



Office of the  
BOARD OF SELECTMEN

272 Main Street, Townsend, Massachusetts 01469

Wayne Miller, *Chairman*

Don Klein, *Vice-Chairman*

Veronica Kell, *Clerk*

James M. Kreidler, Jr., *Town Administrator*

(978) 597-1701

**TO: Board of Selectmen**  
**FR: Jim Kreidler, Town Administrator**  
**RE: Cable Access Corporation**  
**DT: August 10, 2020**

The following is a chronology of events and actions taken by the town re: the formation of a cable access non-profit corporation.

1. November 2015- Board of Selectmen execute a ten-year (November 2015-October 31, 0225) franchise agreement with Comcast.
  - a. The agreement provided for a "transition date" by which the town, or a non-profit in its place, would become responsible for the PEG access staffing, equipment, and programming.
  - b. That date was December 15, 2015 and the transition occurred.
  - c. At the transition date the funding the Town received from Comcast increased from 1.5% of total Townsend revenues, paid quarterly, to 5% of total Townsend revenues, paid quarterly.
  - d. There were two side letters associated with the new agreement.
    - i. One detailed an expansion of the cable system to cover an area in town that had previously been unserved (Vinton Pond Road area).
    - ii. The other provided \$130,000 as payment to the town for transitioning to the town owning and operating the PEG access function. According to the parties involved, a portion of this \$130,000 was to be used to pay the town's share of the cable system expansion project. (separate matter being coordinated by Town Administrator and Attorney Kate Feodoroff)

2. Since the inception of the new agreement the Cable Television Advisory Committee, comprised of citizens appointed by the Board of Selectmen, have been working concurrently on the system expansion and the creation of a non-profit Cable Access Corporation to take over the PEG Access staffing, programming and equipment.
3. With the approval of the Board of Selectmen, from 2016 through 2019 the Cable Television Advisory Committee tried unsuccessfully to work with two different attorneys that specialize in cable access work in Massachusetts.
  - a. 2016- the Board of Selectmen voted to authorize a first counsel, Attorney William Hewig, to represent the Town in the drafting of the corporate documents to create the non-profit cable access corporation.
    - i. That effort stalled.
  - b. 2018- the Board of Selectmen voted to authorize a second counsel, Attorney William Solomon, to represent the Town in the drafting of the corporate documents to create the non-profit cable access corporation.
    - i. That effort also stalled.
4. February 11, 2020- the Board of Selectmen voted to authorize a third counsel, Attorney William August, to represent the Town's interests in the drafting of the corporate documents to create the non-profit cable access corporation, the bylaws and the operating agreement.
5. April 2, 2020- the Board of Selectmen voted to authorize the Town Administrator to sign for the acceptance and approval of the Bylaws of the Townsend Community Access and Media, Inc., and further as it was during the height of the COVID-19 pandemic, authorized the Town Administrator to execute any other documents on behalf of the Town **with the approval of the Chair.**
6. April 30, 2020- Per the April 2, 2020 vote of the Board of Selectmen, and after consultation with and approval from the Chair, the Town Administrator executes the "Formation of a Non-Profit Community Television Access Corporation" form approving the Articles of Incorporation, to include the three original incorporators<sup>1</sup>, and the Bylaws.
7. June 23, 2020- Secretary of State approves the incorporation of Townsend Community Access and Media, Inc.
8. June 25, 2020- Attorney William Solomon is brought on by the newly created non-profit to represent the interests of the non-profit Cable Access Corporation vis-à-vis the Operating Agreement.
9. August 5, 2020- Attorney August forwards a copy of a final DRAFT of the Operating Agreement for the Board of Selectmen's consideration at the August 18, 2020 Board meeting.
10. Final Agreement attached and is recommended by counsel to be approved by the Board.

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<sup>1</sup> Solely for the purpose of having a clear public record of the matter before the Board, consistent with the bylaws, I would recommend a confirmatory vote of the named incorporators.

**PROPOSED MOTION 1:** I move that the Board vote to affirm the appointments of the initial directors of the Townsend Community Access and Media, Inc., as follow:

Mariny A. Cruz- for a 1 year term from June 23, 2020 to June 22, 2021

Jerry D. Racette - for a 2 year term from June 23, 2020 to June 22, 2022

Scott D. Gleason- for a 1 year term from June 23, 2020 to June 22, 2023

**PROPOSED MOTION 2:** I move that the Board vote to approve the Operating Agreement between the Town and the Townsend Community Access and Media, Inc., as recommended by the Board's appointed special cable counsel.





## GRANT AGREEMENT BETWEEN THE TOWN OF TOWNSEND, MA AND TOWNSEND COMMUNITY ACCESS MEDIA, INC.

This Grant Agreement ("Agreement") is made this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2020 by and between the Board of Selectmen of the Town of Townsend, Massachusetts (hereinafter referred to as the "Town" or "Townsend") and the Board of Directors of Townsend Community Access Media, Inc. (hereinafter referred to as "TCAM"), duly established as a non-profit, charitable purpose corporation under Massachusetts General Laws Chapter 180.

WHEREAS, the Board of Selectmen, as statutory Board of Selectmen, granted a Cable Television Renewal License to Comcast of Massachusetts III, Inc., ("Comcast" or "Licensee") effective November 1, 2015 and expiring on October 31, 2025; and

WHEREAS, the Board of Selectmen of the Town and the Board of Directors of TCAM wish to reach agreement on TCAM producing and cablecasting PEG Access programming in Townsend to carry out TCAM's nonprofit charitable and educational purposes and cable license terms for the primary benefit of the general public and to meet the needs of the community at large,

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

### SECTION 1---DEFINITIONS

For the purpose of this Agreement, the following words, terms, phrases and their derivations shall have the meanings given herein.

1. Access: The right or ability of any Townsend resident and/or any Persons affiliated with a Townsend institution to use designated Public, Education and Government ("PEG") facilities, equipment and/or PEG Access channels of the Cable Television System, subject to the conditions and procedures established for such use herein and 47 U.S.C. 531, where applicable.
2. Access Channel: A video channel which the Licensee owns and shall make available to the Town of Townsend and/or Access Users, without charge, for the purpose of transmitting non-commercial programming by members of the public, Town departments and agencies, public schools, educational, institutional and/or similar organizations.
3. Access Corporation: The nonprofit, charitable purpose entity, designated by the Board of Selectmen of the Town of Townsend, for the purpose of operating and managing the use of PEG Access channels, facilities, funding, equipment, training and programming for Townsend Subscribers subject to applicable law and the terms herein.
4. Cable Television System or Cable System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Town as further defined by the federal Cable Act (47 U.S.C. 531 *et seq*).
5. Issuing Authority: The Board of Selectmen of the Town of Townsend, Massachusetts.

6. Origination Capacity: An activated cable and connection to an Upstream Channel, allowing a User(s) to transmit a Signal(s) upstream to a designated location.
7. PEG: The acronym for “public, educational and governmental,” used in conjunction with Access Channels, support and facilities.
8. PEG Access Channels: Any channel(s) made available for the presentation of PEG Access programming.
9. Subscriber: Any Person, firm, corporation or other entity who of which elects to subscribe to, for any purpose, a Cable Service provided or distributed by the Licensee by means of, or in connection with, the Cable Television System.
10. TCAM: The acronym for Townsend Community Access Media, Inc the PEG Access Corporation.
11. Town: The Town of Townsend, Massachusetts.
12. Upstream Channel: A channel over which Signals travel from an authorized location to the Cable System headend.

## **SECTION 2---TERM**

This Agreement shall be effective from its execution through the expiration of the Town of Townsend Comcast Renewal License on October 31, 2025, with an option to extend for a period up to an additional five (5) years upon the advance written agreement of the parties hereto, all such periods subject to Sections 3, 4 and 17 below. Any such extension will be after the expiration of the existing Comcast Renewal License and therefore the parties acknowledge any such extension will have to reflect and be in accordance with the terms and conditions of the future Renewal License of Comcast or its successor and in accordance with the terms and conditions of any future cable system operator licensed by the Town to provide cable services in the Town, if any.

## **Section 3---DESIGNATION**

Subject to the requirements of Sections 4 and 5 below, the Board of Selectmen hereby designates TCAM as a designated PEG Access Corporation to act under this Grant Agreement to provide services to PEG Access Users for the benefit of the general public and subject to the terms herein.

## **SECTION 4---PERIODIC REPORTING**

(1) On an annual basis, and within thirty (30) days of filing its Annual Report (Form PC) with the Massachusetts Attorney General’s office, TCAM shall provide a written report to the Board of Selectmen (the “Report to the BOS”), which report shall include the following:

- (a) A copy of TCAM’s most recent Annual Report (Form PC) filed with the Attorney General’s Office.
- (b) Year-end financial statements prepared by an independent CPA.
- (c) A summary of the previous year’s budget and actual expenditures.
- (d) Upcoming year’s budget.

- (e) Two Year Budget Plan.
- (f) Hours of programming and cablecast by categories of public, educational and governmental programming categories.
- (g) Notable Events, Actions and Programs.
- (h) Training classes offered and attendance thereto.
- (i) TCAM Policies and Procedures, with any changes thereto from the previous year highlighted.
- (j) Any other documentation and/or items mutually agreed upon by the parties hereto; and
- (k) Filings to the State and federal government, including, but not limited to, Change of Directors and/or Officers; instruments of restatement of articles of incorporation; by-laws; dissolution; and any other corporate filings.

(2) Between fifteen (15) and forty-five (45) days after the Board of Selectmen has received TCAM's Report to the BOS, TCAM shall, if requested by the Board of Selectmen, meet with the Board of Selectmen, or its designee(s), for the purpose of reviewing TCAM's operations, budget, programming and items contained in the Report to the BOS for the previous year subject to said review being for advisory purposes and consultation and not for formal approval of or control by the Board of Selectmen. TCAM's annual Report to the Board of Selectmen shall include a cover letter transmitting the Report and shall apprise the Board of Selectmen of this provision for a meeting of the Selectmen and TCAM in accordance with the terms hereof. TCAM shall cooperate fully and in good faith in answering questions from the Board of Selectmen regarding reporting and compliance required under this Agreement.

## **SECTION 5---ANNUAL HEARINGS**

(1) On an annual basis, and at least thirty (30) days after the Board of Selectmen has received TCAM's Annual Report, subject to Section 4 above, TCAM shall meet with the Board of Selectmen for the purpose of reviewing TCAM's operations, budget and programming for the previous year and as further set forth in Section 4(2) above.

(2) TCAM shall provide such information as is reasonably requested by the Board of Selectmen and will agree to meet with the Board of Selectmen as reasonably requested.

## **SECTION 6---ACCESS CORPORATION OBLIGATIONS**

TCAM shall provide noncommercial PEG Access programming and services to PEG Access Users, Subscribers and the Town in a manner that primarily carries out the nonprofit charitable purposes of benefiting the general public as set forth in this Grant Agreement, TCAM's nonprofit Articles of Organization and applicable law as follows:

1. Within seven (7) months of the date hereof, apply to the Internal Revenue Service for tax exempt status under Section 501c3 of the Internal Revenue Code ("Code" or "IRC");
2. Schedule, operate and program the PEG Access Channels provided in accordance with this Agreement, and in all manners consistent with requirements of Section 501c3 of the



Internal Revenue Code and Chapter 180 of the Massachusetts General Laws as applicable to nonprofit charitable purpose corporations;

3. Manage annual funding, pursuant to Section 8 below and this Agreement, and subject to applicable law, including any Department of Revenue requirements with respect to the need for Town Meeting special revenue or fund appropriations being a condition of funding;
4. Purchase and/or lease equipment, with the funds and equipment allocated for such purposes in Sections 9 and 10 below and subject to this Agreement and applicable law;
5. Operate and maintain a nonprofit, noncommercial PEG Access studio in the Town for Townsend for PEG Access Subscribers and other users in accordance with this Agreement including Section 11 below;
6. Conduct periodic training programs for Townsend residents and members of Townsend-based organizations in the skills necessary to produce PEG Access programming;
7. Provide access to production and post-production equipment and facilities, and technical assistance, to PEG Access users, in accordance with TCAM Policies and Procedures;
8. Establish rules, procedures and guidelines for the use of the PEG Access Channels subject to this Agreement including but not limited to Section 7 below;
9. Engage in publicity, fund-raising, outreach, referral and other activities to support PEG Access subject to limitations applicable to nonprofit 501(c)(3) organizations;
10. Provide coverage for key Town meetings and elections at locations determined by the Town. This shall include all Board of Selectmen, School Committee, and Finance Committee meetings, Planning Board, Housing Authority, Conservation Commission, Zoning Board of Appeals, Annual and Special Town Meetings, and local elections. All other meetings shall be covered, upon request of the Board of Selectmen, dependent on the availability of equipment, facilities, and volunteers; and
11. Accomplish such other tasks relating to the operation, scheduling and/or management of the PEG Access Channels, facilities and equipment as TCAM may consider appropriate and necessary and which is consistent with this Agreement.

## **SECTION 7---PEG ACCESS CHANNELS**

(1) TCAM shall have the responsibility for managing, scheduling, operating and programming the two (2) dedicated Downstream PEG Access Channels provided to the Town under Section 6.1 of the Comcast cable license in effect on the date hereof, subject to the terms of this Grant Agreement, applicable law and as follows:

- i. One Downstream PEG also Access Channel shall be designated the Public Access Channel, but such Channel may be used for Educational and Governmental Access programming, if and when appropriate.
- ii. One Downstream PEG Access Channel shall be designated the Educational Access Channel. TCAM shall work cooperatively with the Townsend School Department and all other educational institutions in Townsend to generate programming for the Educational Access Channel.

- iii. One Downstream PEG Access Channel shall be designated the Government Access Channel. TCAM shall work cooperatively with the Board of Selectmen and other Town departments to generate programming for the Government Access Channel.
- (2) TCAM shall cablecast a current weekly programming schedule for each of its PEG Access Channels and shall exercise diligent efforts to make its schedule available online.
- (3) Notwithstanding TCAM's primary role managing and operating the Educational and Government Access channels in accordance with this Grant Agreement, the Issuing Authority retains ultimate control over the cablecasting of programming on the Educational and Government Access channels.
- (4) In the event additional PEG Access Channels are provided to the Town, such Access Channels shall be for such Access uses as determined by the Issuing Authority,

## **SECTION 8---ANNUAL FUNDING FOR PEG ACCESS**

- (1) The Town Comcast Renewal License in effect provides that the Board of Selectmen, as Issuing Authority, or Town will receive five percent (5%) of Comcast's Gross Annual Revenues each year from Comcast for PEG Access Funding. That funding, in the event of payment by Comcast and receipt by the Town, will be distributed as follows:

In order to fulfill its obligations pursuant to Section 6 supra, TCAM shall receive funding through the Board of Selectmen for annual support for PEG Access purposes equal to five percent (5%) of Comcast's Gross Annual Revenues in Townsend subject to receipt and availability of such funding in accordance with applicable law and this Agreement;

- (2) The payments to TCAM from the Board of Selectmen specified in paragraph (1) above shall be made on a quarterly basis within thirty (30) days of the Board of Selectmen's receiving a written request from TCAM for such funding and subject to the funds being received by the Town from the cable licensee and said funds being available in accordance with this Agreement and applicable law.
- (3) In the event the Town receives PEG Access capital funding from Comcast in addition to the 5% funding provided for above, or receives capital funding from a possible additional Licensee in the future, such funding shall be allocated as determined for PEG Access purposes as determined by the Issuing Authority.

## **SECTION 9 -- FUNDING AND APPLICABLE LAW**

- (1) Any Town or Issuing Authority obligations to allocate funds to TCAM under this Agreement or the Renewal License are contingent upon (1) the cable licensee(s) payment of same in accordance with the Town's Comcast cable Renewal License in effect as the date hereof; and upon (2) the meeting of the requirements of the Commonwealth of Massachusetts, including the Department of Revenue, with respect to appropriation of such license funds. If and to the extent the cable licensee(s) does not make such payments, or if funds are not appropriated in accordance with law and DOR requirements, then the Town shall have no liability for such funding except to the extent such funds are received and appropriated.



(2) In the event of any change of law and regulation, or implementation of existing law, causing the cable licensee(s) to offset in-kind benefits or license obligations against franchise fees (license fees) payable to the Town for PEG Access, the Town will not be responsible for making up or in any way compensating for such Licensee-imposed reductions in payments if any.

(3) In the event Licensee does reduce franchise fee payments to the Town as a result of the offset of the value of license benefits against franchisee fees due, the remaining net payment due to and received shall be distributed as between the Access Corporation and Town in the as currently distributed pursuant to Section 8 above.

### **SECTION 10---OWNERSHIP OF ASSETS**

(a) To secure all of its obligations under this Agreement, TCAM hereby grants to the Town, a security interest in all of the assets and interests owned or hereafter acquired by TCAM through the provisions provided in Sections 8 and 9 above, and the proceeds thereof, including but not limited to, deposit accounts and inventory, and all equipment and fixtures, that are or were acquired with funds provided by the Town. TCAM agrees to take all steps reasonably requested by the Board of Selectmen to perfect and enforce the Town's security interest, including the execution and processing of financing statements and continuation statements under the Massachusetts Uniform Commercial Code. TCAM shall also notify any institution with which it now or hereafter maintains any deposit account of the existence of the Town's security interest in the account.

(b) All such assets and interests shall at times remain under the exclusive control of TCAM. TCAM shall have the right to determine appropriate rules, procedures guidelines for the use of said equipment and to amend such rules, procedures and guidelines from time to time; provided, however, that TCAM shall provide the Board of Selectmen with a copy of such rules, procedures and guidelines and any amendments thereto. In the event of dissolution of TCAM, all of such assets and interests referenced in paragraph (a) above shall become the property of the Town and/or its designee(s).

(c) Upon the written request of TCAM, and if judged to be reasonable and appropriate by the Board of Selectmen, the Board of Selectmen may agree to subordinate the Town's interest to finance the purchase of equipment or property. Such subordination shall only be with respect to the specific equipment or property that TCAM might wish to finance.

### **SECTION 11---PEG ACCESS PROGRAMMING**

In programming the PEG Access Channels, TCAM shall comply with federal and State laws and regulations at all times during the term of this Agreement.

### **SECTION 12---TCAM BOARD OF DIRECTORS**

The Board of Selectmen shall have the right to appoint and designate, at its sole discretion, one (1) person from to serve on TCAM's Board of Directors throughout the term of this Agreement and in accordance with the Bylaws of the corporation in effect as of the date hereof.

### **SECTION 13---INDEMNIFICATION**

TCAM shall, at its sole cost and expense, and in its rules for PEG Access use, require every PEG Access User to indemnify and hold harmless the Board of Selectmen, the Town, its officials, boards and employees against any and all claims arising out of any use of the PEG Access studio or arising out of or in connection with any use of the PEG Access equipment or facilities and/or due to any programming cablecast over the PEG Access Channels including, but not limited to injury to persons or property, libel, slander, invasion or privacy or publicity rights, non-compliance with applicable rules, regulations and/or laws and/or authorized use of copyrighted material(s) and TCAM shall, at its sole cost and expense indemnify and hold harmless the Board of Selectmen, the Town, its officials, boards and employees against any and all claims arising out of PEG uses, acts and/or omissions.

### **SECTION 14---INSURANCE**

- (a) TCAM shall carry insurance indemnifying the Board of Selectmen, the Town and itself from and against all claims for injury or damage to persons or property caused by the use of the PEG Access studio and/or any PEG Access equipment, and shall name the Town as an additional insured party. Such insurance shall not be less than One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person or property damage resulting from any one occurrence and Three Million Dollars (\$3,000,000.00) for such coverage in the aggregate and shall have umbrella coverage for other risks in an amount not less than Three Million Dollars (\$3,000,000.00)
- (b) All insurance shall be with responsible companies qualified to do business in Massachusetts. It is also understood and agreed that upon issuance of such insurance policy, a complete certified copy shall be given to the Town for its review and records. No insurance certificates shall be cancelled without a minimum of thirty (30) days prior written notice to the Town.
- (c) TCAM shall insure all PEG Access equipment for theft, loss and damage.
- (d) TCAM shall upon three-month advance written notice secure such other insurance as maintained by television studios and operators of television channels, if any, as may be found by the Issuing Authority to be necessary to reasonably protect the interests of the Town and its residents.

### **SECTION 16---ASSIGNMENT**

TCAM shall have no right whatsoever to assign or sublet its rights regarding the PEG Access studio, the annual funding and/or PEG Access funding and/or equipment under this Agreement without the advance, express, written consent of the Board of Selectmen.

### **SECTION 17---TERMINATION/DISSOLUTION OF THE ACCESS CORPORATION**

- (a) The Board of Selectmen may terminate this Agreement for material breach of this Agreement by TCAM; provided, however, that the Board of Selectmen shall give TCAM (i) advance, written notice specifying, in reasonable detail, such breach and (ii) sixty (60) days from the date of such written notice to cure any such breach. The result of such termination



by the Board of Selectmen shall be that TCAM shall no longer be the designated Access Corporation.

(b) The Board of Selectmen may terminate this Agreement in the event that TCAM engages in malfeasance, misfeasance or misappropriation or misuse of funds, or TCAM fails to obtain or loses, once attained, its federal 501(c)(3) status, or TCAM fails to maintain a status of a Corporation in Good Standing with the Commonwealth of Massachusetts or the U.S. Internal Revenue Service.

(c) In the event that TCAM is dissolved during the term of this Agreement, and/or the Board of Selectmen terminates this Agreement with TCAM pursuant to paragraph (a) and/or (b) above, the Board of Selectmen shall have the absolute right to designate another entity, including the Town itself, to provide PEG Access Programming in the Town. Any such successor PEG Access organization shall then assume all of the benefits and obligations contained herein, and all then-existing deposit accounts, inventory and equipment of any kind or manner owned by TCAM and/or the Town having been purchased with funds provided pursuant to this Agreement, shall become the property of the Town and/or transferred to such successor organization, as directed by the Board of Selectmen in writing.

## **SECTION 18---NONDISCRIMINATION**

TCAM shall not discriminate against any Person in any of its PEG Access activities on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, sexual orientation, disability, age, marital status or status with regard to public assistance. TCAM shall be subject to all other requirements of federal and State laws or regulations relating to nondiscrimination, throughout the term of this Agreement.

## **SECTION 19---NOTICE**

(a) Every notice to be served upon the Town shall be delivered, or sent by certified mail, to the Town Administrator, Townsend Town Hall, 272 Main Street, Townsend, Massachusetts 01469, or such other address as the Board of Selectmen may specify in writing to TCAM, with a copy to the Board of Selectmen.

(b) Every notice to be served upon TCAM shall be delivered, or sent by certified mail, to the President and Executive Director of TCAM at such address as TCAM may specify in writing to the Town.

(c) Whenever notice of any public hearing relating to the Townsend Cable System is required by law, regulation, the Comcast Renewal License, or upon request of the Board of Selectmen, TCAM shall identify such hearing(s) by periodic announcement on a PEG Access Channel. The Town shall exercise reasonable efforts to provide TCAM any such notice for cablecasting.

## **SECTION 20---SEPARABILITY**

If any section, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Agreement.

## **SECTION 21---AMENDMENTS**

This Agreement can be amended only by a written agreement between the parties.

### **SIGNATURE PAGE**

In Witness Whereof, this Agreement is hereby agreed to by the Board of Selectmen of the Town of Townsend and the Board of Directors of Townsend Community Television, Inc. and the parties have hereunto set their hands this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2020.

#### **The Town of Townsend, MA**

By: The Townsend Board of Selectmen,  
as Issuing Authority

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Chairman

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Vice Chair

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Clerk

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Special Counsel

**TCAM**

By: Its President, as authorized by Board of  
Directors:

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5.1.2

Office of the  
BOARD OF SELECTMEN

272 Main Street, Townsend, Massachusetts 01469

Wayne Miller, *Chairman*

Don Klein, *Vice-Chairman*

Veronica Kell, *Clerk*

James M. Kreidler, Jr., *Town Administrator*

(978) 597-1701

**TO: Board of Selectmen**

**FR: Jim Kreidler, Town Administrator**

**RE: Common Sidewalks**

**Summary of project history to date.**

**DT: August 10, 2020**

The following is a chronology of events and actions taken by the town re: The Town Common sidewalks.

1. November 28, 2017- Special Town meeting vote to appropriate \$25,000 for Common sidewalks
2. July 2018- Cemetery and Parks Bid project and all bids exceeded available funds.
3. November 2019- Town submitted request to Senator Tran and Representative Harrington for state funding for the sidewalk project.
4. December 2019- State funding of \$70,000 was approved
5. January 2020- Summit Engineering procured for design, engineering, and contract administration of project
6. March 2020- State contract executed to secure the funding.
7. August 2020- Specifications being finalized by Summit Engineering for bidding.
8. September 2020- Expected bidding.
9. October 2020- Expected construction.





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(978) 597-1701

**TO: Board of Selectmen**

**FR: Jim Kreidler, Town Administrator**

**RE: MAIN STREET (RT. 119) SIDEWALKS**

**Summary of project history to date.**

**DT: August 10, 2020**

The following is a chronology of events and actions taken by the town re: sidewalks on Rt. 119 from the Town Common to the Harbor.

1. July 1999- Mass Highway planning on reconstructing Rt. 119 from Rt. 13 to the Pepperell line.
  - a. If town does the engineering and secures the rights of way Mass Highway will pay to put in sidewalks as a part of the roadway project.
2. October 1999- Engineering for sidewalks from Town Common to Spaulding St.
  - a. Engineering cost estimate is \$31,000
  - b. Work never completed.
3. October 2002- Engineering for sidewalks from Town Common to Spaulding St.
  - a. Engineering cost estimate is \$75,000
  - b. Special Town meeting vote to fund the engineering failed.
  - c. Work never completed.
4. May 2005- Annual Town Meeting appropriated \$100,000 for engineering of the sidewalk project
5. November 2006- Engineering for sidewalks from Town Common to Spaulding St.
  - a. Engineering cost estimate is \$250,000
  - b. Exceeded budget.
  - c. Never completed.
6. September 2012- Board of Selectmen committed \$25,000 of Town Meeting engineering appropriation to Squanacook Greenway group for sidewalk engineering at harbor.

7. July 2014- Mass Highway did the Rt. 119 roadway project.
8. December 2015- Town engineered from the Common to Sterilite
  - a. Cost \$72,000
  - b. \$3,000 appropriation balance remaining uncommitted.
9. June 2020- Kreidler asks Highway Supt. Smith to get updated project construction costs from Weston and Sampson Engineers when considering the quick turnaround Streets and Spaces grant offering.
  - a. Estimated total project construction costs from Town Common to Sterilite \$1,000,000
  - b. Exceeded grant cap of \$300,000

Previously Approved  
4/2/20

**Bylaws of Townsend Community Access and Media, Inc.  
("Townsend CAM")  
Adopted \_\_\_\_\_, 2020**

**Article 1  
Name, Purposes, Powers and Related Matters**

The name of Townsend Community Access and Media, Inc. (hereinafter in these Bylaws referred to as the "Corporation"), the location of its principal office and its purposes shall be as set forth in the Articles of Organization and these Bylaws subject to change, if any, as may be determined in accordance with the Articles of Organization and the Bylaws. The Corporation shall be exclusively charitable, scientific, or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), as amended from time to time, and shall, to carry out its primary purpose, provide non-commercial public, educational and governmental cable access and related technology services to the residents, local government, schools, nonprofit organizations, businesses and other institutions and organizations in the Town of Townsend.

The powers of the Corporation and of its Directors, officers, committees and members, and all matters concerning the conduct and regulation of the affairs of the Corporation and the manner in which and the officers and agents by whom its purposes may be accomplished shall be governed by such provisions in regard thereto, if any, as are set forth in the Articles of Organization and these Bylaws.

All references in these Bylaws to the Articles of Organization shall be constructed to mean the Articles of Organization as from time to time amended.

**Article 2  
Members**

**1. Eligibility**

All residents of the Town of Townsend and organizations based in the Town are eligible for membership in the Corporation.

**2. Qualification for Voting Membership**

Voting membership in the Corporation is open to individuals residing in Townsend or in the case of an organization based in Townsend, such organization may be an organizational member and have one vote, which vote may be cast by a duly appointed representative of said member organization and, to vote, such residents or organization based in Townsend must demonstrate their interest in the affairs of the Corporation by:



- a. Completing and returning to the Corporation an Access Membership Enrollment Form;
- b. Paying the prescribed membership dues, if any, by category, as they may from time to time be established by the Board of Directors; and
- c. Having been Members of the Corporation for at least sixty (60) days prior to any meeting of members.

### 3. Annual Meeting of Members

The Annual Meeting of Members shall be held in Townsend, at such place as the Board of Directors agree, each year during the months of September or October for the purpose of electing Directors and transacting such other business as may properly come before the meeting. The time and place of the Annual Meeting shall be determined by the Corporation's Board of Directors and Members shall be notified of each meeting as provided herein.

### 4. Special Meeting of Members and/or Directors

Special Meetings of Members and/or Directors shall be called by the President upon request of the Board of Directors or upon written request therefore submitted to the Corporation by not less than one-tenth of all members entitled to vote at such a meeting.

### 5. Notice of Meetings

A written notice of every annual or special meeting of the Corporation, stating the place, date, hour, and purpose shall be given not less than seven (7) nor more than thirty (30) days before the date of the meeting to each member entitled to vote at such meeting at his or her address as it appears upon the records of the Corporation. Notice shall be displayed several times, at varying times of the day, on the cable television channel(s) managed by the Corporation during the notice period described above.

### 6. Quorum of Members

a.) Five percent of the voting members, but not less than five members, shall constitute a quorum at any annual or special meeting of the members. Members may only vote at such meeting in person. If a quorum shall fail to attend, a majority of those present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present in person. At such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally notified. (See Article 3, Section 8 re Quorum of Directors)

b.) In the event that there are fewer than 15 members, the Board of Directors shall retain the power to vote on any matter which would otherwise be reserved for the vote of a quorum of members.

#### 7. Procedure for Voting

Members shall be entitled to vote on matters submitted to the Members for approval at meetings of the Members, including the election of future Boards of Directors following appointment of the initial Board of Directors by the Issuing Authority and with respect only to Directors not otherwise subject to appointment; and subject to the Board of Directors having the authority to vote on all corporate matters. In the case of a conflict between a vote of the Members and Directors, a vote of a majority of the Directors shall prevail. Those eligible to vote on a question may only vote in person.

A Director may be a member if he or she otherwise meets the criteria for membership.

#### 8. Members' Dues

The Board of Directors may, from time to time, adopt a schedule of annual dues. Dues shall be maintained at a level reasonably intended to cover the direct costs of: maintaining the membership rolls; providing for participation by the Membership in the governance of the Corporation; and communicating the Corporation's activities to the membership; including the use of printed materials such as a newsletter or a program guide.

### **Article 3 Board of Directors**

#### 1. Powers

The Board of Directors shall have and may exercise all of the powers of the Corporation to the extent permitted by the General Laws, the Articles of Organization and these Bylaws.

#### 2. Tenure and Qualifications

The corporation shall initially have three Directors and collectively they shall be known as the Board of Directors. The Board of Directors shall initially consist of those three persons appointed by the Town of Townsend, Massachusetts Board of Selectmen and named as Directors in the Articles of Organization as filed with the Massachusetts Secretary of the Commonwealth. The Board of Directors may increase the number of Directors to a maximum of five by a majority vote of a quorum of the Directors. Directors shall ultimately serve three-year terms; however, to implement staggered terms of the foregoing initial Directors, one of the Directors



appointed by the Board of Selectmen shall serve a one-year initial term; one shall serve a two-year initial term; and one shall serve a three year initial term. Subsequent terms for all Directors shall be for three (3) years. Successor Directors shall be appointed or elected following the expiration of initial terms as follows. The Board of Selectmen will in its discretion appoint one successor Director to fill the position held by Director serving a three-year initial term. Successors to the other initial Directors, and additional Directors in the event of the expansion of the Board from the initial three Directors to up to five Directors shall be elected, in accordance with these Bylaws, by the Corporation's general membership. Each Director shall hold office until his or her successor is elected or appointed unless removed prior thereto in accordance with law and these Bylaws. Any Director appointed by the Board of Selectmen may be removed without cause by the Board of Selectmen, and a replacement Director shall be appointed by said Board for the unexpired balance of the removed Director's term. Elected successor Directors shall only be removed in accordance with these Bylaws.

### 3. Nomination and Election Process for Directors

Successor Directors to be elected shall be selected in the following manner: no later than thirty (30) days prior to the annual meeting of the Corporation, a Nominating Committee of the Board of Directors shall notify the members of the Corporation of upcoming elections and shall request suggested nominees. The Nominating Committee shall be charged with the responsibility of compiling a slate of candidates from these submissions for election to the Board.

In addition to the candidates selected by the Nominating Committee, any member may become a candidate for election to the Board of Directors by presenting the Nominating Committee with a petition for special nomination signed by at least one-tenth of the eligible voting members of the Corporation no later than fourteen (14) days prior to the date of the annual or special meeting at which the election is to occur. Such candidates will be added to the Nominating Committee Slate for positions on the Board of Directors. Signatures for purposes of this Section shall be deemed valid unless challenged prior to or as of the date of the election. Said elections shall be for the three (3) successor Directors not appointed by the Board of Selectmen and the Superintendent.

### 4. Removal of Directors, Vacancies

Any Director who fails to attend three (3) consecutive meetings of the Board of Directors without reasonable excuse may be removed from the Board of Directors by a majority vote of those Directors present and voting at a regular or special meeting of the Board of Directors. Elected Directors may also be removed for cause by a vote of three fifths (3/5) of members voting at a duly noticed meeting having a quorum of members present. Any Director proposed to be removed shall be entitled to at least ten (10) days notice in writing with statement of cause by mail of the meeting of the Board of Directors, or meeting of members, as applicable, at which

such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Directors, or meeting of members, whichever is applicable, at such meeting prior to such vote for removal taking place.

Any vacancy on the Board of Directors shall be filled by the Board of Directors until the next scheduled election, except that appointed Directors shall be replaced by the appointing authority. Such a replacement Director shall serve until the end of the unexpired term of the person whose absence caused the vacancy to exist. Further to removal of appointed Directors, see Art. 3, section 2 above.

#### 5. Disqualification

No member of the Corporation's staff or applicant for a position with the Corporation shall serve as a member of the Board of Directors. No immediate family member of the Corporation's staff shall serve as a member of the Board of Directors nor shall any immediate family of a member of the Board of Directors be an employee of the Corporation.

#### 6. Schedule of Meetings

The Board of Directors shall hold at least three (3) regular directors meetings during each fiscal year of the Corporation.

The Board of Directors may hold special directors meetings whenever requested by the President or two fifths (2/5) or more of the Directors.

The Clerk shall cause written notice of the regular and any special directors meetings to be mailed or delivered to each Director at least five (5) days before the date of the meeting, unless all of the Directors attend or sign a written waiver of notice.

#### 7. Meetings Open to the Public

Notwithstanding the private charitable status of the Corporation, meetings of the Board of Directors shall be open to the public in accordance with the provisions in Chapter 39, Section 23A and 23B of the General laws of the Commonwealth which governs when certain governmental agencies may hold closed meetings and is adopted for purposes of this section only as a guideline for the conduct of meetings of the Board of Directors. Whenever the Board of Directors determines to hold a closed meeting, it shall publicly specify its reasons for closing the meeting. However, the posting of notices of meetings and notices to Directors shall be in conformity with these Bylaws and not the requirements of M.G.L. Chapter 39.

#### 8. Quorum of Directors

A majority of the Directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board of Directors, the



Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

9. Action of the Board of Directors

The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Corporation's Articles of Organization or these Bylaws.

10. Compensation of Directors

Directors shall not be compensated for their services as Directors other than the reimbursement of reasonable and necessary expenses incurred in the performance of such services.

**Article Four  
Officers**

1. The Board of Directors of the Corporation shall appoint the initial officers of the Corporation from among the Directors of the Corporation. The officers of the Corporation shall consist of a President, Secretary (also known as Clerk), Treasurer, and such other officers as the Board of Directors may deem desirable. All officers shall be elected by the Board of Directors from the Board of Directors. No person shall hold more than one office at any one time. Each officer of the Corporation shall be elected annually at the meeting following the annual meeting and shall hold office until the meeting following the annual meeting of the corporation, or special meeting held in place thereof, and thereafter until his or her successor is chosen and qualified.

The Board of Directors may remove from office any officer by a vote of three fifths (3/5) of its entire number then in office. A vacancy in any office may be filled by vote of the Board of Directors. Officers shall not be compensated for their services as Officers of the Corporation. Removal from office shall not result in removal from Directorship unless in accordance with rules governing same.

2. President

The President shall preside at all meetings of Members and Directors. The President shall nominate the chairpersons of all other committees.

3. Secretary

The Secretary (Clerk) shall issue notices of all meetings of the Board of Directors, and shall send such official notices as may be directed by the Board or required



pursuant to these Bylaws. The Secretary shall also be responsible for all general correspondences of the Board and in general performing all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him/her by the President or by the Board of Directors. The Secretary shall take or be responsible for the taking of minutes of all meetings of the Board of Directors and meetings of the Members called in accordance herewith.

#### 4. Treasurer

The Treasurer shall be responsible for the custody of the corporate funds; keeping full and accurate accounts of receipts and disbursements to the Corporation; depositing all monies in the name of the Corporation in an institutional interest bearing account, and in such depositories as may be designated by the Board of Directors; and shall furnish a quarterly or monthly financial statement and an annual statement of all receipts and disbursements of the Corporation to the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond, and the Board reserves the right to require or otherwise provide for a bond for other members of the Board of Directors.

### **Article Five Committees**

#### 1. Standing Committees

The Standing Committees of the Board of Directors shall include a Finance and Fundraising Committee and a Nominating Committee as described below, and may include additional Committees as determined by the Board of Directors.

#### 2. Appointment and Duties of the Standing Committees

Committee chairpersons shall be nominated by the President and elected by majority of the Board of Directors. The members of each standing committee shall be nominated by the President, after consultation with the chairpersons of such committee. The Board of Directors shall elect members so that committee composition shall reflect the diversity of interests and neighborhoods in the Town of Townsend. Committees shall develop relevant policy recommendations for Board consideration. Chairpersons of Committees are responsible for keeping minutes of their meetings and furnishing reports as requested.

#### 3. Finance and Fundraising Committee

The Finance and Fundraising Committee shall review the annual financial statements, approve annual reports; and recommend to the Board the selection of, and fees to be paid to accountants for the Corporation. It shall be the responsibility of the Finance and Fundraising Committee to report to the Board of Directors whether the Corporation is meeting its projected budget; on the scope and adequacy

of the audits and related fees; and to continually monitor and report to the Board of Directors on the effectiveness and adequacy of the Corporation's internal accounting controls. The Finance and Fundraising Committee shall develop and recommend to the Board the annual budget, and shall regularly monitor the Corporation's expenses, and income.

The Finance and Fundraising Committee shall develop and implement fundraising strategies for the Corporation. The Committee shall recommend to the Board of Directors various fundraising plans as needed, and upon the adoption of a fundraising plan by the Board of Directors, the Committee shall enlist Members of the Board of Directors, officers, Members and other volunteers to assist in the implementation of specific projects. The Committee shall meet regularly to monitor the Corporation's fundraising status and to review grant proposals.

#### 4. Nominating Committee

The Nominating Committee shall select candidates for election to fill vacancy(ies) of the elected Directors of the Board of Directors. The Nominating Committee shall be charged with soliciting the names of nominees for the Board of Directors from the general membership and with the preparation of a slate of candidates to fill such vacancy(ies) as elsewhere herein provided in Article Three.

#### 5. Other Committees

The Board of Directors may, by majority vote, create such other committees and delegate such responsibilities to those committees as shall be considered desirable and permissible from time to time.

### **Article 6 Miscellaneous Provisions**

#### 1. Fiscal Year

Except as from time to time otherwise determined by the Board of Directors, the fiscal year of the Corporation shall be the twelve (12) months ending June 30 of any given year.

#### 2. Annual Financial Review

The account books of the Corporation shall be reviewed annually by an independent certified public accountant retained by the Board of Directors, and the report of such accountant shall be filed with the records of the Corporation.

#### 3. Execution of Corporate Instruments

Mortgages, bonds, notes, checks, other evidences of indebtedness and such other instruments as the Corporation may issue in the conduct of its business shall carry the signature of the President and such other officer or officers the Board of Directors may from time to time determine by resolution. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

#### 4. Amendments

Any part or all of these Bylaws may be altered, amended or repealed from time to time by a two-thirds vote of the Board of Directors present at a regular or special meeting of the Board duly called for that purpose, provided that notice of the substance of the proposed alteration, amendment or repeal shall be stated in a notice for such meeting mailed to the Board of Directors no less than ten (10) days before such meeting. Any such changes must be ratified at the next scheduled annual meeting. Notice of such proposed changes must be provided with the notice of annual meeting pursuant to Section 5 of Article 2 herein. Any such amendment shall be subject to prior approval of the Board of Selectmen in its capacity as License Issuing Authority; provided however, if following forty-five (45) days from receipt of written notification of the proposed amendment and its text said Issuing Authority takes no action, the amendment will be deemed approved. Any amendment to the Articles of Organization shall be subject to same requirements as above; and subject further to membership approval by a vote of two-thirds of the members; and subject to the members also having such rights as set forth in Mass. General Laws c. 180, s.7 with respect to amending the Articles of Organization by a vote of two-thirds of the members.

#### 5. Conflict of Interest

No Director or officer of the Corporation may participate in the evaluation, review and approval of any application for a grant or any other matter in which he or she has a direct personal interest.

All grants and other transactions shall be conducted at arm's length and shall not violate the proscriptions in the Articles of Organization, these Bylaws, or any other applicable prohibition against the Corporation's use or application of its funds for private benefit. No such loan or transaction shall be entered into if it would result in denial of or loss of tax-exempt status under Section 501(c)(3) or other applicable sections, if any, of the Code and its regulations as they now exist or as they may be hereafter amended.

#### 6. Seal

The Board of Directors shall approve and adopt a corporate seal, which shall have inscribed thereon the name of the Corporation and the state of incorporation and the



words "Corporate Seal." The seal shall be stamped or affixed to such documents as may be prescribed by law or custom or by the Board of Directors.

7. Non-Discrimination

Selection of the Board of Directors, officers of the Corporation, Members, volunteers and staff as well as operational practices shall not be based on race, color, religion, age, national origin, gender, disability or sexual preference.

8. Agreements with other Municipalities and Access Entities

The Corporation may enter into agreements with other municipalities, access corporations or cable television licensees to provide cable television access services and to share resources, including but not limited to facilities, equipment and staff and other resources, and enter into other agreements to carry out activities consistent with the purposes of the Corporation. Such agreements should provide necessary resources to the Corporation to serve the particular municipality in question. In the event that such agreements involve occasional transactional cooperation and collaboration including but not limited to sharing of occasional programs or occasional technical assistance, equipment and resource exchange, such agreements shall not require the prior approval of the Board of Directors or Board of Selectmen. In the event that such inter-municipal or inter-entity agreements involve a formal joint venture, formal partnership or contractual relation resulting in a change in the intended mission, audience or membership of the Corporation or otherwise resulting in other municipalities or other studio or programming entities having regular benefit or use of assets or resources of the Corporation, such agreements must be approved by the Board of Directors and the Board of Selectmen.

9. Personnel Policies

The Board of Directors shall be charged with developing the Corporation's personnel policies, job descriptions and advertisements, reviewing and evaluating staff salaries and benefits and the performance of the Executive Director and shall be responsible for related personnel matters and grievances and coordinating the hiring of the Executive Director. Notwithstanding the foregoing, the Board may at any time create a Personnel Committee pursuant to Section 9 of this Article.

10. Annual Report

The Corporation shall prepare an Annual Report of operations and budget and copies of same shall be available to the public. Upon written request of the Board of Selectmen or its designee, the Corporation shall provide the Board of Selectmen, for advisory purposes only, opportunity to review and discuss the Corporation's budget. The Corporation shall participate in hearings to be conducted by the Board of Selectmen or its designee to discuss for advisory purposes the Corporation's operations.

## **Article 7**

### **Indemnification**

To the fullest extent permitted by Chapter 180, Section 3 of the Massachusetts General Laws as it exists or may be amended each Officer, and the Directors of the Corporation shall be indemnified by the Corporation against any and all claims and liabilities to which he/she becomes subject by reason of his/her being or having been an Officer or Director, whether or not he/she continues to be an Officer or Director at the time of the adjudication of such claim or liability. The Corporation shall also indemnify such Officer or Director for any and all legal and other expenses reasonably incurred by him/her in connection with any actual or threatened action, suit or proceeding to which he/she may be made a party by reason of his/her being or having been such an Officer or Director, whether or not he/she continues to be an Officer or Director at the time of incurring such expenses. No Officer or Director shall be indemnified against any action, claim suit or proceeding in which he/she shall be finally adjudged liable by reason of his/her own negligence or willful misconduct; and no such Officer or Director shall be indemnified against the cost of any compromise or settlement of any such alleged claim or liability, unless said compromise or settlement shall be approved in advance by the Board of Directors.







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Attorneys at Law

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Newburyport, MA 01950  
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## MEMORANDUM

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**TO:** JIM KREIDLER, TOWN ADMINISTRATOR  
TOWN OF TOWNSEND

**FROM:** ADAM J. COSTA, ESQ.  
BENJAMIN W. TAYLOR, ESQ.  
MEAD, TALERMAN & COSTA, LLC

**SUBJECT:** LIST OF STATUTES GOVERNING MUNICIPAL CONTRACTS

**DATE:** AUGUST 12, 2020

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Reference is made to the above-captioned matter. In that connection, you requested from us, on behalf of the Board of Selectmen, an overview of governing statutes for all types of municipal contracts with particular attention paid to the length of term by type. As you know, officers of cities and towns have only such powers to bind their municipalities by contract as are conferred by express terms or necessary implication of statutes.<sup>1</sup> Below, please find a list of these statutes.

G.L. c. 30B

Generally speaking,<sup>2</sup> governs the procurement of goods and services. Contracts governed by Chapter 30B are limited to three (3) years in length unless authorized to be longer by a majority town meeting vote. The three-year limitation does not apply to contracts related to real property. Please note that Chapter 30B governs the process for procurement of leases but does not govern length.

G.L. c. 40, § 3

Governs the length of municipal leases. Unless there is town meeting authorization, leases must be 30 years or less. Leases for schoolhouses currently in use must be for 25 years or less.

G.L. c. 149

Governs building construction contracts. In practice, these are frequently referred to as "vertical construction contracts," meaning literally that they apply to projects where something is to be built upward, e.g. a new building. There is no stated time limit on these contracts.

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<sup>1</sup> 18B Mass. Practice, Municipal Law and Practice § 29.1 (5th ed.).

<sup>2</sup> Please note that there is also an extensive list of exemptions to Chapter 30B that is too numerous to list here. For said list, see either Chapter 30B itself or the Office of the Inspector General's Chapter 30B Manual. Some exempted contracts we frequently see are contracts with State agencies or with other municipalities; contracts for architectural and engineering services; and contracts for snow plowing services.

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*Millis Office*

730 Main Street, Suite 1F  
Millis, MA 02054  
Phone 508.376.8400



G.L. c. 30, § 39M

Governs public works projects. These are frequently referred to as “horizontal construction contracts,” meaning literally that they apply to construction of projects other than buildings or structures. There is no stated time limit on these contracts. Said law also governs the purchase of construction materials that do not include any associated labor.

G.L. c. 150E

Governs collective bargaining and limits these contracts to three (3) years.

G.L. c. 41, § 108

Governs several types of personal services contracts. And limits them to three (3) years with the exception of the position of town manager or administrator, see G.L. c. 41, § 108N, which is authorized to be negotiated for “a number of years” (thereby providing flexibility for the parties to choose 1, 3, 5 or any other number of years).

Again, while the above list includes some of the most frequently cited and used statutes relating to municipal contracts, it is not an exhaustive list.

Should you have other or further questions, please do not hesitate to contact us by telephone, at 978.463.7700, or via e-mail, at either [adam@mtclawyers.com](mailto:adam@mtclawyers.com) or [ben@mtclawyers.com](mailto:ben@mtclawyers.com)





5.1.4.2

First Responder cost, including

A. Direct staffing cost- Overtime, additional hire, and/or backfilling staff who test positive.

Police	\$	2,686.24	Facilities	120.05
Fire	\$	31,706.24	VBB	27000
			<b>Total</b>	<b>\$ 61,512.53</b>

B. Quarantine/isolation costs for first responders who may be infected and should not put household members at risk - or who should be kept apart from potentially infected household members.

Fire	\$	2,900.00
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Temporary staff to backfill sick or quarantined municipal employees.

Fire	\$	11,988.00
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Staff for compliance and reporting associated with this funding.

Accounting	\$	1,607.00
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Accelerated telework capacity- infrastructure, subscriptions for meetings services, hardware (laptops)

Police	\$	9,000.00	Assessors	\$	2,000.00
Building	\$	17,000.00	Library	\$	1,368.58
COA	\$	769.76	Water	\$	60.00
BOH	\$	1,000.00	BOS	\$	1,440.00
Treasure/Collector	\$	1,000.00	town hall	\$	50,000.00
COA	\$	5,760.00	<b>Total</b>	\$	<b>89,398.34</b>

Zoom- \$20/m x 6 m=\$120/user x 12 accounts= cameras screens speakers Memorial hall

Hiring and training, including training for employees and contractors hired for COVID-19 response.

PPE, including first responders, grocery store employees, gas station attendants and other who interact with the public

Recreation	\$	16,879.20	Town clerk	\$	1,035.00
Police	\$	6,269.49	Library	\$	706.28
Fire	\$	2,403.29	Water	\$	19.21
Building	\$	234.00	Facilities	\$	5,000.00
COA	\$	1,388.34	<b>Total</b>	\$	<b>33,934.81</b>

Sanitation and refuse collection

Food inspection

Cleaning and disinfection of public buildings

Recreation	\$	6,519.00	Library	\$	47.80
Police	\$	2,500.00	Water	\$	89.76
COA	\$	912.00	Cemetery	\$	75.73
Town Clerk	\$	200.00	Fire	\$	135.21
Facilities	\$	30,700.00			

(3-PT cleaners @ 19hrs @ \$20 @ 6 months plus two to Total \$ 41,179.50  
tent not funded from other sources, including:

A. Planning and development, including IT costs

B. Incremental costs of special education services required under individual education plans (IEPs) in a remote, distance, or alternative location

C. Food for families that rely on food through the school system

Costs of debt financing related to COVID-19 investments - short-term borrowing and construction carry costs

Health insurance claims costs in excess of reasonably budgeted claims costs, and directly related to COVID-19 medical costs.

CORE MUNICIPAL SERVICES SUB-TOTAL \$ 208,585.37

PUBLIC HEALTH MISSION

Boards of Health staffin needs - to the extent not addressed with public health funding.

Use of public spaces/buildings as field hospitals

Shelter for those who are homeless or otherwise have nowhere they can go without significant risk to themselves or other household members, and are at high risk or recovering from COVID-19

Food banks/food pantries - need to be tied to COVID-19

Travel expenses- for distribution of resources

COA 270.53

Transporting residents to COVID-19 medical testing appointments

Sinage and communication including taranslation services

town Clerk	48.83
Cemetary	9.24
Town Hall	4000
Total	4058.07

Educational materials related to COVID-19

2500

Testing for COVID-19

EXPANDED PUBLIC HEALTH MISSION SUB-TOTAL 6828.6

TS TO RESIDENTS IN THEIR HOMES

Grocery and /or meals delivery - modeled on COA activities.

COA 2370

Wellness check-ins with vulnerable elders

Short-term rental or mortgage support

Prescription drug delivery

SERVICES AND SUPPORTS TO RESIDENTS SUB-TOTAL 2370

Other

Civilian Alert System	\$ 4,000.00
Radar Message Board	\$ 17,000.00
Scheduling Software	
Fingerprint/palm print scanner AFRS compliant	
Barricades/Traffic direction and Control	
Polaris Law Enforcement Ranger Rescue Vehicle	\$ 9,335.00
Event Tent - COA	
picnic tables - COA	\$ 850.00
Heavy Duty Carts-COA	\$ 1,500.00
Program expenses- COA	\$ 880.00
Plexiglass Counter Protector (12 @ \$200)-Facilities	\$ 2,400.00
Town Hall Access Control Intercom System	\$ 10,000.00
Barrier Counters (Clerk and Landuse)	\$ 5,000.00
Dutch Door w/ Shelf-BoS	\$ 2,000.00
Town Meeting Tent Set-up and Rental	\$ 3,357.00
Town Meeting Sound Set up and Rental	\$ 2,500.00
Town Clerk- vote by mail ballots	\$ 2,925.00
Town Clerk- Ballot Box	\$ 200.00
Fire Chief - Ambulance Power Load System	\$ 56,867.30

OTHER SUB-TOTAL \$ 119,314.30

Total Expenditure Request \$ 337,098.27







Office of the  
BOARD OF SELECTMEN  
272 Main Street, Townsend, Massachusetts

5.1.4

Wayne Miller, Vice-Chairman

Don Klein, Clerk

James M. Kreidler, Jr.,  
Town Administrator

**COVID-19  
PHASE ONE  
PROTOCOLS FOR EMPLOYEES RETURNING TO WORK**

We have drafted the following protocols and procedures in order to ensure a safe and healthy re-opening of the public buildings in the Town of Townsend.

These protocols, as well as information and training about COVID-19, social distancing, and the proper use of personal protection equipment, will be given to each employee upon their first shift upon reopening.

Effective, June 17, 2020, Town employees shall return to work during their assigned shifts.

Shifts will be assigned Monday-Friday and will allow for the minimum number of employees needed to operate the department. The number of employees shall not exceed 25 percent of the office per the Governor's Order for Phase 1. On the days that an employee is not assigned to their office, the employee will either work from an assigned remote location in the building or will be allowed to telecommute and certify their work attendance during their regularly scheduled hours. Department Heads shall be tasked with staffing their offices in accordance with departmental and employee needs with the approval of the Town Administrator.

Town Buildings shall remain closed to the public until future notice. Town Buildings will open to the public in accordance with the protocols outlined later in this document and in adherence with the guidelines and restrictions developed by the Commonwealth of Massachusetts at a later date.

These protocols shall remain in place until so ordered by the Board of Selectmen in coordination with the Board of Health.

**Self-certification**

Prior to the start of each work day or shift, the employee shall self-certify to their supervisor that they:

- Do not feel ill in any way, have no signs of a fever or a measured temperature of more than 100.3 degrees, a cough, trouble breathing within the last 24 hours, new loss of taste or smell, headache, chest tightness, chills, body aches, sore throat or muscle pain.



- Have had no known close contact with an individual diagnosed with COVID-19
  - Close contact is defined as:
    - Living in the same household;
    - Caring for a positive COVID-19 patient;
    - Being within 6 feet of a person for more than 10 minutes who has tested positive or coming in direct contact with secretions
- Have not been asked to self-isolate or quarantine by their doctor or a local public health official.

Employees who are exhibiting symptoms or unable to self-certify will be directed to leave work and seek medical attention. They are not to return to work unless cleared by a medical doctor or the Public Health Nurse.

### **Procedures while at work**

- Employees who leave their personal work space or who are interfacing with other employees shall wear a face covering over their mouth and nose.
- Shaking hands or other unnecessary physical contact is prohibited.
- Employees are encouraged to wash their hands often with soap and water for at least twenty seconds.
- A no congregation policy is in effect; individuals must implement social distancing by maintaining a minimum distance of 6 feet from other individuals.  
Avoid face-to-face meetings. Any face-to-face meetings that must occur should follow social distancing guidelines and the use of face coverings if a minimum of 6' distance cannot be maintained. No meetings of more than 10 people will be permitted.

Committee and Commission meetings should be done electronically. Committees and in compliance with the Open Meeting Law. Gatherings of more than 10 are not allowed under the Governor's restrictions making in person meetings attended by the public not currently feasible.

- All work crew meetings shall be held outside or remotely and follow social distancing.
- Work crews shall be kept six feet apart at all times to reduce the potential for virus transmission.
- Employees must maintain social distancing separation during breaks and lunch. If you eat lunch in a common area, please clean up after yourself and clean the area with a disinfecting cleaning wipes which will be supplied. One person per table in the lunchroom at a time. Employees are encouraged to eat in their private office.
- Employees should not touch anything in another employee's work space.
- Mail- Gloves shall be worn when opening mail. Mail should not be delivered to each office, but should be left in the mail room. Employees should wash hands after handling mail.





- Shared space (copy room, printers): Only one employee shall enter the copy room or approach the printer at a time. Masks should be worn in those areas. Touch screens should be wiped down before and after use.
- Elevator: Only one person shall enter the elevator at a time and the elevator buttons should be wiped down after each use.
- Employees shall not be allowed to bring children to work.
- The Town continues to urge employees to avoid out of state recreational travel and will only consider business travel on a case by case basis.
- Protocols for Information Technology support
  - Provide remote support when possible
  - Walk people through troubleshooting on the phone when possible
  - Schedule in-person support by appointment when necessary.
  - Protocol for staff person to disinfect their equipment and workspace before IT arrives. Remove all personal items. Disinfect keyboard, mouse, and any surfaces IT need to touch.
  - Protocol for IT staff to disinfect equipment and workspace when finished. Disinfect keyboard, mouse, and any surfaces IT need to touch.
  - Follow all PPE guidelines. Wear mask and gloves. Use keyboard and mouse cover. Remove and clean when finished. Use stylus for any phone or touchscreen interaction.
  - Plastic sheathing will be placed on keyboards that are accessible to the public and cleaned after every use.

### **PROTOCOL FOR EMPLOYEES WHO EXHIBIT SYMPTOMS WHILE AT WORK**

- Any employee who experiences symptoms while at work or outside of work should contact their primary care physician and get tested as soon as possible to determine appropriate protocols and contact tracing.
- The Town will have an Isolation, Contact Tracing, and Communication plan posted for the unlikely situation that a worker is diagnosed as positive with COVID-19 at work, or comes into close contact (within 6 feet for 10 minutes or more) with an individual diagnosed with COVID-19.
- If an employee exhibits symptoms of COVID-19 or reports feeling ill in any way, the Department Head may ask the employee about their symptoms, the most common symptoms include, but are not limited to fever, chills, cough, shortness of breath, sore throat, loss of taste or smell, chest tightness or body aches/muscle pains.
- Department Heads should keep the information confidential and prepare to send the employee home. If the employee is not wearing a mask, they should be given one, along with gloves and accompanied out of the building.



- The Department Head should make arrangements to ensure that the employee may safely leave the building with their necessary personal belongings, such as bags, car keys, etc., having minimal contact with other employees or the public.
- The Department Head should also ask the employee who they have had contact with at work for the previous 48 hours prior to showing symptoms. The people identified as close contacts may need to self quarantine.
- Once arrangements have been made, the employee, if able, should directly leave the building and quarantine at home until they can receive medical advice regarding their symptoms.
- They will also inform their supervisor where they have travelled in the building and the Town will follow the CDC guidelines for cleaning and disinfecting the work area of the employee and areas they travelled.
- The work area of the employee will be closed. Outside windows and doors will be open to increase air circulation. If possible, the Town will wait 24 hours before the area is cleaned.
- All areas used by the person who is sick will be cleaned by a professional cleaning crew and disinfected and if necessary the area will be vacuumed using a high-efficiency air filter.
- The employee should isolate at home and contact their primary care physician for testing. The test results will need to be shared so identified close contacts at work can be quarantined. Medical clearance will be needed to return to work.

### **Cleaning and Cleanliness**

- Daily logs will be kept and initialed by the Maintenance and Cleaning staff for certification of frequent cleaning of common areas; such as bathrooms, counter surfaces, door knobs, floors, carpets, tables, chairs.
- Personal items like pens and phones should not be shared among staff. Pens at common areas should be kept in a container after use and disinfected.
- Staff is expected to clean and sanitize their personal work spaces.
- Employees will be given cleaning supplies and training for their work spaces.

### **Vehicles/Equipment/Tool use**

- All vehicles must be disinfected before and after each use. A log shall be kept and initialed inside each car.
- All efforts will be used to assign the same vehicles and tools to the same employee each day.

## **PROTOCOLS FOR AN EMPLOYEE THAT HAS TESTED POSITIVE**

If an employee is diagnosed with COVID19 then they may not return to work until they have completed the required isolation protocols as listed below. If an employee is notified while at work that they have tested positive for COVID19 then they must follow procedures listed above in **“Protocol for Employees Who Exhibit or Experience Symptoms While at Work”** and immediately begin the required isolation procedures. They must also notify the local Board of Health where they reside and contact tracing will begin.





Depending on whether someone has symptoms or not plays a role in determining the time frame of isolation for COVID19. Also, everyone's course of illness varies and while some may be back to work in a week, others may take 2-3 weeks to recover. It really falls on when they are not considered infectious anymore.

Any employee who develops symptoms outside of work should notify their supervisor of their symptoms as well as the last day they worked. Close contacts at work for the 48 hours before symptoms started should be identified and will need to self-quarantine for 14 days. Close contacts are also recommended to get tested as soon as possible.

Positive Case with Symptoms: Return to work is at the earliest 10 days from symptom onset. They must be at least 10 days from when symptoms started AND fever free with no fever reducing medication for 72 hours, AND have overall improvement of other symptoms.

Positive Case with NO symptoms: Return to work is at the earliest 10 days from test date. They must be at least 10 days from when they were tested. If they develop symptoms while isolating the 10 days resets and begins from when the symptoms started AND they need to be fever free with no fever reducing medication for 72 hours, AND have overall improvement of other symptoms.

Clinically Diagnosed Case: This is someone who did not get tested, but has symptoms of COVID19 or someone who has symptoms, got tested, but tested negative. These people are treated the same as a Positive Case. Symptom onset date is considered day zero. The same criteria as above still needs to be met.

Quarantined: For individuals who have been exposed (close contact) to a positive case but do not have any symptoms. This is 14 days for everyone. This does not change if someone tests negative. This is the incubation period of the virus from exposure to potential symptom onset. Someone who is exposed to the virus can develop symptoms anywhere from 2-14 days from the exposure, so we use the longest time frame. It has been shown that people can be infectious before they actually start having symptoms so quarantining of close contacts for the full 14 days is so important to limit the spread of this highly infectious virus.

Quarantined and Develops Symptoms: If you have an exposed close contact who starts showing symptoms, they need to get tested and isolate at home. They won't be able to be released from isolation until they have met the 10 day from symptom start/3 day fever free/meds free and improvement of symptoms time frame. They do not continue with the quarantine time frame, because they have developed symptoms, and now fall into the isolation category. If they test positive or negative, the same above criteria need to be met.

If an employee is diagnosed with COVID 19 and has been at work within the 72 hours prior to being diagnosed, then all the areas that the employee was in will be cleaned and sanitized by a professional cleaning company. All hard surfaces (desk, computer equipment, etc) in the employees office will be sanitized and all the common area equipment (door knobs, counters, copiers, etc) and other areas such as break rooms and bathrooms will also be cleaned and sanitized.



Other staff - Any staff who were within 6 feet of the employee for more than 10 minutes may be determined to be a close contact and may have to follow quarantine procedures.







## Townsend Public Library Board of Trustees

The following document is considered to offer guidance for the communication of COVID-19 related procedures to employees of the Townsend Public Library under the guidance of the Library Director.

### **To Employees**

Employees are expected to self-evaluate for COVID-19 symptoms before proceeding to work on any given day. If you have had symptoms associated with COVID-19, or have tested positive for COVID-19, or have had close contact with an infected person, you must inform the Library Director as soon as possible so that proper precautions may be taken to protect others. Your privacy will be protected as directed by the Health Insurance Portability and Accountability Act (HIPAA).

### **COVID-19 Workplace Health Screening**

Employee self-checklist prior to leaving for work. Based on current CDC recommendations.

In the past 24 hours, have you experienced:

- Fever – please take your temperature prior to leaving for the library if you are feeling feverish
- New or worsening cough
- Shortness of breath
- Chills or repeated shaking with chills
- Muscle Pain
- Headache
- Sore Throat
- Diarrhea
- New loss of taste or smell

If you answer “yes” to any of the symptoms listed above, or your temperature is 100.4 F, please do not go to the Library. Self-isolate at home and contact your primary care physician for direction. You must have 3 days without fever and improvement in respiratory symptoms to return to work.

### **Situations Requiring Action**

Employees should notify the Library Director if any of the following situations apply to them. The Library Director will work to plan “Next Steps” as described below.

Close Contact = CDC states that a close contact is *someone who was within six feet of an infected person for at least 15 minutes starting from 48 hours before illness onset until the time the [infected person] is isolated. This includes direct physical contact with – or being coughed or sneezed on by – an infected person.*)

MA DPH = Massachusetts Department of Public Health



### **Situation 1**

An employee has tested positive for COVID-19 (confirmed diagnosis of COVID-19)

**OR**

An employee is experiencing any symptoms links to COVID-19 (presumptive diagnosis of COVID-19). The presumption remains in place unless testing indicates a negative result

### **Situation 2**

An employee shares a household with or has had close with an infected person (including the period 48 hours before becoming symptomatic).

### **Situation 3**

An employee or a member of their household has traveled to a location that means quarantine rules under MA COVID-19 Travel Regulations apply. MA travel guidelines change frequently, please refer to link below for updated information as necessary

<https://www.mass.gov/info-details/covid-19-travel-order>

### **Situation 4**

An employee shares a household with or has close contact with a person who, in turn, has had close contact with an infected person (secondary contact)

## **Next Steps: Actions for Situations 1-4**

### **Situation 1**

- Send the employee home and recommend they contact their healthcare provider. If the employee is already working from home, require them to remain there.
- Library Director will initiate contact tracing and notify impacted employees and/or patrons.
- Library Director will contact Town Administrator and other boards as necessary.
- When sending employees home or notifying others, do not identify the infected person by name, as doing so would be a violation of confidentiality laws.
- Follow CDC guidance for cleaning and disinfecting.
- An employee who has been diagnosed with COVID-19 (positive test) or presumed COVID-19 may be allowed to return to the workplace following state public health guidelines, including the following conditions
  - The employee has self-isolated for at least 10 days AND
  - The employee has had no fever for at least 72 hours AND
  - The employee has been symptom-free for at least 72 hours**OR**
  - The employee chooses to be tested for COVID-19 to determine if they are still infected. This requires two negative tests in a row, from tests 24 hours apart, with no further close contact with infected persons.

### **Situation 2**

- If an employee has symptoms associated with COVID-10 following close contact with an infected person, considered a presumptive diagnosis of COVID-19, follow Situation 1 guidance



- If an employee does not have symptoms following close contact with an infected person, send the affected employee home and recommend they contact their healthcare provider.
- Library Director will initiate contact tracing and notify impacted employees and/or patrons.
- Library Director will contact Town Administrator and other boards as necessary.
- When sending employees home or notifying others, do not identify the infected person by name, as doing so would be a violation of confidentiality laws.
- Follow CDC guidance for cleaning and disinfecting.
- An employee who has had close contact with an infected person may return to work following MA DPH guidelines, including the following conditions
  - Require the employee be tested for COVID-19, no sooner than three days from the close contact occurrence. This requires two negative tests in a row, from tests 24 hours apart, with no further contact with infected persons. This would equate to a minimum of 5 days quarantine
  - If testing is not available, or if the employee chooses not to test, the employee must complete a 14-day quarantine as per MA DPH guidelines.
- Regardless of past or recent exposure to an infected person, or test results, an employee who is ill will not be allowed to come to the workplace. This would include situations where an employee has symptoms but a negative COVID-19 test.

### **Situation 3**

On a case-by-case basis, the Library Director will ensure that employees traveling outside of Massachusetts meet the current MA COVID-19 Travel Restrictions. Testing and/or quarantine similar to other situations may be required.

### **Situation 4**

On a case-by-case, the Library Director will assess when the employee can return to the workplace without increased risk to others. The nature of the employee's exposure and the employee's job duties and workplace circumstances will assist in determining when the employee can return to work without increased risk to other. Testing and/or self-quarantining may be required and MA DPH guidelines should be followed as necessary.

### **HIPPA Reminder**

Health information is confidential and under no circumstances should any information on an employee's health condition be shared. In cases where this is known to have occurred, the employee sharing the information should be reprimanded immediately. Employers are allowed to require COVID-19 testing of employees; however, these test results must at all times be treated as confidential.







Office of the  
BOARD OF SELECTMEN  
272 Main Street, Townsend, Massachusetts 01469

Wayne Miller, *Chairman*

Don Klein, *Vice-Chairman*

Veronica Kell, *Clerk*

James M. Kreidler, Jr., *Town Administrator*

(978) 597-1701

**TO: Board of Selectmen**  
**FR: Jim Kreidler, Town Administrator**  
**RE: Follow-up Question to Counsel on Ethics**  
**DT: August 14, 2020**

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**QUESTIONS TO COUNSEL:**

1. Is the approval or disapproval of a section 19 waiver under c. 268A a matter in which town counsel would opine or is that a policy and not a legal issue?
2. If an employee has a bonafide section 19 conflict and pursues a section 19 waiver does section 23 (b) (2) have any applicability or is a section 19 waiver, if approved by the appointing authority, curative?
  - More specifically, even with an approved section 19 waiver, would section 23 (?) prohibit the employee from conducting the evaluation of the subordinate employee/family member?
3. Do you have a standard form nepotism hiring document?

**ANSWERS FROM COUNSEL:**

1. Section 19 Waiver for Self-Dealing/Nepotism

Under exemption 19(b)(1), a municipal employee who first advises his/her appointing authority of the nature and circumstances of the particular matter, makes full disclosure of the financial interest and then receives, in advance, a written determination from the appointing authority allowing him/her to participate, may act in matters in which he or she would otherwise be prohibited from participating.

The determination that the appointing authority must make is whether the financial interest is substantial enough to likely affect the integrity of the services which the municipality may expect from the employee. First, such determination is in the sole discretion of the appointing authority. The Ethics Commission has no role in making the determination. Second, whether the appointing authority grants a Section 19 waiver (specifically, whether the family member(s)



financial interest is substantial enough to likely affect the integrity of the services which the municipality may expect from the official) is a policy matter and NOT a legal question. It is a determination that resides in the sole discretion of the appointing authority. Put another way, the Conflict of Interest Law provides no legal standard for making the determination; the appointing authority must decide on its own.

2. Section 23 Implications

Although somewhat redundant, the Ethics Commission has stated that, in addition to implicating Section 19, nepotism “raises concerns” under Section 23, as well. *See* Ethics Commission Nepotism Advisory 86-02. Specifically, Subsections 23(b)(2)(ii) and (3) prohibit a public employee from using his/her position to secure an unwarranted privilege of substantial value for him/herself, or for others, or from acting in a manner that would cause a reasonable individual to conclude that he/she is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

While the advisory does not explicitly state that both forms are required, we advise our clients to err on the side of caution and do so nonetheless.

3. Standard Nepotism Hiring Document

The Section 19 and Section 23 forms obviate the need for additional documentation.





**Carolyn Smart**

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**From:** Jim Kreidler  
**Sent:** Thursday, August 13, 2020 12:37 PM  
**To:** Veronica Kell  
**Subject:** RE: reports/documents to fellow board members

5.2

Veronica,

I am pleased to see your position that you will request docs from me or others and then request that I send things along to the other members individually.

As relates to the next part of your email below, please read this as an effort on my part to be clear about what I have written to you vis-à-vis the OML.

In my email to you of yesterday I did not, as you assert, "find [your actions] to be an intentional violation of the OML." You will see that I never made such an assessment but rather that I once again was providing advice regarding the potential dangers of members of multiple member boards communicating via email with a quorum of members on a matter that is before the board. I would encourage you to reread what I sent to you.

I have pasted it here:

**"You and I have addressed the requirements of the open meeting law in the short time that you've been on the board.**

**I strongly advise that you refrain from your repeat practice of copying your fellow board members on email communication. Violations of the open meeting law can be deemed to have been intentional by the Attorney General's Division of Open Government if they reoccur after having been advised re: the prohibition of serial communication of a quorum of a board, even via email, on a matter that is before the board.**

**Ultimately, you are an elected member of the Board of Selectmen and I am limited to advising."**

When I received your email questioning my advice, I sought the advice of counsel to be sure that the guidance that I was providing was sound. He replied as follows:

The Open Meeting Law (OML) defines "deliberation" as any "oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction..." Deliberations by a public body constitute a "meeting"; and, per the OML, "all meetings of a public body shall be open to the public."

The OML does exempt certain types of communications from the definition of "deliberation" and, consequently, from qualifying as a "meeting" that must be "open to the public." The term "deliberation" "shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed." The vagueness of these exemptions, or their rigidity, presents challenges. For example, while distributing of a meeting agenda is allowed, discussing or debating the inclusion of items on it is probably not. Likewise, and by way of further example, while distributing, outside of a meeting, reports or documents prepared by a third-party consultant is allowed, distributing a report or document prepared by a member of the public body may not be. In each of these instances, the latter, i.e. likely prohibited, conduct may be deemed to incorporate, maybe incidentally, the opinion(s) of a member.

*Because of the above, our recommendation, which I've communicated to Selectwoman Kell, is that refraining from e-mailing (or otherwise communicating) with or amongst a quorum of a public body is always safest. Exceptions might be made in instances where exclusion from the definition of "deliberation" is black-and-white, so to speak. But choosing to simply not communicate outside of a meeting, on meeting business, all but guarantees that on OML violation, however unintentional, occurs. (emphasis added)*

Part of my job is to advise the Board and its members regarding the law and in ways of limiting liability to the town. My efforts in this matter have been born of that responsibility.

Best,

Jim

James M. Kreidler, Jr.  
Town Administrator  
Townsend, MA 01469

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**From:** Veronica Kell <vkellbos@gmail.com>  
**Sent:** Thursday, August 13, 2020 10:20 AM  
**To:** Jim Kreidler <jkreidler@townsendma.gov>  
**Subject:** reports/documents to fellow board members

Jim,

From here on out, I will request the document from you, or whomever, and forward it to you to send out to the board once I have received it. That way we will all have whatever the document is prior to the meeting (which is the intent of the document request).

That should do it if the fact that the other BOS members have been cc'd is the issue that you find to be an intentional violation of the OML - even though there is no deliberation.

Thanks.

--

Veronica Kell  
Townsend Board of Selectmen