



# Town Counsel and Litigation Management Policy

Select Board

Town of Boxborough, MA

## Intent and Purpose

The intent and purpose of this policy is to ensure the effective use of Town Counsel and to manage the litigation and legal budget appropriately.

M.G.L Section 2, chapter 40 states that “A town may, in its corporate capacity, sue and be sued by its name, and may appoint necessary agents therefor.”

It is inherent in the authority of the Select Board, that the Board holds executive authority under the general laws. Therefore, the control of legal counsel, litigation management and the legal budget falls under the purview of the Select Board.

## Appointment of Town Counsel

The Select Board is the sole appointing authority for Town Counsel. Only the Select Board may appoint Town Counsel or special counsel for all legal matters.

## Access to Town Counsel

It is the policy of the Select Board that access to Town Counsel shall go through either the Select Board Chair or the Town Administrator. Department heads, employees or Chairs and/or members of any other board, committee or commission, shall not contact Town Counsel without the prior explicit approval of either the Select Board Chair or the Town Administrator.

In the event of an emergency, individual members of the Select Board may contact Town Counsel and provide either the Select Board Chair or the Town Administrator with a summary of the issues discussed. The Select Board member shall update the other members of the Select Board either in open meeting or in executive session, depending on the nature of the issues discussed.

## Litigation Management

To better ensure that the Town is litigating only those cases that are defensible, the Select Board shall maintain oversight over all litigation. Oversight includes, but is not limited to:

- Obtain an initial legal budget from defense counsel, updated quarterly:
  - Answer and appearance
  - Discovery: interrogatories, requests for production, depositions
  - Motion practice
  - Status conference with the court
  - Conference with opposing counsel
  - Conference with the Town
  - Other
- Obtain an opinion on the probability of the outcome of the litigated matter.
- Develop a strategy to resolve the matter:
  - Settle
  - Compromise settlement
  - Litigate through a verdict
- Periodically re-evaluate the strategy to ensure nothing has altered the Town's strategy.

*This policy revokes and replaces all previous policies on this topic including the undated policy called "Policy on Use of Town Counsel".*