quasi-municipal entity tasked with the redevelopment of a specific area with the intent to revitalize the land use and encourage growth. It is autonomous and may not be controlled by the Select Board or Town Meeting. The redevelopment authority has eminent domain powers and may exercise them without the approval of the Select Board or Town Meeting. This model is typically employed for large-scale, complex land use projects that often include more than one municipality.

Historic Sites and Structures

Municipalities can create historic districts for managing sites and structures therein. They may do so by special act or, more commonly, by an enabling act under the [Historic District Act](#). The resulting historic district commissions, of which there are more than 200 in Massachusetts, are city or town boards with the power to regulate and restrict various changes within the district.

Another approach is a local historical commission, which provides leadership and education to preserve sites and buildings. These commissions are distinct from a local historical society, which is a private, non-governmental entity.

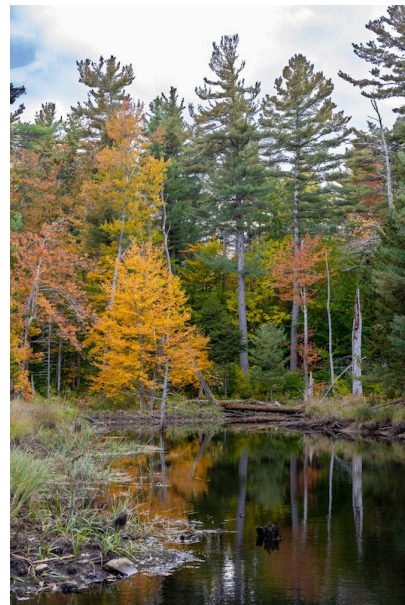
Some municipalities have enacted zoning or general “demolition delay” bylaws, requiring permits and imposing delays in the destruction of historical buildings and homes during which time efforts can be undertaken to avoid losses of particular buildings and/or historical features of the buildings.

Conservation

Wetlands Protection

In Massachusetts, wetlands are broadly defined to include riverfronts, banks, beaches, dunes, flats, wet meadows, and flood-prone areas, in addition to vegetated wetlands, such as swamps, bogs and marshes. The [Massachusetts Wetlands Protection Act](#) and [Department of Environmental Protection regulations](#) cover basic procedures for permits needed for most work in and near wetlands, water bodies and flood-prone areas. Nearly 200 communities have enacted their own wetlands bylaws or ordinances. The conservation commission is responsible for wetlands protection and enforcing a permit system for work that affects wetland areas.

The conservation commission – or the Select Board in towns without one – holds a public hearing, considers the application (known as a Notice of Intent with plans) and issues an approval (known as an Order of Conditions) or disapproval. These permits may restrict activities in order to protect groundwater, drinking water and flood storage capacity, prevent storm damage, or protect shellfish, fisheries or wildlife habitat. Decisions of the local conservation commission may be appealed to the Department of Environmental Protection or the courts.



A marsh in Hawley.

Conservation Restrictions and Open Space

The Conservation Restriction Act governs conservation restrictions, agricultural preservation restrictions, and historic preservation restrictions. These restrictions can be bought and sold, donated or bequeathed. Cities and towns can be party to conservation restrictions, which are voluntary agreements with a government body or qualified charitable organization by which the owner covenants to keep land primarily in its natural condition. The restriction may run in perpetuity or for a period of years. A conservation restriction given to a town, or to a charity within the town, must be approved by the Select Board, and then, on application, by the [Executive Office of Energy and Environmental Affairs](#).

Municipalities, as well as many federal and state agencies and regional authorities, may take open space by eminent domain, purchase it, or receive it as a gift. They also may acquire interests such as easements, covenants and other restrictions. The [Division of Conservation Services](#) offers grant programs for the acquisition of conservation and recreation land, and the development and renovation of parks, but municipalities that have adopted the [Community Preservation Act](#) may have difficulty obtaining these grants since they have their own source of funding for these purposes.

Public Lands and Article 97

[Article 97](#) of the Amendments to the Massachusetts Constitution establishes a right to a clean environment, including its natural, scenic, historical and aesthetic qualities, for the citizens of the Commonwealth. Article 97 also declares the conservation of natural resources as a “public purpose” and provides that land or easements subject to Article 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of each branch of the Legislature.

In November of 2022, the Legislature enacted a new section in state law² that established in statute the requirements and process that a municipality must follow when it proposes to dispose of or change the use of property subject to Article 97. The law, known as the [Public Lands Preservation Act](#), codifies the Executive Office of Energy and Environmental Affairs’ long-standing “no net loss” policy, which requires a municipality or other public entity to offset a change of use of protected open space by providing comparable replacement land.

When a municipality seeks to dispose of or change the use of Article 97 land, the law requires the municipality to:

1. Notify the public and the secretary of EOEEA of the planned disposition and conduct an alternatives analysis for the secretary to show that there is no feasible alternative to disposition or change in use.
2. Identify replacement property that is not already subject to Article 97 that has equal or greater natural resource value, acreage, and monetary value.
3. Take, acquire or dedicate the replacement land or interest identified in perpetuity for Article 97 purposes.

The secretary of EOEEA may waive or modify the second and third requirements under limited circumstances. The law also allows funding, or a combination of funding and replacement land,

to be provided instead of replacement land in certain limited circumstances.

The law also lays out the procedure for petitioning the Legislature to authorize the disposition or use for another purpose of Article 97 property. All petitions must include the alternatives analysis; a description of the replacement land or interest, if applicable; a copy of the appraisal; a copy of any waiver or modification granted, if applicable; and a copy of the report of the findings of the secretary that would allow for funding to be provided instead of a replacement property, if applicable.

For more information, visit the [EOEEA's Article 97 and the Public Lands Preservation Act web page](#).

Forests and Trees

The state [Forest Cutting Practices Act](#) is intended to promote the responsible harvesting of trees. Limited exemptions apply for public utility and highway maintenance as well as some other projects requiring city or town permits.

The [Public Shade Tree Act](#) protects publicly owned trees along city, town and county ways. No such tree may be cut, trimmed or removed, even by the owner, without the written permission of the municipal tree warden or his or her deputy after posting and a public hearing. If there is written objection, the work needs approval of the Select Board or mayor.

The Shade Tree Act has an important exemption for the Select Board, mayor, road commissioners, or a highway surveyor to order trees to be trimmed or removed if they are deemed to "obstruct, endanger, hinder or incommode" persons traveling on a way. State law requires every town to have a tree warden, unless the duties of the warden have been delegated by the town to a board of public works or to a municipal office of lands and natural resources. The tree warden, or designated agency, has broad authority to plant, trim and remove public shade trees and shrubs on town streets.

Farmland and Agriculture

Often subject to local zoning, agriculture is encouraged by a state law that authorizes municipalities to establish incentive areas and relax nuisance laws for farming. The zoning act exempts agricultural activities on lots of a certain size and exempts farm stands if they meet certain requisites.

State law allows for the reduction of real estate taxes on properties used for agricultural and/or horticultural purposes that meet certain minimums for size and gross receipts. State law gives municipalities a right of first refusal, which they can assign to others, to purchase farmland that otherwise would be sold or converted to a non-agricultural use.

Seacoasts

Coastal towns are likely aware of federal and state regulatory, planning, environmental review and funding programs. Many municipal activities and projects need certain permissions. One proviso is the obligation to secure a consistency determination from the Executive Office of Energy and Environmental Affairs' [Office of Coastal Zone Management](#) program for projects and activities seeking federal approvals or financial assistance.

The CZM works with coastal communities to develop municipal harbor plans, which can free the community from some state constraints. Marine industrial uses are encouraged in state-designated port areas. Municipalities get preferential treatment in connection with ocean wind facilities under the Ocean Management Plan, which more broadly deals with state oversight, coordination, planning and policy for the state's ocean resources.

Community Preservation Act

The [Community Preservation Act](#) enables communities to establish a special fund that may be spent for certain open space, historic preservation, affordable housing, and outdoor recreation purposes. This has proven to be an excellent tool in helping cities and towns achieve their goals in these areas. For towns, adoption of the local-option statute involves a majority vote of Town Meeting as well as approval by a majority of voters at the next regular municipal or state election.

The primary source of revenue is a property tax surcharge of up to 3% assessed on each parcel of taxable real estate within the community, amounts that are not subject to the levy limitations of Propositions 2½. The second source of revenue is matching distributions from the state's Community Preservation Trust Fund. For each fiscal year, the city or town must spend or reserve at least 10% of the annual revenue in the local fund for each of the statute's primary purposes: open space, historic preservation and affordable housing. More than half of Massachusetts cities and towns have adopted the CPA.

The [Division of Local Services offers CPA guidance](#) and information, and the nonprofit [Community Preservation Coalition](#) offers information and support for communities that have passed the CPA.

Resources

Planning

- [Citizen Planner Training Collaborative](#)
- [Citizen Planner Training Collaborative's Guide to Massachusetts Land Use](#) (2021)
- [Regional planning agency directory](#)
- [MassGIS](#)

Master Plans

- [Massachusetts master planning statute](#)

Zoning

- [Massachusetts Zoning Act](#)

Scenic Roads

- [Scenic Roads Act](#)

Billboards and Signs

- [Office of Outdoor Advertising](#)

Community Development and Affordable Housing

- [Massachusetts Comprehensive Permit Law](#)
- [Executive Office of Housing and Livable Communities](#)
- [Subsidized Housing Inventory](#)
- [Massachusetts Housing Partnership](#)
- [MHP Housing Toolbox](#)
- [MHP Chapter 40B Handbook for Zoning Boards of Appeal](#) (2017)

Housing Choice

- [Housing Choice Act](#)

MBTA Communities

- [Multi-Family Zoning Requirement for MBTA Communities](#)
- [MBTA communities](#)
- [Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act](#) (Revised: October 21, 2022)

Housing Authorities and Housing Trusts

- [Municipal Affordable Housing Trust Guidebook](#) by Massachusetts Housing Partnership (2018)

Historic Sites and Structures

- [Historic District Act](#)

Wetlands Protection

- [Massachusetts Wetlands Protection Act](#)
- [Department of Environmental Protection Wetlands Protection Act regulations](#)

Conservation Restrictions and Open Space

- [Executive Office of Energy and Environmental Affairs Conservation Restriction Review Program](#)

- [Division of Conservation Services](#)

Public Lands and Article 97

- [Article 97 of the Amendments to the Massachusetts Constitution](#)
- [Article 97 and the Public Lands Preservation Act](#), Executive Office of Energy and Environmental Affairs

Forests and Trees

- [Forest Cutting Practices Act](#)
- [Public Shade Tree Act](#)

Seacoasts

- [Office of Coastal Zone Management](#)

Community Preservation Act

- [Community Preservation Act](#)
 - [Division of Local Services CPA guidance](#)
 - [Community Preservation Coalition](#)
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Footnotes:

- 1 - [Ch. 121B, Sec. 4](#)
- 2 - [Ch. 3, Sec. 5A](#)

Public Works and Parks

Public Works

Public works functions are organized, managed and administered in many different ways in local government. Generally, functions that can be considered public works include the following:

- Street maintenance, cleaning and construction
- Sewerage system design, construction, maintenance and management
- Cemetery maintenance
- Shade tree management
- Water system design, construction and management
- Stormwater management
- Building maintenance
- Snow plowing
- Street sign installation
- Vehicle maintenance (though public safety sometimes maintains their own fleet)
- Recycling/trash/yard waste collection and disposal
- Subdivision review
- Maintenance of parks and playgrounds



Historically, the various public works functions are managed by elected officials such as highway surveyors, water and sewer commissioners, road commissioners, cemetery commissioners, park commissioners, tree wardens, and boards of public works. Some towns with a municipal electric and light commission have incorporated those functions into a department of public works as well.

Some towns maintain a work force to undertake various functions, while many contract for certain services from private vendors. In many towns, public works functions are overseen by a director of public works, who is appointed by and reports to the chief administrative officer or the Select Board.

The following are some statutes that relate to local public works functions:

- A town may elect or appoint highway surveyors, who have responsibility over the ordinary repair of roads.¹
- A town may vote to elect one or more road commissioners, who have the same powers and duties regarding roads as highway surveyors.² Road commissioners also act as tree wardens and, unless there is a separate commission, as sewer commissioners.
- Select Boards may appoint a superintendent of streets, who acts under their direction.³ Two or more towns can join together to share a superintendent of streets.⁴
- A town may vote to elect the cemetery commissioners or have the Select Board appoint them.⁵
- A town may elect a sewer commission or authorize its road commissioners to act as sewer commissioners.⁶
- A town elects a tree warden unless, by vote or bylaw, the position is appointed.⁷ Select Boards may also be authorized to appoint the tree warden.⁸
- If a town votes to have its Select Board act as the water or sewer commissioners, the Select Board may appoint a superintendent of water and sewer, who may be the superintendent of streets.⁹
- A town may establish an elected board of public works, consolidating all functions into one agency.¹⁰ The board may also be made appointive.¹¹

For many years, towns have been developing methods of coordinating public works functions and consolidating functions into a department of public works or a department of public services. There has also been a movement in some cities and towns to consider establishing a separate governmental entity, governed by an independent commission, to manage the services and set rates. Towns may consider establishing an enterprise fund (see Chapter 5), which creates a separate accounting system for a municipal service for which a fee is charged in exchange for a specific service.

Roads and Sidewalks

State laws governing maintenance and repair of roads date back to the early days of the Commonwealth, when cows and horse-drawn carriages accounted for most of the traffic on town streets. It is not surprising that many of the state's highway laws now seem outdated.

Public vs. Private Ways

Roads fall into two categories: public ways and private ways. Generally, public ways are open to unrestricted use by the public, and the town has taken responsibility for maintaining and repairing them through a formal acceptance process. Private ways are open for a limited use, usually providing access to homes. Both types of roads are open to traffic, but the difference can be quite significant to a town.

State law requires that public ways and railroad crossings "shall be kept in repair at the expense of the town in which they are situated, so that they may be reasonably safe and convenient for travelers."¹² Generally, private roads are the responsibility of the private owners

to maintain, though towns may, by bylaw, establish procedures for making temporary (usually minor) repairs on private ways at the request of abutters.¹ The bylaw must address several specific issues, including what percentage of abutters must petition for such repairs, whether betterment charges will be assessed, and the extent of the town's liability due to damages caused by these repairs. Towns that accept the applicable section of state law¹⁴ may also vote to appropriate funds for the removal of snow and ice from private roads, generally for public safety purposes.

Typically, roads are laid out at the request of a subdivision developer. In accepting a subdivision street as a public way, the Select Board should ensure that the developer or the abutting landowners have conveyed ownership or an easement for the street to the town. Abutting property owners who want the town to take over maintenance and repair of a private way may petition the Select Board for its acceptance by Town Meeting as a public way.

Many older subdivisions, constructed when subdivision regulations were not necessarily rigorous with respect to road standards, have roads (private ways) that are in poor condition and require major drainage and pavement improvements. A town should consider the conditions under which it would consider acceptance of any road, as well as how any needed improvements would be made and who would assume the cost.

Not all private ways or subdivision roads are eventually accepted by the town. The acceptance process is technical and should be coordinated with town counsel and the head of the public works department, as well as the planning board.

Defects in Public Ways

State law¹⁵ provides for personal injury or property damage claims arising from defects in public ways due to a lack of repair or insufficient railings, but sets a \$5,000 cap on municipal liability. (See Insurance and Liability section in Chapter 4.)

Traffic Control

Towns have the authority to regulate the use of public and private ways, either by bylaw or by rules and regulations adopted by the Select Board. In most cases, rules and bylaws must be approved in advance by the state.

The Select Board, park commissioners, or the traffic commission or its director may make special regulations about the speed of motor vehicles and the use of motor vehicles on roads under their control. The use of vehicles may be prohibited altogether on certain roads. At the written request of the property owners, special regulations for private ways or private parking areas may be issued.

A roadway safety law that took effect in 2023 to improve safety for "vulnerable road users" establishes new passing requirements, requires safety equipment on specific state vehicles, clarifies key definitions, and clarifies a process for municipalities to reduce speed limits on roadways. The law defines "vulnerable road users" as, essentially, any user other than vehicles (e.g., pedestrians, road workers, bicyclists, skateboarders, etc.). The law governing the process for requesting reduced speed limits is [Chapter 90, Section 18](#). Amendments to speed limits on town roads approved by the Select Board need certification from the [Highway Division](#) that

the change is in the public's interest. (Previously, such a change required certification from the Massachusetts Department of Transportation as well as the registrar of motor vehicles.) The law also allows Select Boards to petition the MassDOT to adjust speed limits on state highways within a town.

Separate state laws permit towns to make bylaws, and Select Boards to make rules, for the regulation of "carriages and vehicles" on town roads and to install traffic devices for the protection of schoolchildren. Towns may designate areas on town roads to be used as bicycle lanes, or close a public way during specified hours to promote recreation or sport, or set hours on public ways when sledding is permitted. Moving a building through a public way requires written permission from the Select Board or road commissioners.

Parking

In most towns, the Select Board or town manager appoints a parking clerk, who is under their direct control. The parking clerk coordinates the processing of parking notices in the town. The clerk may hire staff, organize divisions, or contract for services through competitive bidding. The parking clerk may also perform other municipal jobs, except for police functions. Some towns assign this role to the town clerk.

Various state laws permit towns to regulate where and when people may park. Towns that accept the applicable section of law may adopt traffic regulations authorizing the towing of illegally parked vehicles from roads under town control. Towns can also, by bylaw, require that designated parking spaces be provided for disabled veterans or handicapped people in public and private off-street parking areas. Towns may limit parking in front of houses and apartment buildings to the people living there as long as signs are posted.

Towns may appropriate money for the acquisition, installation, maintenance and operation of parking meters on town roads, but the location of the meters must be approved by the state.¹⁶ Under the same law, towns may also install parking meters in municipally owned or leased off-street parking lots.

Sidewalks

The Select Board (or road commissioners) has general authority to establish, maintain and rebuild sidewalks. No sidewalk may be dug up or constructed without the board's approval. In ordering construction of a new or permanent sidewalk, the Select Board or road commissioners may provide for special assessments on abutting property not exceeding one-half of the cost of the sidewalk. If the town bylaws so provide, the total amount assessed on any individual property may not exceed 1% of its assessed valuation. Assessments must be recorded with the Registry of Deeds.

Drinking Water

Although many towns still rely on some use of private wells by homeowners, most towns in Massachusetts are served by one or more public water supply systems: municipal wells,

reservoirs, or a combination of the two. There are also some communities serviced by private water utilities, which are subject to oversight by the [Department of Public Utilities](#).

A public water supply is defined as a system that has at least 15 service connections or regularly serves an average of 25 or more people at least 60 days a year. This is the threshold for regulation by the federal [Safe Drinking Water Act](#).

Except for communities receiving water service from the [Massachusetts Water Resources Authority](#), any town may vote to establish and operate its own water supply and distribution system.¹⁷ Towns may purchase water from private companies or from other communities.

Towns with a public water supply may create a three-member board of water commissioners, or the Select Board may be authorized to act as the board. Some towns have used the process in state law to create a combined water and sewer commission. Towns also use the legislative special act process to create municipal water departments and combined water and sewer commissions.

Towns with their own water systems may construct and maintain dams, wells, reservoirs, pumping and filtration plants, buildings, standpipes, tanks, fixtures and other structures, as well as purification and treatment plants. The cost of purchasing, developing and enlarging public water supplies can be financed through the issuance of bonds. Some communities have adopted enterprise funds to ensure that the revenue received for services is sufficient to meet the operating costs and capital expenditures of the water or water-sewer department.

The [State Revolving Fund](#) (SRF) loan program offers affordable financing options to cities, towns and public water utilities to improve water supply infrastructure and drinking water safety. The program helps with federal and state water quality requirements of wastewater treatment plants and collection systems; issues related to watershed management priorities, stormwater management, and green infrastructure; and, financial assistance to communities to make available loans to homeowners with septic system problems.

The [Department of Environmental Protection](#) has broad authority for monitoring and enforcing water quality standards for public water supplies and for approving sources of water, water systems, and treatment facilities. MassDEP regularly tests public water supplies for contaminants. If any water supply fails to meet the standards for drinking water safety and quality, MassDEP can require treatment or direct that the public be notified. Water commissioners may impose additional controls on a water system, subject to bylaws or any rules and regulations approved by the town.

The [Water Management Act](#) regulates water withdrawals in Massachusetts. Each public water supply (municipality or district) must obtain a permit from MassDEP authorizing the amount of water available to the municipality. MassDEP has grant programs for acquiring land, addressing contamination, and constructing filtration plants.

Private wells are under the jurisdiction of local boards of health (see Chapter 10). For instance, owners of buildings that need a source of water where a municipal water supply is not available must receive a permit from the local board of health certifying that there is an

adequate supply of potable water at the site. MassDEP can provide boards of health with assistance, on request, but the agency has no direct authority over private wells. Some local boards have promulgated well regulations.

The Water Management Act empowers MassDEP to deal with water supply shortages and emergencies. Each community must have a water resources management plan that incorporates conservation standards based on guidelines outlined by the [Massachusetts Water Resources Commission](#).

MassDEP also has extensive authority to protect groundwater from pollution. MassDEP approval is needed for the discharge of most pollutants, including commercial, industrial and agricultural waste, sewage and runoff.

Stormwater Management

Municipalities are subject to the 1972 federal Clean Water Act and its rules requiring permits for discharges of any pollutants into waters of the United States. The primary focus of the [National Pollutant Discharge Elimination System](#) permit program is pollutants in industrial process water and discharges from municipal sewage treatment plants. There is also a regulatory program that addresses sources of stormwater discharges from large and medium municipal separate storm sewer systems (for cities with populations of 100,000 or more), from small municipal separate storm sewer systems, and construction activities disturbing between one and five acres of land. Public and private entities are required to develop comprehensive stormwater management programs focused on water quality. This obligation affects many municipalities, industries and large landowners.

Municipalities with municipal separate storm sewer systems (MS4) that have been designated as regulated by the U.S. Environmental Protection Agency must comply with all EPA- and MassDEP-promulgated MS4 standards. These MS4 plans typically deal with treatment standards, anti-degradation, retrofitting treatment, low-impact development, wetlands construction and restoration, erosion and sedimentation control, pavement types, and natural alternatives. There are more than 250 MS4 communities in Massachusetts. (For more information, visit the [MassDEP Stormwater Permitting website](#).)

MassDEP has issued regulations governing stormwater discharges. Stormwater is also expected to be controlled in permits required under the state Clean Water Act for both surface discharges and groundwater discharges; under the Wetlands Protection Act and the tidelands and waterways statutes; and in the various certification reviews for activities in Massachusetts seeking federal permits and grants, such as water quality certification and coastal zone consistency determinations.

Solid Waste Management

The board of health is the policy-making board for solid waste issues (see Chapter 10), though the responsibility for managing a transfer station or landfill typically falls to the department of public works, under the purview of the Select Board, and the town's Select Board or chief executive would manage any contracts for trash collection and recycling programs. The board of health must approve sites for solid waste disposal facilities and hazardous waste facilities, and a board permit is needed for the collection and transportation of garbage, or other offensive substances, through town streets.



The Massachusetts Department of Environmental Protection is responsible for establishing rules for the siting, design, operation and maintenance of solid waste management facilities, including landfills, transfer stations, municipal waste combustors (waste-to-energy) and other solid waste handling facilities. Regulations are intended to prevent air, land and water pollution. Such conditions must be abated when and where they occur. The MassDEP is also responsible for establishing requirements for recycling, composting and conversion (e.g., anaerobic digestion) operations that handle recyclable or organic materials. Under current state regulations, it is difficult to find suitable sites for waste disposal, or even facility expansion. Landfills cannot be located in or near wetlands, in areas prone to flooding, or in proximity to either public or private water supplies.

The MassDEP produces 10-year, statewide solid waste master plans, which are policy documents used to guide planning and regulations. The current plan, "[Working Together Toward Zero Waste](#)," addresses waste management, waste reduction and waste diversion, with a strong emphasis on recycling, composting and reuse in order to reduce the amount of waste that must be transported to landfills or incinerated. The MassDEP has helped many communities promote household recycling programs, and works with industry groups to promote markets for recycled products. (For more information, visit the MassDEP's [Recycling & Waste Management](#) website.)

The [Mercury Management Act](#) was enacted in 2006 to remove products containing mercury from the waste stream and to minimize the amount of mercury released into air and water from solid waste disposal facilities. The law is the first in Massachusetts to make product manufacturers responsible for collecting and recycling "end of life" mercury products and components that are sold or distributed in the state. Local boards of health often participate in the Mercury Recovery Program and manage collection sites for mercury-containing products.

Hazardous Waste Sites

The MassDEP's comprehensive regulations, known as the [Massachusetts Contingency Plan](#), set forth what municipal officials need to know about the reporting of hazardous waste sites, response actions and reports, cleanup standards, liabilities and fees, and legal defenses, as well as the presentation and pursuit of claims that cities or towns may have for cost recovery and property damages for which others are liable.

[Chapter 21E](#) applies to present and former owners and operators of sites, as well as those who generate, store, transport and dispose of oil and hazardous materials, but cities and towns may enjoy significant defenses in cases of land taken by eminent domain or acquired in good faith innocently, or land that is downstream of sources of contamination. Cities and towns may even have financial claims against the original sources and operators for cleanup reimbursement and property damages. Comprehensive federal and state laws and regulations govern the location and operation of hazardous waste facilities.

Municipalities are responsible for proper management of hazardous wastes and chemicals and toxic use reduction. Hazardous materials are regulated through the so-called "right-to-know" law, which requires cities and towns to respond to citizens' requests for information about hazardous substances used by local employers in the course of their routine work. The town's emergency response personnel also must be aware of potential hazards within town boundaries.

Underground Storage Tanks

Underground tanks storing chemicals or petroleum products are regulated through MassDEP's [Underground Storage Tank Program](#), which regulates the design, installation, maintenance, monitoring and removal of tanks. MassDEP also administers a limited reimbursement program to assist in meeting the costs associated with the cleanup and removal or replacement of tanks.

Through ordinances and bylaws, cities and towns may adopt tougher underground storage tank standards than state and federal rules. Typically, these local rules authorize a local board or agency, such as the board of health or the fire department, to conduct an inventory of tanks in the municipality and require local registration of underground storage tanks. Several communities have required the replacement of older tanks. Some offer low-interest loans or other subsidies to assist with removal projects.

Parks and Recreation

Massachusetts towns have considerable flexibility in the way they manage public parks, playgrounds and other recreational facilities. In some smaller towns, the Select Board serves as the board of park commissioners. A town may elect a board of park commissioners or

authorize its planning board, department of public works, or road commissioners to perform those functions. The town manager or other chief administrative officer may have oversight over the parks, with local boards setting policy, planning events, and so forth.

Unless a town has elected a board of park commissioners or specifically authorized another agency to act as one, the Select Board is in charge of parks. If the Select Board serves as the board of park commissioners, the board has all the powers and duties granted by law to that body, including laying out and improving public parks and conducting recreation activities.¹⁸

If responsibility for parks and recreation is vested with other boards in town, the formal role of the Select Board in this area is more limited, but it is important for the Select Board to have a good working relationship with the board and staff responsible for parks and recreation. When residents call with complaints about park security or playground noise, Select Board members need to know who to go to in order to get the problem resolved.

Towns may appropriate money for a range of recreation-related purposes, including the construction and maintenance of swimming pools, municipal golf courses, skating rinks, gymnasiums and beaches.¹⁹ Upon acceptance of local-option legislation, a town may establish a revolving fund or enterprise fund to create self-sustaining recreation programs that are funded through program fees rather than by appropriation.²⁰ Towns have considerable freedom to choose the recreational programs they will provide and the fees they will charge for the programs. The [Community Preservation Act](#) is another option to create a source of dedicated funding for certain kinds of recreational purposes. (See Chapter 8 for more on the CPA.)

Many towns have professional parks and recreation staff handling their day-to-day operations. The [National Recreation and Park Association](#) and the [Massachusetts Recreation and Park Association](#) are available to help towns hire qualified personnel. The Massachusetts Department of Transportation website has [resources to help cities and towns in developing and constructing bikeways, bike lanes and bicycle parking facilities](#) for commuter and recreational use.

Board of Park Commissioners

A board of park commissioners has generally the same authority over roads and trees in parks as Select Boards, road commissioners and tree wardens have in other parts of town. The board may lay out and improve public parks, make rules about how town parks may be used, and appoint engineers, surveyors, clerks and other personnel to help with park maintenance. Subject to appropriation, a board of park commissioners also has the power to conduct programs and recreational activities at places other than public parks.²¹ A board of park commissioners also has the power to hire park police officers. Violations of park and playground rules and regulations may carry a fine of not more than \$200.²²

Parks and Playgrounds

State law draws a distinction between public parks and playgrounds, which has implications for the way these lands may be managed. Land that was originally acquired for park purposes (including town commons) is generally recognized by law to be held for all members of the

public, not just for residents of the town. For this reason, the Legislature has final authority over what is done with it. (See [Article 97](#) of the Massachusetts Constitution.) Playgrounds, and/or land that was originally acquired for recreational purposes, are under the control of the town board or commission that has been so designated by Town Meeting, special act or home rule charter. State law gives the agency in charge of public playgrounds and recreation centers extensive authority to acquire, lease and use land and buildings for recreational activities.

Land for parks may be acquired by purchase, gift or eminent domain. Once a park is acquired, however, it takes an affirmative Town Meeting vote and a special act of the Legislature to sell, lease, or use it for any other purpose.

Towns may erect structures for shelter, refreshments and other purposes in parks of at least 100 acres, as long as they do not pose a fire hazard to buildings outside the park. Legislative approval is needed to build any structure larger than 600 square feet.²³ Boards of park commissioners have the power to allow hunting in parks during hunting season.²⁴

Natural Recreation Areas

Natural bodies of water larger than 20 acres, known as “great ponds,” are generally open to the public for recreation, unless they are being used as a drinking water supply. The public must be given reasonable access to great ponds, but towns may make and enforce rules and regulations concerning fishing, hunting and boating. While motorboats, snowmobiles and other recreational vehicles are regulated by the [Department of Fish and Game](#), towns may, by bylaw or regulation, limit or forbid their use on town land.²⁵ Bylaws governing hunting and fishing are subject to the approval of the [Department of Fish and Game](#). Bylaws governing the use of motorboats are subject to the approval of the [Massachusetts Department of Environmental Protection](#).²⁶

Resources

Traffic Control

- [Highway Division](#)

Drinking Water

- [Water distribution companies website](#), Department of Public Utilities
- [Federal Safe Drinking Water Act](#)
- [Massachusetts Water Resources Authority](#)
- [Massachusetts Department of Environmental Protection Drinking Water website](#)
- [State Revolving Fund](#)
- [Massachusetts Water Management Act](#)
- [Massachusetts Water Resources Commission](#)

Stormwater Management

- [National Pollutant Discharge Elimination System](#)
- [Stormwater Permitting website](#), Massachusetts Department of Environmental Protection

Solid Waste Management

- [Working Together Toward Zero Waste](#), solid waste master plan for 2020-2030, by Massachusetts Department of Environmental Protection
- [Recycling & Waste Management](#) website, Massachusetts Department of Environmental Protection
- [Mercury Management Act](#)

Hazardous Waste

- [Massachusetts Contingency Plan](#)

Underground Storage Tanks

- [Underground Storage Tank Program](#), Massachusetts Department of Environmental Protection

Parks and Recreation

- [Community Preservation Act Overview](#), Community Preservation Coalition
- [National Recreation and Park Association](#)
- [Massachusetts Recreation and Park Association](#)
- [Resources regarding developing and constructing bikeways, bike lanes and bicycle parking facilities](#), Massachusetts Department of Transportation

Natural Recreation Areas

- [Department of Fish and Game](#)
- [Massachusetts Department of Environmental Protection](#)

Health and Human Services

Public Health

Health officials in municipalities are involved in numerous and varied public health activities that may include holding vaccination clinics, inspecting food establishments and housing units, responding to nuisance complaints, dealing with unsafe or noncompliant structures and other sources of illness or disease, and permitting septic systems. Core functions of public health have evolved in many communities over time to include emergency planning, substance use prevention and mental health services, with a focus on social determinants of health and health equity. A [manual from the Massachusetts Association of Health Boards](#) outlines the statutory duties of Local Health Boards. It is important to remember that these duties do not include local regulations, bylaws and ordinances that local health boards are also required to manage.

Helpful resources available to health officials include the [Massachusetts Association of Health Boards](#) and the [Massachusetts Health Officers Association](#).

Organization and Role of Health Board

On the local level, boards of health and/or health departments have the primary responsibility for protecting public health. Under state law,¹ the Select Board acts as the board of health if the municipality has no other arrangement, or the Select Board can be authorized by Town Meeting to appoint a board of health. Most municipalities have a separate, autonomous board of health consisting of three or more elected or appointed members. Recently, municipalities have begun to share the delivery of public health services through intermunicipal municipal agreements² or the formation of regional health districts. Municipalities may designate the manner in which health services are delivered.³

Board of health members are not required by law to have any medical or health training, although in practice many do, and some local ordinances or bylaws require that one member be a doctor or medical professional. Boards of health may appoint a physician and other staff to advise and assist them. Select Board members who serve as the board of health are authorized by law to appoint a health inspector.⁴ In towns with fewer than 3,000 people, this inspector may be the school physician. A town charter may provide for another method of appointment of health personnel, such as by the town manager.

Most municipalities employ a health inspector and a public health nurse either full-time, part-time, or on a contractual basis. Qualifications for a health inspector can include licensure as a registered sanitarian. Many municipalities also require that inspectors be certified health

officers. A [Special Commission on Local and Regional Public Health](#) was created in 2016 to “assess the effectiveness and efficiency of municipal and regional public health systems and to make recommendations regarding how to strengthen the delivery of public health services and preventive measures.” The commission’s 2019 report, “[Blueprint for Public Health Excellence: Recommendations for Improved Effectiveness and Efficiency of Local Public Health Protections](#),” outlines recommendations for board of health training and credentials, among other best practices.

Organization and Role of the Health Department

Boards of health may operate according to administrative and enforcement regulations of the [Department of Public Health](#) or the [Massachusetts Department of Environmental Protection](#). The local board of health usually delegates most of its administrative, inspectional and enforcement activity to a health department comprised of paid employees, leaving policy-setting and oversight to the board.

The board’s specific legal duties⁵ include enforcement of the State Sanitary Code (105 CMR 400-675), which establishes minimum health standards for residential housing, day camps, swimming pools and food service establishments, among other facilities and activities. The code permits a board of health, or another health authority, to adopt rules and regulations stricter than those contained in the code.

In addition to many specific statutory jurisdictions and authorities, boards of health have extensive power to adopt and enforce any reasonable health regulation.⁶ Some municipalities have instituted smoking or tobacco control regulations that go beyond the state’s Clean Indoor Air Act,⁷ while others have set standards for noise pollution. Boards of health may issue orders declaring that an emergency exists and requiring that certain actions be taken. They may order the fluoridation of water supplies, adopt and enforce local regulations for the control of air pollution, or adopt regulations for the operation of animal stables.

Because of the range of their authority, health officials can cooperate with the Select Board to shape the standards and character of the community.

Public Health Nursing

State law⁸ permits boards of health to establish and maintain dental, medical and health clinics and to conduct general education campaigns relating to health matters. Many of these direct health services are aimed at adults and children who are unable to obtain private medical care. Many municipalities provide vaccination clinics, well-baby clinics, hypertension screening, and screening for blood lead poisoning, among other community health services.

The local health authority is required to notify the Department of Public Health within 24 hours of the discovery of a case of a communicable disease.⁹ In most communities, this is done by a public health nurse through the MAVEN reporting and tracking system. The board of health must also notify the school committee of all reported diseases that are dangerous to the public health. The [Massachusetts Association for Public Health Nurses](#) is an excellent resource.

Environmental Health

Boards of health have broad authority to regulate in environmental areas where there is a risk of adverse health consequences. Boards of health have the power to enforce state laws and regulations concerning groundwater monitoring, septic systems, underground fuel tanks and chemical storage, landfills, hazardous waste, and water supply contamination. The board of health may make and enforce regulations concerning house drainage and connection with common sewers.¹⁰ The board of health is required to approve sites for solid waste disposal facilities¹¹ and hazardous waste facilities.¹² Preliminary and definitive subdivision plans must be submitted to the board of health for approval.¹³ An excellent resource in this area is the [Massachusetts Environmental Health Association](#), which provides training, educational programs, and networking for professionals in the fields of public and environmental health.

Health Nuisances

Boards of health have considerable authority to take actions in the removal of nuisances. A health nuisance is defined by law as a source of filth or a cause of sickness. State law¹⁴ gives the board of health, after a public hearing, the power to approve a business that may result in a nuisance or harm to the inhabitants, cause injury to their land, or cause offensive or dangerous odors. This permission is called a site assignment.

Boards of health are authorized to examine all nuisances that may be injurious to the public health and to destroy, remove or prevent them.¹⁵ A separate law¹⁶ gives the Select Board the same nuisance abatement powers. The Select Board may declare a burned, dilapidated or dangerous building, structure or vacant lot to be a nuisance. After holding a public hearing and giving written notice to the owner of the property or their authorized agent, the board may order the nuisance altered, disposed of or regulated. If the owner fails to comply, the town can sue for the cost of removing the building or for the cost of another solution.¹⁷

Some municipalities have nuisance bylaws or ordinances that allow them to clean up a nuisance, bill the property owner for costs, and place a lien on the property if the bill is not paid.¹⁸ As an alternative, some municipalities prefer to seek a court order against the owner requiring the cleanup at the expense of the owner, so that the municipality does not have to be responsible for any costs involved. This would require court action and thus should be discussed and coordinated with town counsel.

Health departments have become an essential part of community code enforcement teams for dealing with unsafe or blighted properties.

Sewage and Septic Systems

Septic systems, sewage treatment plants, and sewage systems are of regular concern to municipalities. Under state law,¹⁹ the [Massachusetts Department of Environmental Protection](#) regulates all disposal of sewage by sewerage and septic systems. More than 60 cities and towns in eastern and central Massachusetts are connected directly or indirectly to the [Massachusetts Water Resources Authority](#), which is responsible for regional wastewater collection and treatment, and water supply. The MWRA can issue orders to private dischargers and municipalities violating MWRA regulations, which impose detailed and comprehensive limitations.

A separate MassDEP permit program, the [Division of Water Pollution Control](#), regulates the construction, connections, repairs, expansions and extensions of public and private sewage treatment plants and their sewerage and discharge points.

Title 5

Boards of health are also the local enforcement agents for the State Environmental Code (310 CMR 11.00, 310 CMR 15.000), Title 5 of which establishes minimum standards for on-site sewage disposal. Title 5 governs the type of system installed, the permit procedure, the design specifications, the testing prerequisites, and the performance standards (including certain inspections during the life of the system, as with a land transfer). Each septic system requires a permit from the local board of health or its agent, following a physical inspection.

Certain provisions of Title 5 cannot be waived, but any variance requires approval of the board of health and, on review, the Massachusetts Department of Environmental Protection. For example, the MassDEP must approve the use of most alternative systems, modifications of large flow systems, and several other project types where state review is appropriate.

In addition to these statutes and regulations, municipalities have authority to promulgate their own septic system regulations.²⁰ Many municipalities have such local septic system rules. Some municipalities have used this power to regulate package treatment plants, mounded septic systems, groundwater and soil conditions, and time-of-testing during the year.

Solid Waste

State law requires local boards of health to approve sites for solid waste disposal facilities²¹ and hazardous waste facilities,²² and a board of health permit is needed for the collection and transportation of garbage, or other offensive substances, through town streets.²³ The day-to-day responsibility for managing trash collection, landfills, transfer stations and recycling programs, however, typically falls to the department of public works and/or the Select Board (see Chapter 9). Local boards of health also often participate in the Mercury Recovery Program and manage collection sites for mercury-containing products.

Human Services

Human services comprise a variety of publicly funded programs dedicated to improving the quality of life for town residents. Seniors, youth and families, veterans and the disability community are examples of the specific populations that may be served by local human services programs.

Human services have developed through efforts of both the public sector and private agencies. Although the tradition of local involvement is strong, most notably in health, recreation and elderly programs, many towns address community-centered problems on an as-needed basis. Examples include setting up a youth commission to serve the needs of young people and creating a council on aging to serve only the elderly. The [Massachusetts](#)

[Councils on Aging](#) is an excellent nonprofit resource that provides support to municipal programs that deliver community elderly services.

Many municipalities in Massachusetts have recognized the value of an integrated approach to human services that enables community leaders to assess existing programs and plan for the future. Many municipalities have created human services departments or have appointed human services coordinators to implement this more comprehensive approach. The nonprofit [Massachusetts Public Health Association](#) aims to create health equity by addressing root causes of health and wellness across many factors including food, housing and transportation.

Components of a Human Services Program

The composition of a human services program varies from town to town, depending on community needs and values. Some municipalities offer elder transportation, while others emphasize day care. Some choose to include veterans' affairs as part of their overall human services function, while others treat it separately. Various state statutes provide blueprints for the creation and support of local human services agencies. Municipalities also participate in the delivery of human services in indirect ways. A municipality may financially support a private mental health center, offer free space to a day care center in a municipal building, or secure state or federal funding for a community residence.²⁴

Without infinite resources, a municipality must make choices about which services it can provide, starting with a comprehensive examination of its human services and the establishment of a committee comprising interested citizens, including representatives from agencies already serving the community. A Select Board member should serve on the committee to make sure its work coordinates with the municipality's overall planning process.

Municipalities often perform the following functions:

- **Funding:** The municipality provides financial support, or in-kind contributions, to a private organization that provides services to the local community. This might include a youth agency or a community mental health center. Many human services functions are also funded by federal and state grant programs.
- **Planning:** The municipality develops policies and sets priorities by conducting needs assessments and working to coordinate human services programs that are already available. Needs assessment activities might include citizen surveys, agency questionnaires, discussions with agency directors, or community meetings.
- **Coordination:** The municipality uses its influence and staff to encourage joint efforts and programs both inside and outside of government.
- **Advocacy:** The municipality negotiates with state agencies and community groups on behalf of residents who need certain services.
- **Evaluation:** The municipality monitors and provides planning help to human services agencies.
- **Publicity:** The municipality provides information to residents about the availability of services.

Managing Human Services

In Massachusetts, municipalities have developed a variety of methods for coordinating human services activities. Although some of these involve a change in the local charter, others can be accomplished by simple administrative action. The following are some of the approaches towns use to manage human services:

- **Human services department:** A department is created that incorporates all the specialized human service agencies and functions. The degree of central control varies with each town. Budgets may be submitted for individual agencies, or for the department as a whole.
- **Existing department:** An existing department, usually health, recreation or community development, assumes authority over human services.
- **Human services coordinator:** A staff person is assigned the task of overseeing human services, but this person has little or no line authority over existing human service agencies. The staff person may be assigned exclusively to human services or may have other responsibilities as well.
- **Collocation:** All the municipality's human service agencies are brought together into one physical location. Although there may be little or no administrative linkage, the theory is that the proximity will encourage informal contacts, referrals and cooperative planning.
- **Contracting:** A nonprofit agency is hired to plan and deliver services. Under this approach, the municipality relinquishes some control in exchange for freedom from hiring and supervisory responsibilities.
- **Social worker:** The municipality hires a social worker to keep in contact with vulnerable citizens and to act as both a case manager and an advocate. As needs surrounding care linkage are increasing, more municipalities are finding social workers are key members of delivering human services programs.
- **Regional approach:** Contiguous communities create regional agencies, or fund existing agencies, to provide human services planning and program management.
- **Citizen commission:** A citizen commission may act alone as adviser to the Select Board, or may function in conjunction with any of the other models. The goal of a commission is to give citizens a voice in policy development and priority setting.

Public Libraries

The [Massachusetts Board of Library Commissioners](#) is the agency of state government with the statutory authority and responsibility to organize, develop, coordinate, and improve library services throughout the Commonwealth.

Public libraries may be established in one of two ways. The first is by bylaw, in which case the library is owned by the town, funded with appropriations, and under the charge of an elected board of trustees. The trustees are responsible for the care, management and control of the library and all property of the town related thereto. All money raised or appropriated by the town for library purposes is to be expended by the trustees. Likewise, the trustees manage all money donated or bequeathed to the town for library purposes. The trustees may enter into

agreement with the board or boards of any neighboring library or libraries to pay for common services or to manage a facility on behalf of the various municipalities that are parties to the agreement, with expenses shared as set out in the agreement.



The second way is for the town to accept a gift or bequest for the purpose of establishing a library. The gift or bequest establishes the manner in which trustees are chosen. The gift may require that the trustees be appointed by the Select Board or another specified body. When a town appropriates funds to such a library, the trustees serve as department heads when they spend the appropriated funds. Alternatively, the town could appoint an officer or board to manage and expend the appropriated funds.

Resources

Public Health

- [Duties of Local Boards of Health in Massachusetts](#), by the Massachusetts Association of Health Boards
- [Massachusetts Association of Health Boards](#)
- [Massachusetts Health Officers Association](#)

Organization and Role of Health Board

- [Special Commission on Local and Regional Public Health](#)
- [Blueprint for Public Health Excellence: Recommendations for Improved Effectiveness and Efficiency of Local Public Health Protections](#), by Special Commission on Local and Regional Public Health (2019)

Organization and Role of the Health Department

- [Department of Public Health](#)
- [Massachusetts Department of Environmental Protection](#)

Public Health Nursing

- [Massachusetts Association for Public Health Nurses](#)

Environmental Health

- [Massachusetts Environmental Health Association](#)

Sewage and Septic Systems

- [Massachusetts Department of Environmental Protection](#)
- [Massachusetts Water Resources Authority](#)
- [Division of Water Pollution Control](#)

Human Services

- [Massachusetts Councils on Aging](#)
- [Massachusetts Public Health Association](#)

Public Libraries

- [Massachusetts Board of Library Commissioners](#)

There is a legal dimension to most issues that a Select Board will consider, so professional legal counsel is a critical component of effective town governance. The oath taken by Select Board members upon entering office reflects this reality: "... to uphold and discharge all the duties incumbent upon me ... in accordance with the bylaws and charter of the town, the laws of the Commonwealth, and the constitution of the United States."

Few Select Board members enter office with a familiarity with the law, and many may underestimate the time and importance associated with legal matters. Towns and board members that do not receive (or heed) good legal advice may place the community in jeopardy, risking the loss of time, money and reputation.

Most towns retain legal counsel, though there is no specific state statutory authorization or direction to appoint one. There is, however, a specific statute defining the role of legal counsel. The term "city solicitor," according to state law,¹ "shall include the head of the legal department of a city or town." A statutory reference to a city solicitor is applicable to the head of the law department of a city or town, whatever the title of the position.

This chapter uses the terms "town counsel" and "chief legal officer" interchangeably. Communities may refer to their legal department as the "law department," "town counsel's office," "legal department" and the like, but there is no real difference between the terms.

Duties and Qualifications

There is no state statute governing the duties of the chief legal officer of a community. The duties and responsibilities are typically set forth by town charter and/or bylaws. Typically, the town charter would include the creation of the position of chief legal officer or head of the legal department, and set forth the duties and responsibilities in varying degrees of detail.

The charter and bylaws usually address matters such as the appointment of legal counsel, authority to represent the community, and authority regarding the settlement of cases, compensation, law department organization, and the like.

Typical duties and responsibilities for a chief legal officer of a community include some or all of the following (though this list is not all-inclusive):

- Provide general legal advice for officials, officers, employees and the local government

- Defend or represent the community (including its officers, officials and employees) in claims and litigation
- Draft contracts, legal documents, local laws, releases, deeds, orders, proclamations, forms, and other documents
- Render advice, both orally and in writing, and draft opinions, advisories, memoranda, decisions, and the like
- Serve as the coordinator for all legal affairs of the community
- Serve as part of the management team of the community
- Prosecute violations of local laws
- Conduct internal investigations and studies
- Conduct seminars for officers, officials and employees
- Advise the Select Board and other town officials and employees on governance laws, particularly where the laws have changed or may not be clear-cut
- Advise on personnel matters
- Advise on election laws
- Provide advice at Town Meeting or other venues
- Review Executive Session minutes prior to publication
- Stay informed, and share information about current issues affecting local government and municipal law

Various state and federal laws also provide for specific roles of local counsel and may need to be consulted depending on the particular issue.

Qualifications

There is no statutory set of qualifications for municipal counsel, but at a minimum he or she needs to be an attorney licensed in Massachusetts. In the absence of a specific requirement under local law, a community is free to establish whatever qualifications it believes to be appropriate (understanding that bylaws are subject to approval by the Attorney General's Office). These criteria may include:

- Being a practicing attorney for a certain number of years
- Evidence of commitment and proficiency in municipal law (e.g., by having taken or leading seminars on municipal law topics)
- Membership in certain professional associations
- Having a certain amount of municipal law experience
- Residency

Municipal counsel, by whatever title, is subject to the state's conflict-of-interest law and any local conflict-of-interest law, as well as the Code of Professional Responsibility for attorneys. The [Massachusetts Municipal Lawyers Association](#) also has a statement of principles concerning the conduct of municipal counsel.

Select Board's Relationship With Town Counsel

The Select Board is advised to develop and maintain a good working relationship with the town counsel, who is there to assist the board in the performance of its duties. The Select Board needs a strong and effective management team, and the chief administrative officer (e.g., town manager or administrator) and town counsel are key players on that team. Ultimately, the Select Board will make the final key decisions on legal matters, but to make those decisions properly, the board needs to work with its legal counsel, and its legal counsel needs to work with the board.

If a member of the Select Board is also an attorney, this member should not be relied upon to provide legal advice to the town. Such an arrangement could expose the town or the member to unnecessary risks, in addition to potential concerns about qualifications.

Tips for maintaining a good and effective relationship with legal counsel include:

- Consult with counsel in advance of making important decisions.
- Share with counsel all relevant facts and information about a matter.
- Give counsel sufficient time to properly respond, in case he or she needs to research a matter relative to the most current laws and court decisions, and be clear about deadlines and priorities.
- Respect the fact that counsel may at times have to advise that the town cannot legally do something that town leaders want to do. Communities retain legal counsel to assist with acting within the law. Counsel should advise the town on how to legally do what it wants to do, if it is possible at all, and to be clear about the consequences.
- Recognize that others who may offer advice on legal matters may not have the necessary municipal law background and may not have all the facts.
- Respect confidences regarding legal matters.

Access

In order to control costs and to have effective local administration, some Select Boards adopt local policies regarding access to counsel. Some towns have a requirement that department heads and employees go through the town manager or administrator, the Select Board chair, or the full Select Board in order to consult with town counsel. Other communities allow direct contact with town counsel.

The policy regarding contact with town counsel often depends on the method of compensation. If counsel is paid on an hourly basis, there may be a concern that costs will get out of hand if everyone may contact counsel directly. Even in instances where counsel is on a salary or retainer, it is not advisable to create or permit a situation where counsel is inundated with requests and thus cannot attend to (nor even be aware of) town priorities. A proper working relationship with town counsel should lead to the development of the best approach for the community regarding how contact should be handled.

Town department heads, boards and employees sometimes defer to town counsel on matters for which they are responsible. Town counsel should certainly advise these individuals and help them make the right decision, but should not make decisions that should and could be made by others.

Selection of Town Counsel

The selection of a chief legal counsel for a municipality involves matters such as the following:

- Authority to select
- Qualifications
- Appointment versus election
- Special counsel
- Specific statutes authorizing certain boards to hire counsel

While this refers to regular or special counsel, the same issues typically would apply to the appointment of an assistant or special municipal counsel.

Working Arrangement

There are many options for the relationship of municipal counsel to the community. These options include in-house versus outside attorney or firm; salary versus hourly versus retainer; or combination of formats or other variations. There is no one plan that works best for everyone. Factors such as the amount of work involved or anticipated, and the town's financial situation are often key considerations in deciding what format is best for a given community.



- **In-house:** The town counsel works as an employee of the town, usually on a salary basis, in a municipal building subject to appropriate policy, and with appropriate staff and office resources.

Another question is whether the counsel will be working full-time or part-time for the town. A part-time counsel would normally have other private legal work, as long as it presents no conflict with the town. As a practical matter, a town counsel needs to be able to provide prompt service, so even a counsel who works part-time is likely to be called upon outside of those part-time hours.

Some communities have a full-time town counsel and one or more full-time assistant town counsels. Alternatively, the town counsel may be full-time, with any assistants being part-time. Or the town counsel may be part-time while any assistants are full-time.

Another variation to the in-house model is to have a counsel who is a regular employee, either full-time or part-time, but does the town's legal work at his or her private law office. In such cases, there might be an office supplement involved.

- **Outside attorney or firm:** A community may hire a town counsel who is a sole practitioner or in a small law practice. This person may or may not be appointed as an employee. Either way, the person is an official of the town by virtue of his or her

appointment as town counsel.

Another variation is appointing a single attorney who is associated with a mid-sized to large firm, or the firm itself. The town should have a primary contact person at the firm, who is usually denoted as the town counsel. That person should oversee and manage the town's legal matters. In a model of this nature, there may be other attorneys in the firm who will work on the town's matters. Such firms often have attorneys who have expertise in certain areas, such as labor, contracts, real estate, finance, etc. These attorneys may be working with and under the direction of a community's town counsel.

When more than one attorney is involved in providing legal services to a town, it is important that the various attorneys know what each other is doing regarding the town's legal matters. The attorney designated as the town counsel is generally the best candidate to perform this coordinating function.

When engaging a firm, close attention needs to be paid to the budget, as there will be more than one person working on town matters.

- **Salary, hourly, stipend or combination:** A town also needs to consider the method of compensation for its town counsel. If the person is full-time or even part-time as an employee (regardless of whether the person does outside private work), he or she usually receives a salary. A variation may be that the salary covers certain work and the person might be paid on an hourly basis for other work (usually litigation, but also matters that may not be anticipated when establishing an annual budget). Some communities pay their town counsel on an hourly basis, though in some cases there may be a minimum number of hours that are provided.

Sometimes a stipend is used to retain the town counsel for certain described work. In such a situation, it must be clear what work is covered by the stipend and what is not.

- **Other legal-related expenses:** No matter what model a town adopts, it should expect to either pay for or reimburse its town counsel for out-of-pocket expenses. These items could include fees related to filing, copies of court documents, service of process, stenographers, expert witnesses, consultants, transportation, and office supplies.

The bottom line is that the amount spent on legal services is a product of the method of compensation and the amount of work there is.

Authority to Appoint

Any community can create the position of chief legal officer and call it whatever it chooses. Even if there is no specific local law, the chief executive board or officer of a community could, under prevailing views of local municipal authority, have the inherent authority to appoint an attorney. Over the years, however, there have been legal disputes over the issue of who has the authority to hire legal counsel for a municipality. This has resulted in cases where

the authority of a municipal department to engage legal counsel is called into question, or the obligation of a community to pay an attorney who has provided legal services is at issue.

Under state law,² a town is authorized to sue and be sued and may appoint agents of the town for those purposes. Typically, the Select Board is appointed by vote or bylaw as the agent of the town for purposes of such suits. This does not mean, however, that the agent so designated is necessarily the only one who can prosecute or defend suits on behalf of the town. Other laws, discussed here, may authorize other officials to bring such suits.

It is important that the Select Board be involved in any decision to bring legal action, unless the law specifically authorizes another party to do so. Litigation is expensive and needs to be controlled, usually by the Select Board or chief administrative officer of the community. Coordination is necessary in order for a community to properly manage its legal affairs and litigation.

Over the years, problems have arisen in some towns when a local board seeks to obtain its own legal counsel without the approval of the Select Board. In one noteworthy case, a board of public works sought to engage its own counsel instead of using town counsel. The Supreme Judicial Court held that the board of public works had no such authority in the absence of a special application to the Select Board or a vote of town meeting. "It is conventional learning," the court ruled, "that a municipal department is not permitted to bring suit for the town without specific authorization from the town or from agents entitled to act for it – unless, indeed, there is governing legislation conferring the power on the department. The rule serves to prevent confusion or conflict in the direction and management of municipal litigation."³ The Supreme Judicial Court also recognized the common practice of a municipality organizing its law department under an appointed counsel as having the "purpose to control expense and improve management."

Selection of Regular Municipal Counsel

The typical method for the selection of the regular municipal counsel is by appointment. Depending on the provisions of the local charter or bylaws, such appointment is typically made by the chief executive officer of the community. This could be the Select Board or the town manager or administrator. Where a single official makes the appointment, there is often a requirement that the appointment be approved or ratified by the Select Board. A variation of the specific need for approval by some other local authority is found in communities where there is a requirement that the authority making the appointment must submit the name to the other body, which must act to reject the appointment or it is presumed to be approved.

In at least one Massachusetts community, legal counsel is an elected office, but this is not viewed as a wise method for selecting a municipal attorney.

Selection of Special or Outside Counsel

From time to time, a community may find it necessary or beneficial to hire a special or outside counsel. Reasons for this include:

- A conflict of interest issue for the regular counsel
- The need or perception of a need for independence from regular counsel

- A need for local counsel to testify or represent the town
- The need for specialized legal services (sometimes under the supervision of the town counsel)
- The workload of the town counsel

As with the appointment of regular municipal counsel, one must look to the local laws to see which procedure, if any, has been set out for the appointment of special counsel. Typical provisions address the following:

- Who can make the appointment (e.g., Select Board, town manager, town counsel)
- Any limitations on the authority of the special counsel
- To whom the special counsel should report

There has been a growing need to employ special counsel from time to time to respond to particular legal matters, although doing so may not be viewed favorably by some members of the public. A regular town counsel serves an important role in recognizing when there is a need for special counsel and recommending it to the town. A community is best served by a municipal counsel who employs the most appropriate strategy in each legal matter, and does not overlook the possibility of employing a “specialist” should the need arise. This is an important function of any manager, and the community needs to recognize the town counsel’s advice in that regard.

Reappointment of Counsel

As with any appointment, a Select Board should establish clear criteria for its decision. In the case of legal counsel, the board may want to consider the quality of service provided in making a decision on reappointment, and, accordingly, to consult with town officials who have access to counsel. Any evaluation process should be undertaken objectively and with the knowledge of all parties, and with sufficient time to make an informed decision.

The Select Board may wish to consider factors such as:

- Timeliness
- Quality of service provided
- Areas where service meets or exceeds expectations
- Areas where service should be improved
- Other factors that have been identified by board members or senior staff

Special Statutes for Boards/Personnel to Hire Counsel

In certain instances, specific statutory authority exists for a board or department to hire its own legal counsel.

- School committees have specific statutory authority to hire legal counsel for collective bargaining and for general purposes. State law⁴ sets a \$25,000 spending limit on collective bargaining counsel before the school committee must obtain approval from the Select Board. There is no such limit, however, for general legal counsel for the school committee.⁵ Also, the statute refers to the “school committee” hiring counsel, which does

not address whether the superintendent of schools has that authority independent of authorization from the school committee.

- Boards of assessors are granted statutory authority to hire their own legal counsel for appellate tax matters.⁶ If the town has a town counsel, however, the assessors are to use that attorney, who will be paid from the counsel's budget, unless the community specifically appropriates money for the assessors to hire their own counsel. Notwithstanding this limitation, many communities do have a separate attorney handling tax appeals. Depending on local law, a special counsel could be appointed to represent the board of assessors in appellate tax matters.
- A municipal official or board may be provided with legal counsel to appeal certain decisions of the zoning board of appeals, special permit granting authority, or planning board.⁷ There is, however, no statutory right to such legal counsel (unless specifically provided for under local law), and thus, presumably, the appointment of such counsel is subject to the authority of the local chief executive board or officer.
- A retirement board may employ its own legal counsel if it chooses to do so.⁸ Otherwise, the town counsel serves as legal counsel to the retirement board.
- If there is no town counsel, and certain actions are brought against the treasurer or collector where the Select Board is satisfied that he or she was acting in good faith, without negligence and in the belief that the he or she was acting in the best interests of the town, the Select Board shall employ an attorney to represent the treasurer or collector.⁹
- Even if there is a regular municipal counsel, a municipality may provide separate legal counsel to represent a police officer in defense of claims arising from damage by a police dog.¹⁰

Liability Insurance

A growing issue in municipal legal services is liability coverage for municipal counsel. One could presume that, if the municipal counsel is an official or employee of the community, he or she is covered by liability insurance in the same way as any other town official or employee. But some municipal liability insurers take the position – either based on practice or language in the policies – that attorneys for the municipality, regardless of the relationship (regular or special, employee or independent contractor), are not covered by the town's liability insurance.

The issue is not legal malpractice as much as it is liability if the municipal counsel is sued by someone for something done while acting on behalf of the municipality. It should also be noted that a municipality has certain obligations and options to indemnify employees and officials under state law.¹¹ Insurance should be considered when legal services are engaged.

Resources

- [Massachusetts Municipal Lawyers Association](#)

Municipal Government and Climate Change

Climate change is a global challenge experienced at the local level, and local governments have an important role in addressing the causes and effects of a changing climate. Extreme weather events, demands on infrastructure, public health impacts, migration, and effects on agriculture are all examples of local impacts from a global issue. Fortunately, quite a number of resources and tools are available to help communities reduce their carbon footprint and adapt to and plan for present and future climate impacts.

While the Select Board may not have direct authority over certain areas of climate action planning, it is important for board members, as the elected leaders of the town, to be aware of the resources available and the trends in local government climate action in order to help lead local efforts. It's also important to understand that this is an evolving area of concern for all levels of government. Towns experience new challenges and new opportunities, and have created new areas of responsibility for staff and committees. It is important for towns to approach this topic strategically and to seek consensus.

Climate Mitigation

Climate mitigation refers to efforts to reduce greenhouse gas (GHG) emissions in order to lessen the impacts of climate change. Climate scientists have made it clear that the world needs to reduce global greenhouse gas pollution to net zero by 2050 in order to avoid catastrophic climate change. The planet has already warmed by about 1 degree Celsius since humans began burning fossil fuels like coal, oil and gas in large quantities in the mid-1800s. Scientists project that the worst impacts of climate change can be avoided if we can keep overall warming below 1.5 C. According to the Intergovernmental Panel on Climate Change's 2019 special report, "[Global Warming of 1.5°C](#)," in order to give ourselves a chance to limit global warming to 1.5 C worldwide, we will need to reduce GHG pollution by 45% by 2030 and to net zero by 2050. In other words, there is a limited "carbon budget," or cumulative amount of GHG pollution, that can be emitted without passing 1.5 C of warming.

There are many solutions that towns can implement to reduce how we contribute to climate change through activities such as energy consumption for residential or commercial uses and transportation.

Climate Law and Green Communities Act

An [omnibus climate change law enacted in 2021](#) codified the state's commitment to achieving net zero greenhouse gas emissions by 2050. The law, called [An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy](#), mandates a 50% reduction in greenhouse gas emissions below 1990 levels by 2030 and a 75% reduction by 2040. In alignment with these statutory goals, many municipalities have started planning for a net-zero future for their community.

The 2021 climate law was a follow-up to the [Green Communities Act](#), enacted in 2008, which overhauled the state's energy policies in order to promote renewable energy (e.g., solar, wind), as well as conservation and efficiency, and to decrease reliance on fossil fuels. The Green Communities Act requires municipalities to adopt energy-efficient building codes, provides for long-term contracts for the purchase of renewable energy, and allows metering in two directions (net metering), allowing surplus energy generated by a renewable source to be sold back to the electrical grid.

The Green Communities Act allows municipalities to own renewable energy facilities and grants authority to issue bonds to finance their construction. It also provides for as-of-right siting for renewable or alternative energy facilities (both generating and manufacturing) for qualified green communities in designated areas, and further encourages communities to develop clean energy resources by providing up to \$10 million per year in assistance to municipalities.

The Green Communities Act established the Regional Greenhouse Gas Initiative Auction Trust Fund, and the law requires that 80% of auction proceeds go to energy efficiency programs. The law provides several options for municipal governments relating to technical assistance and procurement. The [Green Community Designation and Grant Program](#) provides a road map, along with financial and technical support, to municipalities that pledge to cut municipal energy use by 20% over five years and meet four other criteria established in the Green Communities Act. The Department of Energy Resources website has more details about [Green Communities](#).

The Metropolitan Area Planning Council has also developed tools to assist municipalities as they consider planning for a net zero future, including the [Net Zero Planning](#) web area and its online [Municipal Net Zero Playbook](#).

The [Northeast Clean Energy Council](#) has published a free [guide to help municipal leaders navigate the complexities of the transition to a clean energy future](#).

Energy, Transportation and Housing

Energy distribution and production, to the degree that it is under municipal authority or influence, are important to climate strategy. Many communities are regulating fossil fuel infrastructure or seeking to promote renewable energy sources through aggregation programs. These efforts are best advanced in a strategic context in order to make changes with the broadest possible basis of support.

Similarly, transportation is a significant contributor to climate change, and cities and towns are increasingly seeking ways to promote electrification of public fleets, support public electric

vehicle charging infrastructure, and encourage non-motorized transportation such as bicycling and walking. Town leaders should coordinate these efforts among departments and committees.

Finally, a town's housing policy should be aligned with climate policy. Housing production and priorities can be designed to minimize climate impacts from energy use, transportation demands, and the effects of extreme weather.



Climate Adaptation

Climate adaptation refers to planning and improvements related to the impacts of climate change that are occurring and have become unavoidable. These impacts can include, but are not limited to, extreme heat, sea level rise, overland flooding, and increased intensity and frequency of storms.

The Commonwealth created the [Municipal Vulnerability Preparedness](#) program to provide support for cities and towns to conduct the process of planning for climate change resiliency and implementing priority projects. The program provides funding to help towns complete vulnerability assessments and develop and implement action-oriented resiliency plans. The MVP website has [descriptions of all action grant projects](#) that have received funds.

[ResilientMass](#), a “climate change clearinghouse” for Massachusetts, is a gateway to data and information relevant to climate change adaptation and mitigation across the Commonwealth. Created by the Executive Office of Energy and Environmental Affairs, ResilientMass provides local climate change science and tools for local planners, practitioners, policy-makers and the public to support decision making that enhances climate resilience.

The [Massachusetts Climate Change Assessment](#), published in 2022, details how the state's residents, environments and infrastructure may be affected by climate change and related hazards through the end of the century. In the fall of 2023, the Healey-Driscoll administration released a 360-page hazard mitigation and climate adaptation plan — the [ResilientMass Plan](#) — that details 142 actions to be taken across state agencies, including the creation of an Office of Climate Science. In early 2023, Gov. Maura Healey also created the first cabinet-level Climate Chief position in the country.

Resources

Climate Mitigation

- ["Global Warming of 1.5°C,"](#) Intergovernmental Panel on Climate Change (2019)

Climate Law and Green Communities Act

- [Green Community Designation and Grant Program](#), Green Communities Division, Massachusetts Department of Energy Resources
- [Being a Green Community](#), Green Communities Division, Massachusetts Department of Energy Resources
- [Net Zero Planning](#) web area, Metropolitan Area Planning Council
- [Municipal Net Zero Playbook](#), Metropolitan Area Planning Council
- ["Municipal Guide to Inclusive Climate Action and Equitable Procurement,"](#) Northeast Clean Energy Council

Climate Adaptation

- [Municipal Vulnerability Preparedness program](#), Executive Office of Energy and Environmental Affairs
- [MVP program action grant project descriptions](#), Executive Office of Energy and Environmental Affairs
- [ResilientMass](#) climate change clearinghouse, Executive Office of Energy and Environmental Affairs
- [Massachusetts Climate Change Assessment](#), Executive Office of Energy and Environmental Affairs (2022)
- [ResilientMass State Hazard Mitigation and Climate Adaptation Plan](#), Executive Office of Energy and Environmental Affairs and Massachusetts Emergency Management Agency (2023)