

Welcome To Public Service:

*A Short Guide to Service
as an Elected/Appointed Official
of the
Town of West Hartford*



Prepared by the
Office of Corporation Counsel
Town of West Hartford

The very essence of a free government consists in considering offices as public trusts, bestowed for the good of the country, and not for the benefit of an individual or a party.

John Caldwell Calhoun

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

James Madison

The value of government to the people it serves is in direct relationship to the interest citizens themselves display in the affairs of state.

Attributed to William Scranton

In the long-run every Government is the exact symbol of its People, with their wisdom and unwisdom; we have to say, Like People like Government.

Thomas Carlyle

Run Away!

Monty Python

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INTRODUCTION

Whether you have just been elected to public office, or have volunteered to serve on one of the Town's many boards and commissions, you probably have several questions about your role. This guide is designed to answer some of the questions which we have been asked over the years. It also answers questions which we have *not* been asked over the years... but should have been. Please do not feel obliged to read this guide cover-to-cover. There will not be a quiz. Everyone comes to public service with a different degree of background knowledge and comfort with their new role and our objective is to fill in any gaps. We encourage you to familiarize yourself with the overall content of this guide and to consult it as you would any other reference material.

Of course, our staff are always available via telephone, e-mail or in person to answer any specific questions which you may have about your duties as a Town official. Your questions and our answers are generally protected by the attorney-client privilege as will be discussed further in this guide. Many times, however, people don't want to inconvenience staff or may feel embarrassed to ask questions to which they think they should already know the answer. Please do not feel at all uncomfortable about calling us. We would much rather have you ask a question in advance than try to fix an avoidable problem after the fact.

Because most boards/commissions meet during early morning or evening hours, you may not feel that someone is available to answer a question during one of your meetings. Hopefully this guide will provide you with enough information to allow you to proceed until you can get more detailed information from us. You may reach us using the following contact information. We encourage you to send any e-mailed questions to all three of us unless you have been working with a particular member of our office on a matter. Doing so will ensure that you get the fastest possible response from the person who knows the most about your particular question.

Joseph O'Brien
Corporation Counsel
50 South Main Street
West Hartford, CT 06107
(860) 561-7420
JAObrien@westhartford.org

Patrick G. Alair
Deputy Corporation Counsel
50 South Main Street
West Hartford, CT 06107
(860) 561-7422
pata@westhartford.org

Kimberly Boneham, Assistant Corporation Counsel
50 South Main Street
West Hartford, CT 06107
(860) 561-7424
kimberlyb@westhartford.org

WHAT AM I DOING HERE?

We would be happy to discuss issues of predetermination versus free will with you, but such metaphysical questions are beyond the scope of this guide. Consequently, our answer to this particular question focuses on your general duties as a Town official.

The Town of West Hartford elects its Town Council, Board of Education, Town Clerk and Registrars of Voters. Each of these elected officials have broad duties and powers which are spelled out in the Town's Charter and ordinances as well as in state law. In addition to our elected officials, however, the Town benefits from the service of nearly 150 appointees sitting on more than twenty boards and commissions. The duties of these agencies are much more subject-matter focused. Most of them are established by specific provisions of the Town's Charter or Code of Ordinances, though several *ad hoc* advisory groups also exist.

If you are reading this guide, you already have a rough sense of your role in Town government. Either you ran for office with a sense of what the duties of office would entail or you were asked to serve on a specific board/commission and were given some general description of your duties. Whatever your specific situation, we strongly encourage you to start your service by reading through the provisions of the Charter and/or Code of Ordinances which describe your duties in more detail. Our Charter and Code of Ordinances are available on-line. They are indexed and searchable by going to www.westhartford.org and following the link from the Town's main web page, or by going directly to that link at the General Code Publishing website:

<http://www.ecode360.com/?custId=WE0900>

The following boards and commissions are established in Chapter IV of our Charter and their duties may be found there:

Plan and Zoning Commission	¹ Zoning Board of Appeals ²
Board of Assessors	Board of Assessment Appeals
Board of Special Assessments	Library Board
Personnel Board	

¹The duties of the Plan and Zoning Commission are further discussed in Ch. XIII of the Charter and throughout Ch. 177 of the Code of Ordinances.

²The duties of the Zoning Board of Appeals are further discussed in Ch. XII of the Charter and throughout Ch. 177 of the Code of Ordinances.

The Town's remaining boards and commissions are generally described in individual articles within Ch. 4 of the West Hartford Code of Ordinances, as are the general ordinance provisions applicable to all boards and commissions. If you do not see your specific board or commission listed there, please feel free to call us and we will be happy to discuss your duties with you.

MEETINGS - THE FREEDOM OF INFORMATION ACT, ROBERT'S RULES OF ORDER AND OTHER SUNDRY MATTERS

Most of your duties will take place at meetings of your agencies. Generally, "meetings" are simply that: gatherings of the members of your agency to discuss issues or other matters within your jurisdiction. Some of you may hear presentations from other groups, hold public hearings or schedule public events. Regardless of the situation, these meetings are subject to legal requirements and traditional formal procedures. If you have never before been a member of a public body, some of the rules regarding how they operate may be foreign to you. While the following information may appear daunting at first, in practice it is actually not nearly as confusing as it may seem on paper.

A. The Freedom of Information Act

Whatever your duties may be, if you are a member of an official board or commission of the Town of West Hartford, you are a member of what Connecticut law defines as a "Public Agency." Please do not think - even for a moment - that "surely this doesn't apply to me." It does. Your agency is subject to the requirements of Connecticut's Freedom of Information Act (FOIA). While the FOIA contains many subtle nuances, its provisions can generally be divided into two simple groups: (1) Public Meetings; and (2) Public Records. We will address the "Public Records" concept later. For the time being let's concentrate on Public Meetings.

The FOIA covers much more than simply what constitutes a public meeting. It includes a number of procedural rules for the scheduling, management and recording of meetings so that the public can have access both to the meetings themselves and to a record of what happened. After all, a meeting is hardly "public" if no one can find out when it is going to take place, where it is going to be held or what happened.

1. What is a "Meeting"?

The General Rule: Quorum . In general, any time your agency gathers to conduct agency business, that event is a "Meeting" which is subject to the requirements of the FOIA. Of course, nothing in the law is ever quite that simple.

In the case of a board or commission with multiple members, the agency can generally only take official action by a vote of its members at a meeting where a *quorum* of those members is present. In the absence of a different rule, a quorum consists of a majority of the existing, appointed members of the agency *including* any members whose terms have expired, but whose successors have not yet been appointed.³ In other words, if the ordinance governing your agency provides that it shall have seven members, but only five have been appointed, a quorum is three. If a sixth member had been serving, but their term has expired, under our ordinances they continue to serve until their successor has been appointed. Consequently, they are counted toward establishing a quorum.

Exceptions to the Quorum Requirement. Logically, if a quorum of the members of an agency must be present to conduct agency business, then you would think that a gathering of *less than* a quorum of the members of an agency is *not* a “meeting” of the agency. Two sets of circumstances *may* constitute an exception to this logical assumption. The first situation is where an agency delegates its authority to a single member (or a subcommittee) to take action on a specific topic. Thus, for example, if a five-member board votes to authorize its Chair to listen to a presentation and make a decision, the meetings at which the Chair listens to the presentation and makes the decision may be “meetings” of the agency.

The second circumstance, which has become more commonplace in recent years, is what has come to be known as a “serial meeting.” This situation can occur in person, by telephone or by e-mail. Usually it starts innocently enough. One member calls another to ask a question or discuss an issue of business before the agency. As a result of this discussion, each of those two members call another member and continue the discussion. Eventually, a consensus decision has been made about agency business by the full membership of the agency without the members ever gathering together physically in one place. With the advent of e-mail, the notion of a serial meeting has become even more complex because of the possibility that multiple members of an agency can participate in a discussion at the same time and to the same degree as if they were gathered around the meeting room table. Indeed, the e-mail serial meeting scenario even blurs the distinction between the “public meeting” and “public record” provisions of the FOIA. These situations are almost certainly going to be viewed as “meetings” by the Freedom of Information Commission. For reasons which will be discussed further herein, these serial meetings almost always violate the requirements of the FOIA.

When is a meeting not a Meeting? Certain narrow categories of meetings are excluded from the scope of the FOIA altogether. These meetings are not considered to be “Meetings” under the FOIA at all. They are:

³An exception to this rule is the West Hartford Town Council which, pursuant to West Hartford Charter, Ch. III, §2 requires six members to establish a quorum.

- Any meeting of a personnel search committee for executive level employment candidates;
 - Any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business;
 - Meetings to discuss strategy or negotiations with respect to collective bargaining;
 - A caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency;
 - Communication limited to notice of meetings of any public agency or the agendas thereof.
- Note:* This is a clearly authorized exception to the general caution against “serial meetings.”
- A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act

Before relying upon any of these exceptions, we strongly urge you to consult our office in order to be certain that the law has not changed and that your interpretation of the situation is sound.

2. Before the Meeting

Regular and Special Meetings. Meetings of boards or commissions fall into two categories: “Regular Meetings” and “Special Meetings.” “Regular meetings” are held according to an adopted schedule. After adopting a schedule for regular meetings, the schedule must be provided to the Town Clerk and the first meeting may not be held for at least thirty days. Consequently, we recommend adopting the schedule in November so that your January meeting will not violate the 30-day requirement. “Special Meetings” are any *other* meetings which you may call during the course of the year as needed. For the most part, regular and special meetings are indistinguishable. The one significant difference relates to the importance of the agenda for the meeting.

The Agenda. Before any meeting is held, an agenda is prepared *and must be posted on the Town Clerk’s bulletin board at least 24 hours before the beginning of the meeting.*⁴ For purposes of this rule, only business days count, so a meeting to be held at 8:00 am on Monday morning must be posted before 8:00 am on the preceding Friday. This requirement applies to both regular and special meetings. Any action taken at an improperly noticed meeting is null and void.

The legal distinction between regular meetings and special meetings relates to the significance of the agenda. At a *regular* meeting a public agency may consider a matter

⁴The Town Council has adopted a more stringent rule requiring 48 hours notice prior to any special meetings of the Council or its committees.

which is not listed on its agenda, provided that it votes to do so by a 2/3 majority vote. Procedurally, a member moves to take up a matter not on the agenda, stating what that matter is. The body then votes on the motion before discussing the substance of the matter at all. If the motion passes by a 2/3 majority of those present, the agency can then proceed to discuss the substance of the issue. At a *special* meeting, however, *no* matters may be taken up by the agency except those listed on the agenda.

A sample agenda is appended to this guide. The Town Clerk's Office is working toward having a basic standardized agenda available as a "fillable form" for your use if you choose. You are not bound to use either of these forms. They are simply offered for your convenience.

3. The Meeting Itself:

Opening the meeting. The meeting of an agency is usually opened by the Chair. In the Chair's absence, the Vice-Chair or any other member of the agency may open the meeting. The first order of business should always be to take attendance. This serves a number of purposes. First and foremost, it allows the Chair to determine whether a quorum is present. Secondarily, under the Town's ordinances, if any member of an appointed board or commission is absent for three consecutive meetings, the Chair is *required* to notify the appointing authority of that fact. The appointing authority is then obliged to determine whether the member in question should be removed from their position or whether extenuating circumstances justify the repeated absences. A third, very practical reason for taking attendance is that some agency meetings are audio-recorded and the roll call allows subsequent listeners to more easily identify the various speakers.

On those rare occasions when the roll call demonstrates the lack of a quorum, the agency *cannot* take any formal action on its agenda items. The person presiding over the meeting simply declares a lack of a quorum and adjourns the meeting. Unless the meeting is to be cancelled altogether, the person adjourning the meeting should adjourn to a stated date, time and place. Notice of the new date, time and place for the meeting should be posted on the meeting room door within 24 hours. At this point the meeting is over and the minutes should end.

Public Participation/Executive Session : At the heart of the FOIA is a simple principle: The meetings of public agencies are presumed to be open to the public. There are, however, exceptions to this rule. Your meeting may not fall into one of the exceptions to the definition of "meeting" listed above, but certain subjects may still be discussed by the agency in private. These private portions of a meeting are referred to as an "Executive Session." For some reason, people occasionally use the term "Executive Session" to refer to the portion of a meeting where the agency votes on the agenda items before it. This is incorrect and the misuse of the term should be avoided because it has legal significance which may be misunderstood - particularly in the written minutes which are the ultimate

record of the meeting. Executive sessions can only be held after a 2/3 majority vote is taken by the body to go into executive session. The motion must clearly state the purpose for the executive session and it can only be for one or more of the following very narrow purposes:

- Discussion of the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, *unless* the individual in question insists that the discussion be held at an open meeting;
- Strategy and negotiations with respect to pending claims or pending litigation involving the agency or its members until that litigation or claim has been finally resolved (including litigation being contemplated by the agency);
- Matters concerning security strategy or the deployment of security personnel, or devices affecting public security;
- Discussion of the selection of a site or the lease, sale or purchase of real estate by the Town when publicity would cause a likelihood of increased price until such time as all of the property has been acquired or the transaction is abandoned;
- Discussion which would result in the disclosure of public records or the information contained therein when those records are exempt from disclosure under the FOIA.

No agency business should be discussed in executive session except the topic for which the session was called.

4. After the Meeting

Following the meeting, written minutes must be prepared and provided to the Town Clerk. The FOIA requires that a summary of all votes taken (including the votes of each member of the agency) must be reduced to writing and provided to the Town Clerk within 48 hours. Complete minutes, including that same voting information, must be turned over to the Town Clerk within seven days. For obvious reasons, it is usually more efficient to have the minutes prepared within 48 hours if possible.

Minutes need not be verbatim. Often, simply annotating the agenda of the meeting with a general summary of the discussion regarding each agenda item suffices. The times when the meeting is called to order and adjourned should be noted. The roll of those members of the agency who are present should also be listed. It is important to note the maker/seconder of each motion, including any procedural motions, and the vote on each motion. This will help readers to understand the final action taken. Beyond these requirements, the level of the detail provided in the minutes is up to the person taking them. More detail is always helpful to later readers, but that benefit must be balanced against the time and abilities of the person taking and transcribing them.

B. Robert's Rules of Order and Other Procedural Rules

Generally, meetings are run by the Chair of the agency or the Vice-Chair in the absence of the Chair. In the absence of a specific rule applicable to your agency, Town ordinances specify that the Chair is to be elected annually by the members themselves. At that same time, the agency can elect any other officers which it chooses to establish. We would recommend establishing a Vice-Chair and a Secretary in addition to the Chair. Having a Vice-Chair simplifies matters when the Chair falls ill or is out of town on business when a meeting needs to be held. The Secretary is the person who takes the minutes of the meeting, writes them up afterward and provides a copy to the Town Clerk. Having a regular Secretary helps to establish a routine practice for taking minutes and avoids accidental oversights.

The Chair should certainly become familiar with Robert's Rules of Order and with any rules which the agency has adopted for itself. We also recommend that other members become familiar with these rules. Robert's Rules are the parliamentary rules of procedure which are universally recognized by boards and commissions around the world. They can become somewhat esoteric or convoluted if agency members choose to delve deeply into them. For the most part, however, they are nothing more than a set of "manners" by which members of the body are expected to behave in an extremely polite and formal society. Several websites provide tutorials on Robert's Rules as well as the text of the rules themselves. The Town Clerk's Office and this office also keep copies of Robert's Rules on hand. A Quick Reference Chart is provided as an appendix to this guide, but that chart does require some familiarity with Robert's Rules and should not be used as a replacement for such familiarity.

In addition to the Charter and ordinance provisions which establish the substantive bounds of your authority, several of our boards and commissions have also adopted their own procedural rules of organization. You should find out whether your particular agency has adopted such rules or bylaws and familiarize yourself with them. If your agency has not adopted such rules, you may wish to consider doing so. These rules may cover such issues as: who may call a meeting of the agency; when and where your regularly-scheduled meetings are to be held; the regular order of items on your agenda; who sets the agenda for your meetings, etc. The Standing Rules of the Town Council are posted on the Town's website at the following link and may provide you with ideas to incorporate into your own rules.

<http://www.westhartford.org/government/Standing%20Rules%202007-2009%20rev%20March%202009.pdf>

If you do adopt rules, however, please have this office review them to be certain that they do not accidentally violate some applicable provision of law.

For those of you who are members of agencies which exercise land use decision-

making authority (Town Council and its Zoning Alternates, Plan and Zoning Commission and Zoning Board of Appeals) the topic of zoning processes and procedures is a subject for another day and another guide. From time to time (as new membership warrants), our office holds an evening workshop for land use agency members. It is very important that you understand the procedural and substantive rules applicable to these duties, but the topic is complex enough to warrant its own discussion.

THE CODE OF ETHICS

West Hartford prides itself as a well-run, professionally managed municipality. Ours has long been a culture of ethics in which one very simple rule guides everything we do: Be above reproach. Since being above reproach is sometimes easier said than done, the Town has adopted a formal Code of Ethics which can be found at West Hartford Code of Ordinances, Ch. 16. The substantive provisions of this code should not come as a surprise to anyone, but you may never have had any reason to consider some aspects of these rules. For that reason, we offer a short bullet-summary here. As always, if you have any specific questions, you should feel free to call us for guidance.

Standard of service : A basic level of principled conduct is expected of all public officials in West Hartford. All public officials are expected to honor the Town's objectives. These are found in the expressions of the electorate in both elections and referenda, in the Town's Charter and ordinances and in the programs developed by the Town. Agency members should not exceed their authority or ask others to do so. They must also work in full cooperation with other public officers, officials and employees unless law, good conscience or the officially recognized confidential nature of their work prevents them from doing so.

Use of public property : No public official shall ask for, or permit himself or herself or others to use Town-owned or -leased vehicles, equipment, materials or property for personal convenience or profit, unless those services are available to the public at large or are available pursuant to established Town policies.

Special consideration prohibited : No public official shall grant any special consideration, treatment or advantage to anyone which is not available to every other citizen.

Conflicts of interest : No public official may engage in any business or transaction or have a private financial interest or personal interest, direct or indirect, which is incompatible or in conflict with the proper discharge of his or her official duties in the public interest. For purposes of this rule, a "private financial interest" includes the financial interests of your spouse or minor child(ren). In addition you must avoid any conflict of interest which would tend to impair your independence of judgment or action in the performance of your official duties for the Town.

This rule is a mouthful and is the most common type of ethical dilemma. For that reason, it warrants a short explanation. The rule *does not* mean that you must divest yourself of all of your investments, quit your job or sever all ties with that difficult relative you've been hoping to avoid for years. For the most part, it simply requires you to step back and recuse yourself from agency discussion of any issues where you have a specific personal or financial interest at stake. Regrettably, there may be times when your public service may mean that you forego personal or professional opportunities in order to avoid any appearance of impropriety. This is more common among our elected officials because of the nature of their duties and is a very under-appreciated aspect of their service. At those times, the rewards of public service may seem somewhat theoretical.

Nor does this requirement mean that you cannot have a personal interest in the *general* subject matter with which your agency deals. After all, if you have been appointed to an agency, you were probably asked to serve precisely *because of* your familiarity with a particular subject-matter. It would be silly to have a Senior Citizens Advisory Committee with no senior citizens on it or an Advisory Commission for Persons with Disabilities with no disabled members. You are, however, expected to evaluate those situations where an issue may be uniquely applicable to you and to recuse yourself from considering those issues. A member of the Plan and Zoning Commission, for example, should probably recuse himself or herself from considering an application involving the home next door, or an application submitted by a direct business competitor.

You do not need to disclose the nature of a conflict of interest unless you choose to do so. Nor should any of the other members of your agency press you to do so. If good conscience compels someone to step back from discussion of an issue for ethical reasons, no one should ever question or disrespect that decision.

Financial interest restricted : No public official shall be financially interested, directly or indirectly, in any contract with, sales to, purchases from or compensable services made with or rendered to the Town, except as a minority stockholder or a director in a corporation.

This does not apply to any contract awarded to the lowest responsible bidder after public advertisement. In addition, our office has opined that this rule does not apply to an employee of a business if that employee's compensation is not dependent upon or tied to the contract with the Town.

Confidential information : Except when required by law, no public official may disclose any confidential information concerning the property, government business or affairs of the Town, or use such information to advance his/her private financial interests or the interests of anyone else.

Acceptance of gifts, gratuities and favors restricted : No public official shall accept or solicit any valuable gift, regardless of its form, from any person who is interested in business dealings with the Town, or which gift might tend to influence the public official in the discharge of his or her official duties, in granting any improper favor, service or thing of value.

Please note that there is no “*de minimis*” exception in the Town’s rule. Some government entities have a rule which allows for gifts worth less than a specified amount. West Hartford’s Code of Ethics is broader than that and we routinely refer to it as “not even a cup of coffee.”

On the other hand, this rule does not provide you with the excuse you were looking for to return Aunt Sadie’s terrible holiday fruitcake. It only applies to gifts from people interested in business dealings with the Town, or which might tend to influence you in the performance of your official duties. Unless Aunt Sadie is a Town contractor or has an application pending before your agency, you probably have to find another way to get rid of that fruitcake.

Appearance on behalf of private interests : No public official may appear on behalf of private interests before any agency of the Town. No public official may represent private interests in any action or proceeding against the Town in any litigation when said appearance or representation would conflict with or tend to impair his or her independence of judgment and action in performing his/her official duties. An elected officer or official may not appear before a Town agency except on behalf of constituents in the course of performing his or her duties as a representative of the electorate. Any other official or employee may appear before a Town agency in the performance of official, public or civic obligations.

Disclosure of interests required : On very rare occasions, you may find yourself in a situation where you simply have no choice but to participate in a discussion which might have a direct impact upon you. Sometimes, you may not even realize that you have been participating in such a discussion until it has been underway for a while. A public official who has a private financial interest in any action, legislative or otherwise, by any Town agency and who is a member of, participates in discussion with or gives an official opinion to such Town agency must disclose the true nature and extent of that interest. This should be done in writing if possible, but on the written minutes of the meeting at a bare minimum. This requirement does not apply to:

- (1) Contracts awarded to the lowest responsible bidder after public advertisement.
- (2) Unpaid appointed officials during a declared state of emergency.
- (3) Matters requiring disclosure to or approval by a court.

- (4) Interests by virtue of ownership of stock in a publicly held corporation in an amount less than 10% of all issued and outstanding stock.

Every *elected* official (excluding Justices of the Peace and Selectmen) and the members of the Plan and Zoning Commission and Zoning Board of Appeals must file an annual statement with the Town Clerk, under oath, containing the following information:

- (1) All real estate located within the Town of West Hartford owned by such elected official or held under a lease for a term exceeding five years, excluding his or her principal residence. This includes all real estate owned or leased by a corporation, trust or partnership in which the official is the legal or equitable holder of at least 5% of the legal or equitable interests in said corporation, trust or partnership.
- (2) The names of any firm, proprietorship, partnership or corporation of which said elected official is an employee or in which such elected official holds at least a five-percent interest *if* that firm, proprietorship, partnership or corporation has sold or supplied goods or services in excess of \$10,000 per annum to the Town of West Hartford during the two years immediately preceding such official's election to office.
- (3) Any income, fees, salary or wages directly or indirectly received by such elected official from the Town of West Hartford or its agencies during the two years immediately preceding such official's election to public office.

Political activities by Town personnel : No paid public official appointed by the Town Manager or by the Board of Education shall use the prestige of his or her position in behalf of any political party. No public official, paid or otherwise, shall promise an appointment to any paid position under the Town Manager or the Board of Education as a reward for any political activity.

Commission on Ethics : The Town has established a Commission on Ethics which may render advisory opinions to any agency of the Town and to officers, officials and employees pursuant to written request or upon its own initiative. All requests for opinions and opinions themselves are confidential. The Commission may, in its discretion, make public opinions which it believes will be in the public interest, but only after being redacted to shield the identity of the officer, official or employee involved.

Violations and penalties : There is no provision for the recall of an elected official in Connecticut, so there is little which can be done to sanction such officials for ethical violations. If any elected official, except a member of the Board of Education, is found by the Town Council to have knowingly violated the Town's Code of Ethics, the fact of such violation shall be noted upon the official records of the Town Council. The rule is silent with respect to members of the Board of Education, but it is presumed that any such violation would be noted upon the official records of the Board of Education itself. All other public officials who knowingly violate the Code of Ethics may be removed from

office in accordance with the procedures specified in the Charter.

PUBLIC RECORDS

It may appear somewhat disjointed to discuss “Public Records” separately from “Public Meetings” Our reason for doing so is to allow for a more coherent discussion of how public meetings are to be run because that is a far more significant issue for the members of local boards or commissions. Nonetheless, as public agency members, you should be aware of how Connecticut law deals with public records.

A. Records Retention :

Under Connecticut law, the records of all public agencies must be retained for specified periods of time. The State’s Public Records Administrator has established a Records Retention Schedule which specifies the required retention periods for various classes of municipal government records. It can be found on-line at:

<http://www.cslib.org/publicrecords/retschedules.htm>

Most formal, official correspondence which is received or generated by your agency will be retained by staff in Town Hall. For example, the official copies of your agendas, minutes, etc. are the copies transmitted to the Town Clerk and kept in that office. You need not retain your personal copies unless you choose to do so.

The one significant area of concern for most of you will be e-mails. E-mail messages have been divided into three categories by the Public Records Administrator, depending on the significance of their content. The vast majority of messages which you receive or send will fall into the “Transitory” category which can be deleted at will. These are routine business or casual communications similar to the types of messages which would be conveyed in a telephone call. For example, messages such as “I cannot attend the meeting tonight” or “Can you send me another copy of the agenda” would fall into this category.

The remaining two categories: “Less than permanent” and “Permanent” recognize that in some cases, important business or policy matters may be transmitted via e-mail instead of via a more formal communication. The general rule here is simply that the format of the communication is not important. It is the content which matters. Thus, if you receive an e-mail message which contains information which you would save if it was received in a letter, you should preserve the e-mail by printing it for the official records of the agency. Scrolling quickly through the Records Retention Schedules will reassure you that these messages are very rare and, where public agencies are concerned, are almost certainly being kept by other parties to the message.

B. Disclosure of Public Records :

As is the case with your meetings, the general rule is that any records in the possession of a public agency are public records and are open to public inspection. Should a member of the public file a request for access to those records under the FOIA, you are obliged to produce them “promptly” for inspection or copying. The FOIA does, however, give you three business days to provide an initial response to a request for records. This should give you ample time to consult with this office about your obligations in a specific situation.

You should be aware that if an individual provides your agency or its members with documents, those documents are likely to be deemed to be public records from that moment forward unless they fall into one of the statutorily-recognized exceptions to the rule. This also applies to your correspondence with Town staff or with the other members of your agency about agency matters, including e-mail messages. You may wish to create a separate e-mail address for Town-related correspondence using one of the popular services such as gmail or hotmail in order to avoid having to scour through your saved messages in the unlikely event of a request to inspect those e-mail messages.

You should also be aware that the FOIA *does not* require you to keep records because someone might one day ask for them. That is what the Records Retention Schedules are for. If you engaged in a series of e-mail messages about a topic and destroyed those messages in the ordinary course (as the Records Retention Schedules allow), then you cannot produce them in response to a subsequent FOI request *and there is nothing wrong with that*. What you cannot do is destroy a record after a FOI request has been made for it, even if you could have destroyed it legitimately before you received that request.

The types of documents which are exempt from disclosure under the FOIA are subject to very specific requirements. If a public agency possesses such records, it may decline to disclose them. Rather than giving you a precise list of exempt documents, which would be long, complicated and difficult to parse, the following “short list” of document types should suffice to alert you that a possible exemption exists and that you may wish to consult with us:

- Preliminary drafts or notes
- Personnel or medical files and similar files
- Records of law enforcement agencies
- Records of strategy and negotiations with respect to pending claims or litigation
- Trade secrets
- Commercial or financial information given in confidence

- Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations;
- Real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property
- Statements of personal worth or personal financial data required by a licensing agency
- Records of strategy or negotiations with respect to collective bargaining;
- Records, tax returns, reports and statements exempted by federal law or state statutes
- Communications privileged by the attorney-client relationship;
- Names or addresses of public school students without their consent
- Any information obtained by the use of illegal means;
- Records of an investigation or the name of an employee providing information under the provisions of Connecticut's "Whistleblower" law;
- Adoption records
- Any page of a primary petition, nominating petition, referendum petition or petition for a town meeting submitted under any provision of the general statutes
- Records of municipal health complaints, including investigation information
- Educational records
- Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility
- Records of standards, procedures, processes, software and codes, not otherwise available to the public
- The residential, work or school address of any participant in the State's address confidentiality program
- The name or address of any minor enrolled in any parks and recreation program administered or sponsored by any public agency;
- Responses to any request for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed

LEGAL QUESTIONS

A. The Attorney-Client Privilege

Connecticut General Statutes §52-146r explicitly extends the traditional attorney-client privilege to confidential communications between government attorneys and their clients. For purposes of this rule, the term "confidential communications" is defined as:

...all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that

attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice

Once again, however, we are obliged to point out an important limitation here. We are counsel to *the Town*. We represent you in your capacities as *officials of the Town*. We do not represent you in your personal capacities. Thus, if you disclose to us that you are a Yankees fan, that fact is not privileged (even though it may cast great doubt on your suitability for public office) and we cannot assure you that those communications will be privileged. Nor should you divulge that you have been embezzling from your employer because that conduct is unrelated to your service to the Town. If, on the other hand, you wish to consult with us about whether you have a conflict of interest under our Code of Ethics, or ask a question about whether you may hold an executive session to discuss a specific topic, that communication is privileged.

We are also compelled to point out that in some cases, if a member of an agency asks us a question, we may be obliged to provide the answer to the entire agency. We are not talking about conflict of interest questions here, or when a member of an agency simply needs guidance or a “refresher” on some question. If, however, a member asks us for an interpretation of an ordinance which is integral to a decision being made by his or her agency, then *all* of the members of the agency should have that information. In these cases we will inform you that we intend to share our answer to your question(s) with the other members of the agency.

In extremely rare cases, circumstances could arise in which your legal interests and those of the Town diverge. In those cases, our obligation is to protect the interests of the Town. That does not mean we will stop taking your calls and pretend we don't recognize you in the supermarket. As will be discussed in the next section, mechanisms exist for handling those situations.

B. Liability Issues: What if I Get Sued?

Several Town boards or commissions make decisions which can be appealed to court. Most common among these are zoning appeals and property tax appeals, though other less common examples do occur. These appeals are important, but routine. Other than taking offense at the notion that someone might disagree with, or ultimately overturn your decision, you should not be concerned by the filing of such an appeal. They are lawsuits against the Town and impose no personal liability upon you or your agency. If you are the Chair of one of these agencies, there are some situations in which one of the several possible ways to serve a lawsuit upon your agency is to serve you. This happens fairly rarely because there are usually more efficient alternatives, but you may wish to let your spouse know that if they find notice of a lawsuit wedged inside your front door, it is not cause for alarm.

Other than these routine appeals, it is *extremely* unlikely that your membership on a Town board or commission will ever result in you being sued. The Town Council and Board of Education do take actions which can potentially cause people to be legally aggrieved, but most Town boards and commissions simply have no authority to take the kind of action which could result in a legally-recognized harm to anyone. Consequently, there is no basis upon which someone could sue you.

Let us suppose, however, that an extraordinarily zealous attorney comes up with some basis upon which to name you in a lawsuit seeking damages as a result of your Town-related activities. Please be assured that Connecticut law requires the Town to defend any civil lawsuit filed against you as a result of your discharge of your official duties. As public officials, you are insured through the Town's self-insurance program. This office, or a private attorney hired by the Town will appear in any such case on behalf of all of the Town-related defendants and will defend the matter vigorously in consultation with you. The Town is also generally obligated to pay any settlements or judgments against you in any such lawsuits.

There is one exception to the Town's obligation. As usual, any discussion of the exception ends up overshadowing the general rule and causing more alarm than is warranted. If a judgment is entered against you in a claim caused by your "malicious, wanton or wilful act", the Town is not obligated to pay any judgment and is entitled to reimbursement for the costs of your defense. Obviously, we would not expect any members of our public agencies to engage in any "malicious, wanton or wilful" behavior which might lead to a lawsuit, let alone a judgment. Nonetheless, experience suggests that lawyers sometimes draft lawsuits alleging that the facts justify a variety of different claims, including claims of intentional misconduct. In these cases, this office will advise you if the "malicious, wanton or wilful act" exception *may* apply. The Town will continue to defend you, but may do so through independent counsel in order to avoid any concern about whether your counsel is loyal to you and your interests.

Two examples of these types of claims are worthy of note. We hasten to add that neither of these situations has ever occurred in West Hartford. The first is a complaint to the Freedom of Information Commission in which a wilful violation has been alleged. The FOIC does have the authority to impose penalties on the members of a public agency if it determines that a wilful violation of the FOIA has occurred. The vast majority of FOIA violations are entirely unintentional, however, and the FOIC very rarely imposes penalties upon public agencies. No public agency of the Town has ever been subjected to such penalties. Nonetheless, the possibility does exist.

The second situation is a claim alleging a violation of civil rights. Under federal civil rights laws, a plaintiff who prevails may receive attorneys fees as well as damages. Some lawyers will dress up what would otherwise be a traditional negligence claim in the form of a federal civil rights claim in the hopes that even a low-value claim will include an

award of the attorney's own fees. Civil rights claims must allege that the defendant acted wilfully, wantonly or maliciously in order to succeed. Consequently, by definition, they trigger the exception for claims alleging a "malicious, wanton or wilful act."

In the highly unlikely event that you were to be sued as a result of your Town-related activities, we would immediately make arrangements to meet with you and discuss the matter fully and frankly. If you poll the other members of your board or commission, you will not find anyone who has ever had cause to participate in such a discussion with the members of this office.

CONCLUSION

We hope that this guide serves to reassure you and provide you with a helpful resource rather than causing you to be overwhelmed by issues which had never occurred to you before. The procedural and other requirements discussed here are all in place for the best of reasons, but they can sometimes make it more difficult to get to the real substance why you are here: Doing good service to your community. If we can help you navigate through the various processes and procedures which are the curse of modern government, please feel free to call on us.

Welcome to the Town's service and Good Luck!

APPENDICES

APPENDIX A:ELECTED/APPOINTED WEST HARTFORD BOARDS AND COMMISSIONS

A. Elected Officials:

Board of Education
Registrar of Voters
Town Clerk / Council Clerk
Town Council¹

Commission on Ethics
Conservation & Environment
Commission
Constables
Design Review Advisory Committee
Fair Rent Commission
Fence Authority
Historic District Commission
Housing Code Board of Appeals
Human Rights Commission
Parks and Recreation Advisory Board
Pension Board
Risk Management Advisory Board
Senior Citizen Advisory Commission
Substance Abuse Prevention Commission
Veterans' Affairs Commission

B. Officials Appointed By Charter:

Board of Assessment Appeals
Board of Assessors
Board of Special Assessments
Library Board
Personnel Board
Town Council Zoning Alternates
Town Plan and Zoning Commission
Zoning Board of Appeals

D. Officials Appointed By Other Authority:

C. Officials Appointed By Ordinance:

Advisory Commission for Persons with Disabilities
Cemetery Advisory Board

Greater Hartford Transit District
Housing Authority
Metropolitan District Commission

¹The Town Council also organizes its membership into several standing subcommittees and appoints members to serve as liaisons to various other groups or agencies

APPENDIX
B:SAMPLE AGENDA

AGENDA

<<Agency Name>>

<<Meeting Date>>

1.Roll Call

2.Public Forum

3.Approval of Minutes

a. Minutes of Meeting of <<Previous Meeting Date(s)>>

4.Designation of Agenda Items to Be Added to Consent Calendar

5.Receipt of Communications

6.Unfinished Business

7.New Business

8.Adoption of Consent Calendar

9.Staff Reports

10.Executive Session

11.Adjournment

APPENDIX C: ROBERT'S RULES OF ORDER MOTIONS CHART

Based on *Robert's Rules of Order Newly Revised (10th Edition)*¹

Part 1, Main Motions. These motions are listed in order of precedence. A motion can be introduced if it is higher on the chart than the pending motion. § indicates the section from Robert's Rules.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE
§21	Close meeting	I move to adjourn	No	Yes	No	No	Majority
§20	Take break	I move to recess for ...	No	Yes	No	Yes	Majority
§19	Register complaint	I rise to a question of privilege	Yes	No	No	No	None
§18	Make follow agenda	I call for the orders of the day	Yes	No	No	No	None
§17	Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
§16	Close debate	I move the previous question	No	Yes	No	No	2/3
§15	Limit or extend debate	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14	Postpone to a certain time	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13	Refer to committee	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12	Modify wording of motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority
§11	Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
§10	Bring business before assembly (a main motion)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

¹Reprinted from <http://www.robertsrules.org/motions.htm>

Part 2, Incidental Motions. No order of precedence. These motions arise incidentally and are decided immediately.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE
§23	Enforce rules	Point of Order	Yes	No	No	No	None
§24	Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority
§25	Suspend rules	I move to suspend the rules	No	Yes	No	No	2/3
§26	Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3
§27	Divide motion	I move to divide the question	No	Yes	No	Yes	Majority
§29	Demand a rising vote	I move for a rising vote	Yes	No	No	No	None
§33	Parliamentary law question	Parliamentary inquiry	Yes	No	No	No	None
§33	Request for information	Point of information	Yes	No	No	No	None

Part 3, Motions That Bring a Question Again Before the Assembly.

No order of precedence. Introduce only when nothing else is pending.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§34	Take matter from table	I move to take from the table ...	No	Yes	No	No	Majority
§35	Cancel previous action	I move to rescind ...	No	Yes	Yes	Yes	2/3 or Majority with notice
§37	Reconsider motion	I move to reconsider ...	No	Yes	Varies	No	Majority