



Town of Sudbury

Select Board

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POLICY ON ACCESS TO TOWN COUNSEL AND CONFIDENTIALITY OF ATTORNEY-CLIENT COMMUNICATIONS

(Adopted 9/8/15, amended 7/14/2020)

It is the intent of this policy to set forth general guidelines and expectations on the accessibility of Town Counsel to Town boards, commissions and committees, and employees, consistent with the Town of Sudbury general bylaws, the Town charter (the Select Board-Town Manager Act) and state law. It is not the intent of this policy to explicitly or implicitly deny anyone access to Town Counsel but rather to control and monitor accessibility to Town Counsel, thereby understanding and controlling the cost of legal services.

- A. Boards, commissions and committees of the Town of Sudbury excluding the Select Board
 - a. Chairs of all boards, commissions or committees, other than the Select Board, shall request access to Town Counsel from the Town Manager to obtain legal advice, including a request for a written opinion, or to request Town Counsel to attend a meeting of such board, committee or commission. Any member of a board, commission or committee may request a written opinion from Town Counsel, provided that said member obtains a majority vote of said board, committee or commission at a public meeting authorizing the request of such opinion. After obtaining a majority vote as set forth in the preceding sentence, said request shall be submitted to the Town Manager for approval.
 - b. The Town Manager will refer all requests for opinions received from individual members of boards, commissions or committee to the chair of said committee, who will schedule the request for a vote of the board, commission or committee on the matter of approving such a request at the next meeting of said committee, when feasible.
 - c. Boards, commissions or committees may vote to authorize one member of the board, commission or committee to communicate directly with Town Counsel on a specific matter they have explicitly voted for that member to have responsibility for. For example, if a board appoints one member of the board to work on a policy item to be considered by the board, the board may include in their designation that this includes the ability to seek an opinion from Town Counsel as part of the work to be undertaken by that board member. Such vote of the board, commission, or committee must clearly reflect an authorization for the Town Counsel to speak directly with less than a quorum of the board, commission or committee on the specific matter. Such access to Town Counsel must be approved by the Town Manager.

- d. The chairs or vice-chairs of all boards, committees and commission shall have direct access to Town Counsel to request advice or assistance in preparation of the agenda for an upcoming meeting or for advice regarding chairing an upcoming meeting. They do not need to request access from the Town Manager on such inquiries.
- e. The chairs or vice-chairs of boards, committees or commission with the Town shall have direct access prospectively to Town Counsel to request opinions, advice or information concerning the Open Meeting Law codified at G.L. c. 39, section 23B or to receive guidance with respect to the rules governing responses to public records requests. They do not need to request access from the Town Manager on such inquiries.
- f. Officers of the Town, including all members of boards, commissions and committee requesting Ethics Opinions (Conflict of Interest Law) shall have direct access to Town Counsel. They do not need to request access from the Town Manager on such inquiries.
- g. The Moderator shall have direct access to Town Counsel to obtain legal advice, including a request for a written opinion, in relation to his/her duties as Moderator.

B. Select Board and Town Manager

- a. The chair of the Select Board shall have direct access to Town Counsel to obtain legal advice, including a request for a written opinion, or to request Town Counsel to attend a meeting of the board. Any member of the Select Board shall have direct access to Town Counsel to obtain legal advice or request a written opinion. Such requests shall be submitted in writing to Town Counsel with a copy to the Town Manager and the chair of the Select Board for notification purposes. The chair of the Board shall ensure that other Board members are informed of such requests and legal opinions.
- b. The Town Manager shall have direct access to Town Counsel at all times in relation to her/his duties as Town Manager.
- c. The chair of the Select Board shall have direct access to Town Counsel to request advice or assistance in preparation of the agenda for an upcoming meeting or for advice regarding chairing an upcoming meeting. The chair does not need to request access from the Town Manager on such inquiries.
- d. The chair or vice-chair of the Select Board shall have direct access prospectively to Town Counsel to request opinions, advice or information concerning the Open Meeting Law codified at G.L. c. 39, section 23B or to receive guidance with respect to the rules governing responses to public records requests. They do not need to request access from the Town Manager on such inquiries.
- e. All members of the Select Board requesting Ethics Opinions (Conflict of Interest Law) shall have direct access to Town Counsel. They do not need to request access from the Town Manager on such inquiries.

C. Town Meeting Issues

- a. Warrant articles for the Annual Town Meeting or Special Town Meetings sponsored by Town boards, committees, commissions or employees shall be drafted by the Town Counsel's office.
- b. Sponsors of warrant article(s), excluding petition articles, shall submit draft wording for articles or general background information that Town Counsel will use to write the article, and send it back to the sponsor for signature before submission to the Select Board's Office.
- c. Sponsors of petition articles for Annual or Special Town Meeting may submit draft articles to Town Counsel for legal review and guidance. Town Counsel will not draft articles for petitioners, but will be available for legal review and guidance. To obtain such legal review, draft petition articles must be submitted to the Select Board's office at least five business days prior to the deadline for article submission. Staff in the Select Board's office shall forward the draft petition article to Town Counsel for review.
- d. Town Counsel's office will write all motions for all articles for Annual or Special Town Meeting, working with the sponsors of all articles as needed in the judgment of Town Counsel.

D. Confidentiality of Attorney-Client Communications

The attorney-client privilege shields from the view of third parties all confidential communications between a client and its attorney undertaken for the purpose of obtaining legal advice. As a matter of policy, the Select Board hereby requires that the confidentiality of communications between town officials, departments, boards, and committees, and Town Counsel and Special Town Counsel be maintained and preserved. The scope of privileged communications includes communications from Town officials, departments, boards or employees seeking legal advice, as well as opinions and advice received from Town Counsel or Special Town Counsel, whether in formal written opinions, email, in person, or by telephone. The attorney-client privilege belongs to the Town of Sudbury, acting through its Select Board. The Select Board is the chief policy making body of the Town and is responsible, in conjunction with Town Counsel, for managing the legal affairs of the Town. Accordingly, only the Select Board, acting as a Board at a duly noticed meeting, is authorized to waive the attorney-client privilege on behalf of the Town. Should any town official, department, board, or committee believe that it is in the best interests of the Town to waive the attorney-client privilege with respect to any privileged attorney-client communication received from Town Counsel or Special Town Counsel, they should request to discuss the matter with the Select Board in executive session to obtain a vote by the Select Board as to whether or not said privileged communication may be released. No town official, department, board or committee is permitted on his or her or its own volition to release any confidential attorney-client communications to third parties or otherwise purport to waive the Town's attorney-client privilege.