

PLANNING BOARD WORKSHOP

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: January 28, 2025
SUBJECT: February 4, 2025 Planning Board Workshop

The Cape Elizabeth Planning Board will hold a workshop on **Tuesday, February 4, 2025**, beginning at 7:00 p.m. in the Jordan Conference Room, Town Hall.

WORKSHOP AGENDA

- 7:00 1. **7 Scott Dyer Rd Site Plan and Subdivision Amendments.** Zev Myerowitz would like to discuss a lot line shift and installation of a hot tub for the property located at 7 Scott Dyer Rd (U22-74, 74-3).
- 7:20 2. **Town Basketball Court.** The Town of Cape Elizabeth would like to discuss construction of a basketball court next to the Spurwink School building located at 7 Holman Road (U21-10).
- 7:50 3. **Contract Zoning.** At the October 16, 2024 meeting, the Town Council referred to the Planning Board a Contract Zoning Amendment for review.
- 8:55 4. **Planning Board logistics.** The Planning Board will discuss meeting logistics, the work of related committees, and training.

Public Comment: Members of the public are strongly encouraged to submit written comments addressing workshop items. All written comments shall be submitted to the Town Planner for distribution to the Planning Board and placed in the public file. An opportunity for members of the public to speak at workshops is not available.

NOTE: The times on this agenda are approximate and are intended for the convenience of the applicants; however, your time could be called earlier or later than the indicated time.

Cc: Town Manager

TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name Zev Myerowitz

Email: drzev@me.com. Telephone 207.939.9781

Address 7 Scott Dyer Rd

Do you own the property? **Yes X** No ____

If not, do you have written permission from the owner? Yes ____ (please provide) No ____

Project Contact Person (one only):

Name Zev Myerowitz

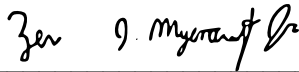
Email: drzev@me.com. Telephone 207.939.9781

Address 7 Scott Dyer Rd

Email drzev@me.com

Location of Project 7 Scott Dyer Rd. Map/Lot U22 Lot 74; 74-3

Project description: Reassignment of approximately 5' of land to greater facilitate mutual lot recreational use for installation of a hot tub/swim spa



Signature of Owner

1/16/24

Date

Please return to the town planner, ACP Office, Town Hall
maureen.omeara@capeelizabeth.org, 799-0115

Planning Board workshop requests must be submitted at least 7 days before the workshop.

TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name Town of Cape Elizabeth – Town Manager Pat Fox

Email pat.fox@capeelizabeth.org Telephone (207) 799-1619

Address 320 Ocean House Road – Cape Elizabeth, Maine

Do you own the property? Yes X No

If not, do you have written permission from the owner? Yes (please provide) No

Project Contact Person (one only):

Name Stephen Harding, Town Engineer Telephone 207-200-2057

Address 75 John Roberts Road, Suite 4A – South Portland, Maine

Email sharding@sebagotechnics.com

Location of Project 6 Scott Dyer Road open space Map/Lot U21/10

Project description: Project entails the construction of an asphalt surface. basketball court with a 10-foot-tall chain link perimeter fence. A walkway from the adjacent parking lot will provide a pedestrian connection to the court. A 24-foot-wide connection to the adjacent Holman Road segment will also be included in this project to facilitate the Town Center intersections project anticipated to be constructed in 2025.



Signature of Owner

1-23-25
Date

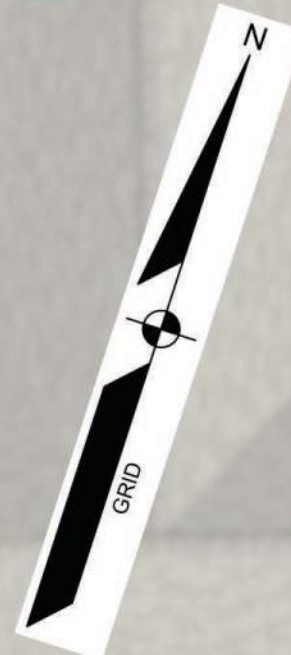
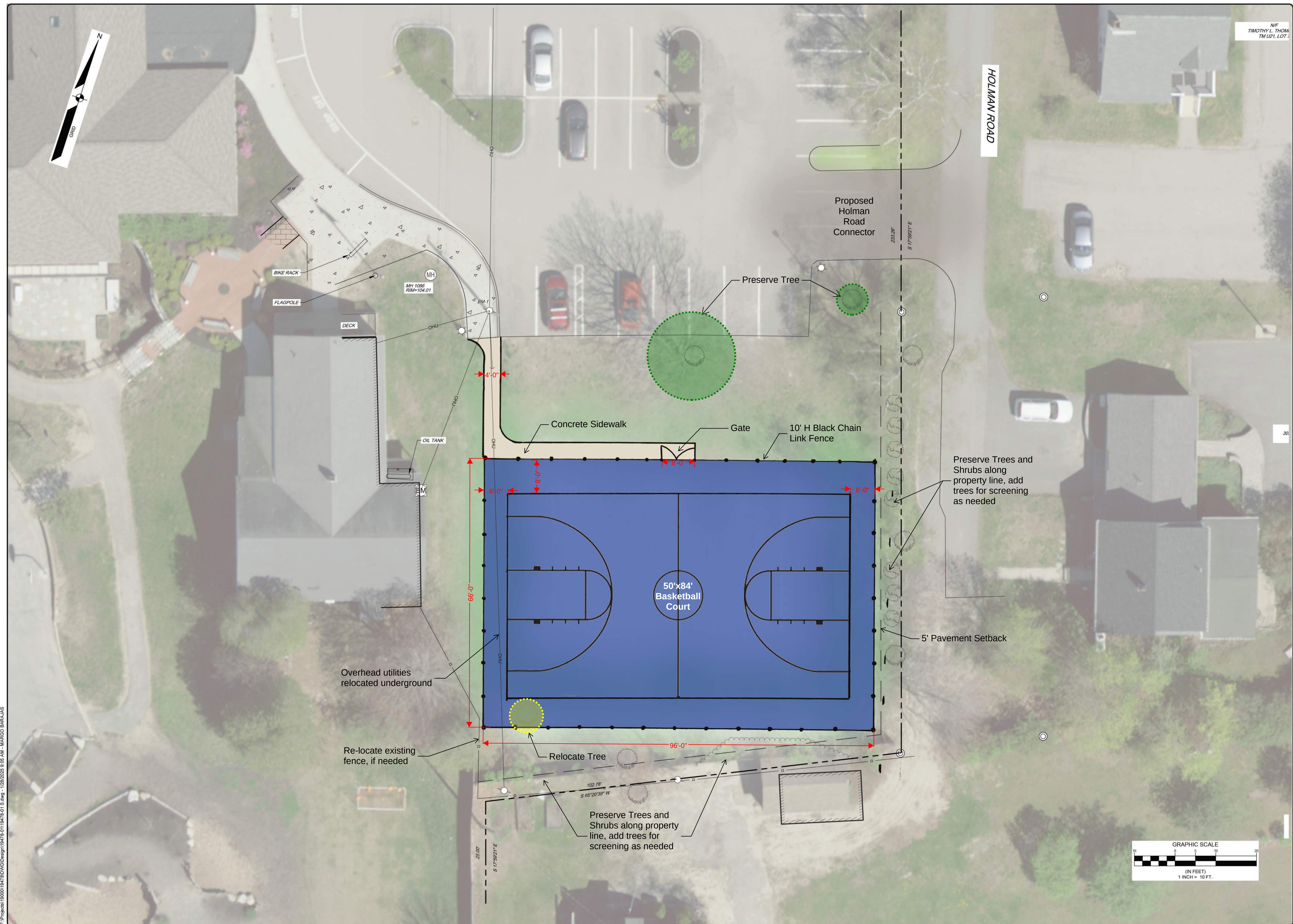
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maureen.omeara@capeelizabeth.org, 799-0115
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PLS OR PE

PROGRESS
PRINT

PLS OR PE

NOT FOR
CONSTRUCTION

[illegible]

REV:	BY:	DATE:	STATUS:
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THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNIQS, INC. ANY ALTERATIONS.



SEBAGOTECHNICS.COM
75 John Roberts Rd. Suite 4A
South Portland, ME 04106
207-200-2100

Basketball Court Concept Sketch

01/28/2025

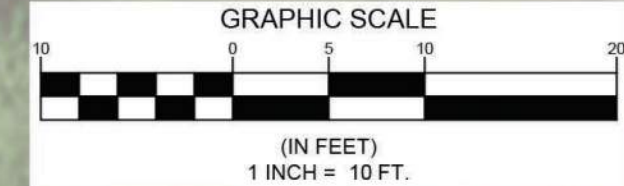
SCOTT DYER ROAD
CAPE ELIZABETH MAINE

FOR:
TOWN OF CAPE ELIZABETH

3320 OCEAN HOUSE ROAD

DESIGNED	MB
DRAWN	CJC/DAB
CHECKED	SDH
DATE	-
SCALE	1" = 10'
PROJECT	19478-01

SHEET C-102



CAPE ELIZABETH COUNCIL TRAINING

Mary Costigan
December 16, 2024

**BERN
STEIN
SHUR**

Declaration of Intent

- “...public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly....”
- The law “shall be liberally construed and applied to promote its underlying purposes and policies....” 1 M.R.S. §401

What does the law cover?

- Public meetings/proceedings
- Public records

Public Meetings/Proceedings

What are public proceedings? Who is covered by FOAA?

“Public Proceedings” are defined in §402(2) to mean the transactions of any functions affecting any or all citizens of the State by any of the following:

...

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision

Open Meeting Requirement

§403:

Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

When can a public proceeding be closed to the public?

- “Except as otherwise provided by statute or by section 405”
 - Statutory exemption: Example - Poverty Abatements
 - Executive Sessions under §405

Communications Outside a Public Meeting

- §401: FOAA “does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of” FOAA
- Telephone and electronic communications are subject to FOAA
- Including personal and official email accounts, Facebook, Twitter, etc...
- Phone, e-mail, electronic communications can be used for communications on non-substantive issues (set meeting date for example), but not to deliberate or discuss substantive matters among board members.
- Common violations: polling members by telephone to vote on or discuss an application; chance meeting at grocery store or private party where matter is discussed, making decisions in a closed door meeting when not authorized, and conducting discussions about official business by email.

Public Right to Attend and Record §404

- In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny,
 - all persons shall be entitled to attend public proceedings and
 - to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings.
 - The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

What record must be made of a public proceeding? - §403

- **Record of public proceedings.** Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:
 - A. The date, time and place of the public proceeding;
 - B. The members of the body holding the public proceeding recorded as either present or absent; and
 - C. All motions and votes taken, by individual member, if there is a roll call.
- **Audio or video recording.** An audio, video or other electronic recording of a public proceeding satisfies this requirement.

Executive Sessions - §405

Permitted Deliberations: Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

1. An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
2. Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
3. Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
4. Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

Executive Sessions - §405 cont'd

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

Executive Sessions - §405 cont'd

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage;

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality

Restrictions on Executive Sessions

- An executive session may not be used to defeat the purposes of the FOAA.
- An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.
- An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.
- A motion to go into executive session must :
 - Indicate the precise nature of the business of the executive session and
 - include a citation of one or more sources of statutory or other authority that permits an executive session for that business.
- Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

Notice of Public Meetings - § 406

- Public notice shall be given for all public proceedings ... if these proceedings are a meeting of a body or agency consisting of 3 or more persons.
- This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned.
- In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

Decisions - § 407

1. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

2. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

Remote Meeting Participation §403-B

A public body may allow members of the body and the public to participate in a public proceeding using remote methods only under the following conditions:

- The body has adopted a written policy governing remote participation
- If no policy is adopted, the chair can determine a meeting can be held remotely if an emergency exists.
- Members of the public must be able to attend by remote methods when members of the body participate by remote methods
- Reasonable accommodations may be provided when necessary to provide access to individuals with disabilities.
- If there is an opportunity for public input during the proceeding, an effective means of communication must be provided.
- Notice of remote meetings must include the means by which members of the public may access the proceeding using remote methods.
- The notice must also identify a location for members of the public to attend in person.
- Public attendance at a proceeding may be limited solely to remote methods if there is an emergency or urgent situation that requires the body to meet only by remote methods.

Remote Meeting Participation §403-B Cont'd

- A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting.
- All votes taken during a public proceeding using remote methods must be taken by roll call.
- All documents and other materials considered by the public body must be made available, electronically or otherwise, to the public who attend by remote methods
- Members of the public are permitted to record the proceeding remotely.
- A remote participation policy adopted by the municipal officers applies to all public bodies that are within the jurisdiction of the municipality unless the municipal officers specifically authorize a public body under their jurisdiction to adopt its own remote participation policy.

Public Records

Definition:

- Written, printed, graphic, mechanical or electronic information;
- Possession or custody of agency, official or association; and
- Received, prepared or containing information related to transaction of public business

Public Records Exceptions

Common Exceptions

- Records designated confidential by statute
- Municipal statutory exceptions include personnel records, certain TIF submissions, forest management plans (tree growth and open space programs), poverty abatement records applications, and certain GA applications
- Information contained in a communication between a constituent and an elected official if the information: is of a personal nature including medical information, credit or financial info, personal history, social security number, or complaints, charges of misconduct or other materials pertaining to disciplinary action.
- Juvenile records
- Investigations
- Email addresses collected and used by a political subdivision to provide noninteractive notifications, updates and cancellations

Who May Make a FOAA Request?

- **Who?**

“Any person” – regardless of residency or citizenship

- Includes individuals, corporations, associations, media

- **The “why” behind the request**

FOAA requesters generally do not have to justify or explain their reasons for making requests

- **The “how” of the request**

Does not have to be in writing

No required form

Responding to a FOAA Request

- Acknowledge request within 5 working days of receipt and provide an estimated time frame and cost in reasonable amount of time
- Denial in writing within 5 working days
- Locate responsive records and redact exempt information
- Respond to requester with the documents within a reasonable time
- Schedule inspection, conversion, or copying during reasonable office hours

Fees

- \$25/hour after the first two hours of staff time for time spent searching, retrieving, compiling or redacting
- Reasonable fee for copying; actual costs for conversion and mailing
- If estimate of costs is greater than \$50, must notify requester before proceeding; if costs exceed \$100, payment in advance can be required
- Fee waivers can be granted if requester is indigent, or the agency or official considers release of the public record to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government, and is not primarily in the commercial interest of the requester

Violations

- Any person may appeal to Superior Court
- Burden on agency or public body
- If illegal meeting, action of board will null and void
 - If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and penalties may apply
- Officials subject to penalties and attorneys fees
- A willful violation of FOAA is subject to a civil penalty of not more than \$500

Public Access Officers

Public Access Officers

- Each agency must designate a Public Access Officer from among its existing employees
- Serves as FOAA contact for the agency
- Serves as resource within the agency on FOAA issues and to ensure requests are properly acknowledged.
- Same training requirements as elected officials

Public Access Ombudsman

- Created earlier, but not previously funded.
- The Ombudsman is available to review complaints about compliance with the Freedom of Access Act and attempt to mediate their resolution, as well as answer calls from the public, media and government agencies about the requirements of the law.

Training

- Certain public officials must complete a FOAA training within 120 days after the official takes the oath of office
 - Public access officer
 - Municipal officers, municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers and deputies for those positions, planning board members, and budget committee members
- Training must include the following topics:
 - General legal requirements of FOAA regarding public records and public proceedings
 - Procedures and requirements to comply with a public record request
 - Penalties and other consequences for failure to comply with the law
- Certificate and record of completed training is required

Conflicts of Interest

- Financial Conflicts of Interest
- Incompatibility of Office
- Prohibited Appointments or Employment
- Relationships
- Predisposition or Bias

Financial Conflicts of Interest

Common Law

- “whether the town official by reason of his [her] interest, is placed in a situation of temptation to serve his own personal pecuniary interest to the prejudice of the interests of those for whom the law authorized and required him to act...”
- Not a lot of guidance on the threshold for indirect pecuniary interests that triggers disqualification. The Maine Law Court has directed that the determination of whether a particular interest is sufficient to disqualify an individual must be made on a case-by-case basis.

Financial Conflicts of Interest

Statutory Law

- 30-A M.R.S.A. § 2605 sets out black letter standards when it will be presumed that the official or deciding party is “self-interested” in connection with the performance of governmental actions or decision making.

Statutory Test – 10% Rule

- when the official is an “officer, director, partner, associate or stockholder of a private corporation, business or other economic entity” which is the subject of the issue before the body; and
- the individual is “directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least 10% interest in the business or other economic entity.”

Avoid Appearance of a Conflict of Interest

Safeguard the integrity of the proceedings.

- Do you think that in light of the points raised, circumstances and situation that you can participate in these proceedings without any bias, predisposition or letting your relationship impact your participation or decision?

and

- Will you conduct yourself and base your decision in the proceedings based solely on the record of the proceedings and based on your best judgment on applying the applicable and relevant standards?

Handling Conflicts

- **Disclose, Discuss and Vote**
- **Consequence – Action Could be Voidable if Challenged**

Prohibited Appointments

- 30-A M.R.S.A. § 2606: No municipal officer, during the term for which that officer has been elected and for one year thereafter, may be appointed to any civil office of profit or employment position of the municipality, which was created or the compensation of which was increased by the action of the municipal officers during the officer's term.
- Charter/Ordinance/Policy: Callaghan v. South Portland

Incompatibility of Offices

Statutory Prohibitions :

- Town manager may not serve as town moderator, selectman, assessor or school committee member
- Tax collector or treasurer may not serve as selectman or assessor
- Municipal officer (or spouse) may not serve on board of appeals
- Etc....

Common law

- - Municipal officers and code enforcement officers, road commission, school committee member, municipal clerk, election warden, etc...

Bias Based on Relationships

- Quasi-judicial Functions
- Consanguinity or Affinity Within the 6th Degree = Bias
 - 1 M.R.S. §71(6): when a municipal officer sits as a quasi-judicial officer (e.g., one who makes licensing decisions, hears, and decides personnel matters, hears appeals) to decide on a matter involving a relative by blood (consanguinity) or marriage (affinity) (and likely adoption) who is related to a party to the proceeding as a second cousin or closer, that municipal official is disqualified from participation in that proceeding.

Bias Based on Predisposition

- Quasi-Judicial Functions
- Can you make an impartial decision?
- Is there an appearance of bias?
- Burden of Proof is on the applicant
- Research Conducted by Board Members

CODE OF ETHICS

- **Conflicts of Interest**
 - Councilors must ensure their official actions are not intended to create actual or the potential for personal or financial gain, either directly or indirectly, for themselves, family members, personal friends, or other related parties.
 - If a Councilor has accepted money or other consideration from a citizen, group of citizens, business, or other entity that has interest in an issue before the Council and the money or consideration was received within 12 months of the Council's consideration of the issue, the Councilor shall not participate in the issue.
- **Gifts and/or Gratuities**
 - Councilors should refuse personal gifts, favors, donations, or special privileges where favor or special privilege would not have been extended but for the position of such Councilor, where the giver's interests are likely to be affected by actions of the Councilor, or where gift is designed to influence the actions of the Councilor.
- **Appearance of a Conflict and Improper Influence**
 - Councilors should conduct official and personal affairs in a manner as to avoid any appearance of conflict of interest and/or improper influence.
- **Representing Third Parties Before Town Agencies**
 - No Councilor shall appear on behalf of any third party before any Town body or represent any third party in any action in which the Town is a party, without explicitly stating that they are appearing as a citizen or representative of a citizen as opposed to as a member of the Council.
 - Councilors may appear before a Town body when acting on behalf of constituents, themselves, or the Town, in the course of their official duties.

CODE OF ETHICS CONT'D

- **Bias**
 - If a Councilor believes they are biased for or against an individual or entity that has a matter pending before the Council, and such bias will interfere with the Councilor's ability to make a fair and impartial decision, they shall recuse themselves from the decision-making.
- **Standards of Conduct**
 - Preserve written communications that are subject to FOAA.
 - Conduct public business in a transparent manner.
 - Annually provide a list of gifts received in the prior year having a value of \$100 or greater, from any person or entity within the Town or having a pending matter before the Council, other than family or close friends.
- **Enforcement**
 - If any member of the Council believes that a violation has occurred or a conflict of interest exists, they shall report the matter to the Town Clerk, who shall distribute the report to the Council.
 - The Town Council shall be the judge of whether any violation of the Code of Ethics has occurred and shall determine the proper remedy or response.
 - See also – Article III, Section 6 of the Council Rules (If any member of the Town Council believes that another member has a statutory conflict of interest, they may raise a point of order at any time and the Town Council shall immediately suspend business to resolve the issue.)

THANK YOU

Mary Costigan

December 16, 2024

**BERN
STEIN
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DRAFT
**Contract Zoning Amendment
Zoning Ordinance**

SEC. 19-7-18. CONTRACT ZONING

A. Purpose

Contract Zoning is incorporated into the Zoning Ordinance as a tool to enable the Town to implement its policies, as expressed in the Comprehensive Plan and other policy documents, by providing regulatory flexibility for unique projects and properties, and is limited to properties located in the Town Center Zoning District.

B. Eligibility

A contract zoning request may be submitted for a property or contiguous properties by an applicant with right, title or interest to the property, and the property must be located in the Town Center District. The proposed development shall be consistent with the Comprehensive Plan and/or other town policy documents and proposed uses shall be compatible with permitted uses in the zoning district where the project is located. The project shall include a public benefit.

C. Process

1. Town Council Concept Review. Upon submission of a complete concept application for a Contract Zoning proposal to the Town Manager, the Town Council shall schedule a workshop to discuss the concept. The Planning Board shall be invited to attend and participate in the workshop. Public notice shall also be provided in compliance with the provisions of Sec. 16-2-1(b) Public Notice, Subdivision Ordinance.

The purpose of the Town Council workshop is for the applicant to present a concept plan. The Town Council shall allow public comment. The Town Council and Planning Board shall provide feedback to the applicant, and specifically comment on application eligibility under subsection B above.

2. Review Escrow Account. Following the Town Council workshop, if the applicant notifies the town manager that they wish to proceed with the contract zoning application, a review escrow account shall be established in compliance with the provisions of Sec. 16-2-1(c) Review Escrow Account, Subdivision Ordinance. The escrow account shall fund the Town costs to process the contract zoning application, including but not limited to legal and technical review of the contract, and costs for other consulting services as needed.

- 1
2 3. Town Council referral to Ordinance Committee. Following the Town
3 Council workshop and upon confirmation from the applicant that they
4 intend to seek a contract zone, the contract zoning concept application
5 shall be placed on the next available Town Council agenda for referral to
6 the Ordinance Committee. Failure of the Town Council to refer the
7 application to the Ordinance Committee shall be deemed a denial of the
8 contract zoning application.
9
- 10 4. Ordinance Committee review. If the contract zoning application is referred
11 to the Ordinance Committee, the applicant shall submit to the Town
12 Manager a draft contract zoning agreement (in digital/document format).
13 The Ordinance Committee shall review the concept plan and draft
14 contract for the primary purpose of compliance with the comprehensive
15 plan and other policy documents, refining the terms of the contract, and
16 evaluating the public benefit of the project. The advice of the Town
17 Attorney shall be provided as part of the agreement review. Upon
18 completion of the Ordinance Committee review, the contract zoning
19 application and agreement shall be sent back to the Town Council with a
20 recommendation from the Ordinance Committee to adopt or reject the
21 contract.
22
- 23 5. Planning Board review. Upon receipt of the Ordinance Committee
24 recommendation, the Town Council shall refer the contract zoning
25 application to the Planning Board or vote to reject the application. If
26 referred, the Planning Board shall review the contract zoning application
27 with a focus on the alternative zoning requirements included in the
28 application, compliance with the comprehensive plan, the requirements
29 of 30-A M.R.S.A §4352(8) and other policy documents, clarity of the
30 proposed requirements, and alignment with development review
31 requirements expected if the contract zoning is approved. The Planning
32 Board may request additional information related to anticipated future
33 development review. Notice shall be provided in accordance with 30-A
34 M.R.S.A. §4352 (8). At the conclusion of review, the Planning Board shall
35 provide a recommendation to the Town Council to adopt or reject the
36 contract, and may propose conditions.
37
- 38 6. Town Council decision. Upon receipt of the Planning Board
39 recommendation, the Town Council shall place the contract zoning
40 application on the next available meeting and shall schedule a public
41 hearing. The Town Council shall vote to approve or deny the contract
42 zoning application, and may include conditions on the vote for approval.
43

- 1 7. Development review. A contract zoning project approved by the Town
 2 Council shall be subject to applicable development review as required by
 3 the Subdivision Ordinance and Zoning Ordinance. Such review shall be
 4 conducted after an affirmative vote by the Town Council to grant the
 5 contract zoning and upon submission of a development review
 6 application to the Planning Board.

7
 8 **D. Submission Requirements**

- 9
 10 1. Concept Plan. The applicant shall submit a concept plan application for
 11 contract zoning to the Town Manager. The application shall include the
 12 following:
 13
 14 a. Completed application form;
 15
 16 b. Written description of the proposal, which shall also include
 17 proposed uses, estimated traffic volumes and sanitary wastewater
 18 disposal;
 19
 20 c. List of the zoning provisions to be revised by the contract zone,
 21 and the proposed replacement zoning requirements.
 22
 23 d. Description of public benefit;
 24
 25 e. Concept plan to include the following:
 26
 27 i. A plan of the property showing boundaries (survey preferred
 28 by not required);
 29
 30 ii. Public road access, internal site circulation, parking, and
 31 estimated traffic volumes;
 32
 33 iii. Proposed building footprints, building heights, and sketch
 34 plan elevations;
 35
 36 iv. Proposed buffer areas;
 37
 38 2. Draft Contract. Upon referral of the Contract zoning application to the
 39 Ordinance Committee, the applicant shall submit to the Town Manager a
 40 draft contract. The contract shall include:
 41
 42 1. A written description of the contract zoning project, including the
 43 number and type of uses, concept design and layout of buildings,
 44 site improvements, scale and density of the development, open

space, natural resources and buffers, and other elements of the project;

2. Concept plan of the project;
3. All variations proposed from the Zoning Ordinance;
4. Description of and commitment to the public benefit to be provided;
5. Commitment to successfully obtaining all development review permits, including compliance with performance guarantee provisions.
6. Provisions for modifications, amendments, enforcement and remedies.

E. Review Standards

The following criteria shall be used by the Town Council in reviewing applications for contract zoning. Only conditions and restrictions that relate to the physical development or the operation of the property may be attached to the approval.

1. Comprehensive Plan. The contract zoning proposal is consistent with the Comprehensive Plan and related policy documents.
2. Community compatibility. The proposed contract zoning project is designed to incorporate the uniqueness of the project into the neighborhood and community in a compatible manner. The contract zoning project may include use, buildings (including size and scale) and elements not found in the community.
3. Other statutory requirements. The proposed contract zoning shall comply with other statutory requirements.
4. Contract zoning need. The contract zoning project cannot be reasonably accommodated within the existing zoning ordinance and other town regulations.
5. Public Benefit. The contract zoning project includes a meaningful public benefit to the community. A public benefit may include, but is not limited to:

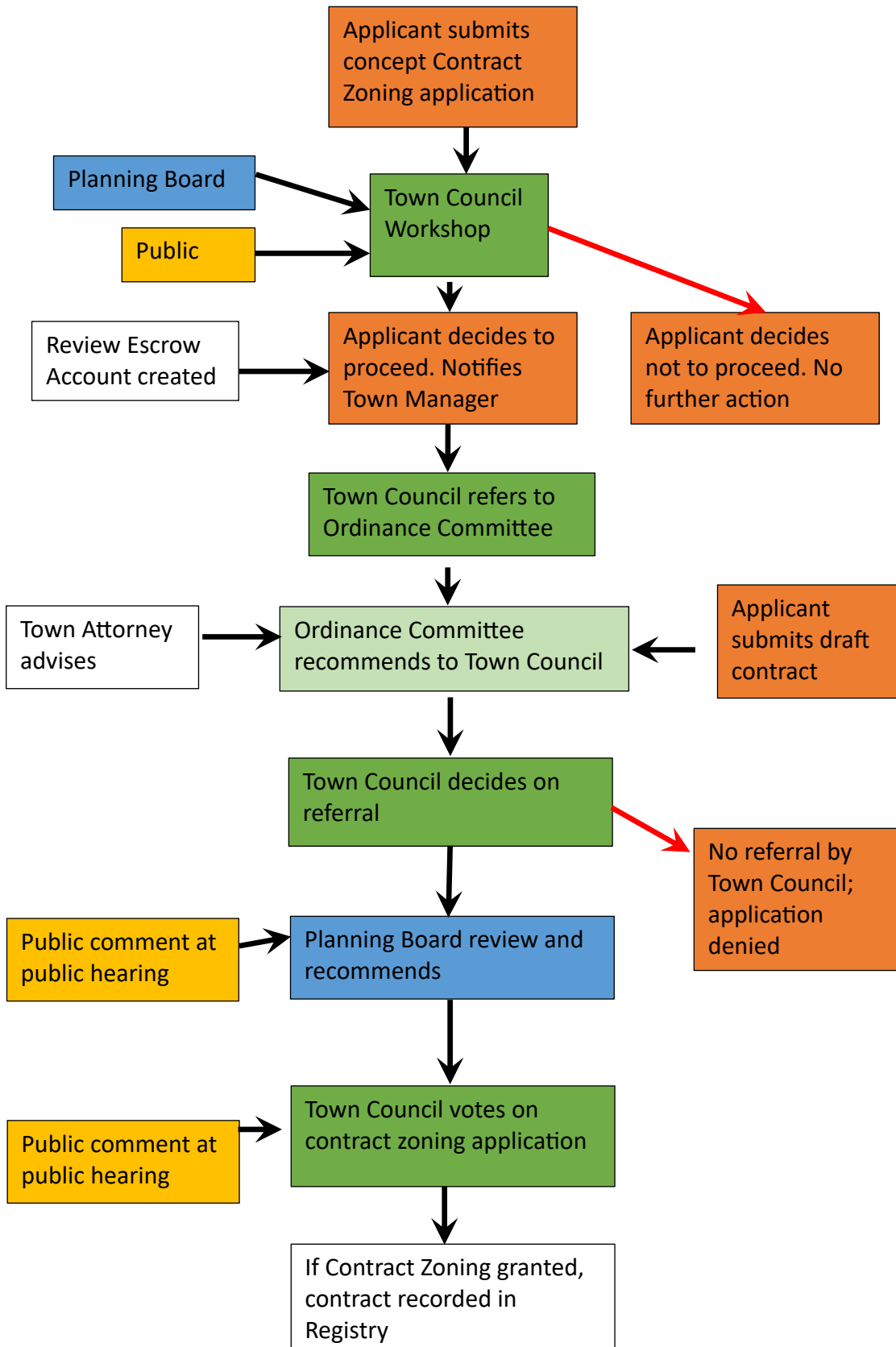
- a. Open space. The project includes permanent preservation of open space for the benefit of the public in a manner that significantly increases the open space preservation that would otherwise be required through development review.
 - b. Affordable housing. The project is comprised of housing where at least 50% of the lots or units are affordable for moderate or low income households.
 - c. Infrastructure. The project makes a substantial contribution to identified infrastructure needs, including but not limited to pedestrian and bicycle safety facilities, sanitary wastewater capacity, stormwater infrastructure and public roads.
 - d. Economic development. The project creates commercial development and job creation substantially greater than the typical development allowed by existing zoning regulations.
6. Shoreland Zoning. No contract provision shall have the effect of lessening existing Shoreland Zoning regulations.

F. Post-Approval Requirements

1. Contract signed and recorded. The contract zoning agreement approved by the Town Council shall be executed by the Town Manager and signed by the applicant. The contract shall be recorded in the Cumberland County Registry of Deeds, and if the contract is not recorded within 90 days, shall be deemed null and void unless the deadline is extended by the Town Council prior to the expiration date.
2. Duration of contract zoning approval. The contract zoning agreement shall specify a time frame for completing the project. If the contract zoning agreement expires, rezoning of the property in accordance with Sec. 19-10-3 shall be needed to terminate the contract zoning.
3. Performance guarantee for public benefit. The contract zoning project shall be subject to submit a performance guarantee in accordance with Sec. 16-2-6 (c), Performance Guarantee, Subdivision Ordinance.

Town	Town wide	Purpose	Procedure	Public Hearing	Submission highlights	Site Plan	Public Benefit	Standards
Dayton		Purpose. Occasionally, competing and incompatible land uses conflict; and traditional zoning methods and procedures, such as variances, conditional use permits, and alterations to the zone boundaries, are inadequate to promote desirable growth....	•Application to Planning Board; PB hearing and notice, including posting sign at property; recommendation to Board of Selectmen; Board of Selectmen adoption, must include PB findings	Planning Board public hearing and Board of Selectmen vote for adoption	Plot plan, streets, written use of property, consistency with comp plan, unusual nature of property, conditions on contract	Required for all CZ; Site plan can be obtained as part of Contract zoning approval	Not required	•land has unusual nature or location; •consistent w comp plan; •consistent with existing uses and permitted uses in zone; •conditions sufficient to meet CZ intent
Falmouth	Yes	In order to allow for flexibility for the development of the land, to assure public benefit, and to mitigate potential negative impacts on subject, abutting, and nearby properties, a contract zoning agreement is required.	<i>Conceptual review.</i> •Town Council Community Development Committee. <i>Formal review.</i> •Planning Board. •Town Council. •Planning Board public hearing. •Town Council public hearing.	Planning Board and Town Council	•Concept review plan. •Formal review: Existing conditions plan, proposed conceptual development plan, traffic impact study, draft contract zoning agreement	Submitted after contract zoning approved	Required	Implied
Kennebunk	Yes	due to the unusual nature or unique location of the development proposed, the Town finds it necessary or appropriate to allow both flexibility for the development of the land and to be able to impose, by agreement with the property owner or otherwise, conditions or restrictions that will assure consistency with the Comprehensive Plan and that are not generally applicable to other properties similarly zoned. All rezoning under this Section shall be consistent with and complementary to existing and permitted uses within the original zones. Use of the provisions of this section shall be limited to where a rezoning is requested by the owner of the property or by an applicant with a legal interest in the property. Nothing in this section shall authorize an agreement for rezoning that is inconsistent with the Comprehensive Plan.	•Planning Board minor site plan concept plan, public hearing. •Town meeting	Planning Board and Town Meeting	•minor site plan submission requirements for concept plan	Submitted after contract zoning approved at public hearing	Required	•Consistent with comp plan. •consistent with existing and permitted uses in zone
Saco	Yes, except RP District	Purpose. Occasionally, competing and incompatible land uses conflict; and traditional zoning methods and procedures, such as variances, conditional use permits, and alterations to the zone boundaries, are inadequate to promote desirable growth....	•Application to Planning Board; PB hearing and notice, including posting sign at property; recommendation to Town Council; Town Council adoption, must include PB findings	Planning Board public hearing and Town Council vote for adoption	Plot plan, streets, written use of property, consistency with comp plan, unusual nature of property, conditions on contract	Required for all CZ; Site plan can be obtained as part of Contract zoning approval	Not required	•land has unusual nature or location; •consistent w comp plan; •consistent with existing uses and permitted uses in zone; •conditions sufficient to meet CZ intent
Scarborough	Yes	modify the zoning district regulations applicable to a parcel of land, subject to appropriate conditions and restrictions which relate to the physical development or operation of the property, and which will allow reasonable uses of the land which would not have been permitted by the existing zoning district regulations but which remain consistent with the Town of Scarborough Comprehensive Plan and compatible with the existing and permitted uses within the existing zoning district classification	•Preliminary joint Town Council/Planning Board meeting. •Planning Board review of site plan •Town Council Contract zoning agreement	Planning Board and Town Council	•Require review under Site Plan Ordinance, after preliminary TC directions	site plan as part of PB contract zoning review, then complete site plan review following contract zoning approval	Required	•consistent with comp plan. •consistent with existing and permitted uses. •in the public interest. •townwide benefits

Draft Contract Zoning Process



CERTIFICATION OF COMPLETION OF
FREEDOM OF ACCESS TRAINING REQUIRED BY 1 M.R.S.A. § 412

I, _____, hereby certify that I have met the training
(Name of elected official)

requirements set forth in 1 M.R.S.A. § 412 on _____ by
(date of training)
completing the following training:

- ☐ A thorough review of all of the information made available on the
Frequently Asked Questions portion of the State Freedom of Access
website, www.maine.gov/foaa/faq.
- ☐ Another training course that includes this information, identified as follows:

(Title of Course)

(Name of Course Provider)

Dated this _____ day of _____, 200____.

Signature

Printed Name

Elected Office

Note: Training must be completed within 120 days after an elected official takes the oath of
office or, for elected officials serving in office on July 1, 2008, by November 1, 2008.

Maine Freedom of Access Act: Your Right to Know

[Home](#) → Frequently Asked Questions

Frequently Asked Questions (FAQ)

[General Questions](#) | [Public Records](#) | [Public Proceedings](#)

GENERAL QUESTIONS

What is the Freedom of Access Act?

The [Freedom of Access Act](#) (FOAA) is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The FOAA does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the Freedom of Information Act (FOIA) applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

For more general information on the Freedom of Information Act go to:

[FOIA.gov - Freedom of Information Act](#)

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any [Superior Court](#) in the state to seek relief for an alleged violation of the FOAA. [1 M.R.S. § 409\(1\)](#)

Relief can be in the form of an order issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. [1 M.R.S. § 410](#)

What are the penalties for failure to comply with the Freedom of Access Act?

A state government agency or local government entity whose officer or employee commits a willful violation is subject to a fine of not more than \$500 for the first violation; a fine of not more than \$1,000 for a civil violation that was committed not more than 4 years after a previous adjudication of a violation by an officer or employee of the same state government agency or local government entity; or a fine of not more than \$2,000 for a civil violation committed not more

than 4 years after 2 or more previous adjudications of a civil violation by an officer or employee of the same state government agency or local government entity. [1 M.R.S. § 410](#) Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. [1 M.R.S. § 452](#)

What is the Public Access Ombudsman?

The Legislature created a public access ombudsman position to review complaints about compliance with the FOAA and attempt to mediate their resolution, as well as answer calls from the public, media, public agencies and officials about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law.

How do I contact the Public Access Ombudsman?

Call the Office of the Attorney General at (207) 626-8577 or get more information online at:

[Your Right to Know: Maine's Freedom of Access Act](#)

Who is required to take training on the Freedom of Access Act?

Public access officers and certain officials subject to this section must complete a [course of training](#) on the requirements of the FOAA. [1 M.R.S. § 412](#)

Which officials are required to take Freedom of Access training?

Officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators
- Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school administrative units
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts
- Public access officers.

As of October 18, 2021 the list of officials required to complete the training also includes:

- Municipal managers or administrators
- Municipal code enforcement officers

- Deputies for municipal clerks, treasurers, managers or administrators, assessors, and code enforcement officers
- Municipal planning board members
- Officials of school administrative units includes superintendents, assistant superintendents and school board members

What is a public access officer?

A public access officer must be designated to serve as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within five working days of receiving the request and that a good faith estimate of when the response to the request will be complete is provided.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Officials and public access officers can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.

Do training courses need to be certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

When must the training be completed?

The training requirement must be completed not later than the 120th day after the date the official assumes the person's duties as an official or the person is designated as a public access officer.

How do officials and public access officers certify they have completed the training?

After completing the training, officials and public access officers are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the official or filed with the public entity to which the

official was elected or appointed. A public access officer must file the record with the agency or official that designated the public access officer. A [sample training completion form is available \(PDF\)](#) (This file requires the free [Adobe Reader](#)).

PUBLIC RECORDS

What is a public record?

The FOAA defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below.) [1 M.R.S. § 402\(3\)](#)

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The FOAA provides that "a person" has the right to inspect and copy public records. [1 M.R.S. § 408-A](#)

How do I make a Freedom of Access Act request for a public record?

See the [How to Make a Request page on this site](#).

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The FOAA does not require that requests for public records be in writing. However, most governmental bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the governmental body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely-preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all

records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within 5 working days of receipt of the request. [1 M.R.S. § 408-A\(3\)](#)

How does an agency determine the date a request for public records was received?

The date a request for public records was received is the date a sufficient description of the record is received by the agency or official at the office responsible for maintaining the record. [1 M.R.S. § 408-A\(3\)](#)

Does an agency have to forward my request if I sent it to an office within the agency that does not maintain the record?

A request for records that are maintained by the agency but not by the office of the agency that received the request must be forwarded to the appropriate office or official within the agency without willful delay. [1 M.R.S. § 408-A\(3\)](#)

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. [1 M.R.S. § 408-A\(3\)](#)

Does an agency have to estimate how long it will take to respond to my request?

Yes. An agency or official must provide a good faith, nonbinding estimate of how long it will take to comply with the request within a reasonable time of receiving the request. The agency or official shall make a good faith effort to fully respond within the estimated time. [1 M.R.S. § 408-A\(3\)](#)

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. [1 M.R.S. § 408-A](#) The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. [1 M.R.S. § 408-A\(5\)](#)

Can an agency or official delay responding if my request was not directed to the agency public access officer?

No. An agency that receives a request to inspect or copy a public record must acknowledge and respond regardless of whether the request was directed to the public access officer. The unavailability of a public access officer may not be reason for a delay. [1 M.R.S. § 413\(3\)](#)

What if the agency or official does not have regular office hours?

If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. [1 M.R.S. § 408-A\(5\)](#)

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. [1 M.R.S. § 408-A](#) Agencies must acknowledge the request within 5 working days of receipt.

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

A person may inspect or copy any public record in the office of the agency or official during reasonable office hours. The agency or official shall mail the copy upon request. The agency may charge a reasonable fee to cover the cost of making the copies for you, as well as actual mailing costs. [1 M.R.S. § 408-A\(1\), \(2\), \(8\)\(E\)](#)

When may a governmental body refuse to release the records I request?

The FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records.

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the [Statutory Exceptions List](#). While this listing may not be totally complete, it contains the vast majority of exceptions to the FOAA.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the FOAA. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Must an agency have computer technology resources that allow for maximum accessibility to public records while protecting confidential information?

When purchasing and contracting for computer software and other information technology resources, an agency shall consider the extent to which it will maximize accessibility and exportability while protecting confidential information that may be contained in the public records. [1 M.R.S. §414](#)

Does an agency have to explain why it denies access to a public record?

Yes. An agency has 5 working days after the receipt of a request to deny the request and state the reason for the denial or state that some or all of the responsive records may be denied once they are located and reviewed. [1 M.R.S. § 408-A\(4\)](#)

What can I do if an agency fails to provide a written denial?

If an agency does not provide a written denial or a statement that the request may be denied in full or in part following a review within 5 working days of the receipt of the request, this is considered a failure to allow inspection or copying and is subject to appeal. [1 M.R.S. § 408-A\(4\)](#)

What can I do if I believe an agency has unlawfully withheld a public record?

If you are not satisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 30 calendar days of your receipt of the written notice of denial, to any [Superior Court](#) within the state. [1 M.R.S. § 409\(1\)](#)

Can an agency deny a request because it is unduly burdensome?

An agency may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action in the Superior Court for the county where the request was made within 30 days of receipt. The agency must document the terms of the request, the good faith estimate and efforts to clarify or modify the request. Notice must be provided to the requester at least 10 days before the agency files for an order of protection. Upon a showing of good cause, the court can establish the terms of production and limit or deny the request. [1 M.R.S. § 408-A\(4-A\)](#) **As of October 18, 2021**, a reasonable fee to cover the cost of copying is no

more than 10 cents per page for a standard 8 1/2 by 11 inch black and white copy. A per page fee may not be charged for records provided electronically.

May a governmental body ask me why I want a certain record?

The FOAA does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. [1 M.R.S. § 408-A\(3\)](#)

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request. [1 M.R.S. § 408-A\(6\)](#)

If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file. [1 M.R.S. § 408-A\(7\)](#)

Must the agency or official provide me with access to a computer terminal to inspect electronically stored public records?

No. The agency or official is not required to provide access to a computer terminal. [1 M.R.S. § 408-A\(7\)\(B\)](#)

I asked a public official a question about a record, but he/she didn't answer. Is the official required to answer my question?

No. A public officer or agency is not required to explain or answer questions about public records. The FOAA only requires officials and agencies to make public records available for inspection and copying.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or

governmental business" and is not deemed confidential or excepted from the FOAA, it constitutes a "public record". [1 M.R.S. § 402\(3\)](#)

An agency or official must provide access to electronically stored public records, including e-mails, as a printed document or in the medium it is stored at the discretion of the requestor. If an agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in an e-mail, the agency is not required to provide the records in an electronic format. [1 M.R.S. § 408-A\(7\)](#)

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages.

Is information contained in a communication between a constituent and an elected official a public record?

Information of a personal nature consisting of an individual's medical information, credit or financial information, character, misconduct or disciplinary action, social security number, or that would be confidential if it were in the possession of another public agency or official is not a public record. However, other parts of the communication are public. [1 M.R.S. § 402\(3\)\(C-1\)](#)

Can an agency charge for public records?

There is no initial fee for submitting a FOAA request and agencies cannot charge an individual to inspect records unless the public record cannot be inspected without being compiled or converted. [1 M.R.S. § 408-A\(8\)\(D\)](#) However, agencies can and normally do charge for copying records. Although the FOAA does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". [1 M.R.S. § 408-A\(8\)\(A\)](#)

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The FOAA authorizes agencies or officials to charge \$15 per hour after the first hour of staff time per request. **As of October 18, 2021**, an agency or official may charge \$25 per hour after the first two hours of staff time per request. [1 M.R.S. § 408-A\(8\)\(B\)](#) Where conversion of a record is necessary, the agency or official may also charge a fee to cover the actual cost of conversion. [1 M.R.S. § 408-A\(8\)\(C\)](#)

As of October 18, 2021, an agency may retain any fees or costs charged for responding to a FOAA request.

The agency or official must prepare an estimate of the time and cost required to complete a request within a reasonable amount of time of receipt of the request. If the estimate is greater than \$30, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the FOAA. [1 M.R.S. § 408-A\(9\), \(10\)](#)

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if the agency or official considers release of the public record to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [1 M.R.S. § 408-A\(11\)](#)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public agency or official is required to make available for inspection and copying, subject to any applicable exemptions, only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order.[1 M.R.S. § 402 \(2\)](#)

What does the law require with regard to public proceedings?

The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. [1 M.R.S. § 403](#)

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. [1 M.R.S. § 406](#)

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same or faster means used to notify the members of the public body or agency conducting the public proceeding. [1 M.R.S. § 406](#) The requirements that the meeting be open to the public, that any person be permitted to attend and that a record of the meeting be made and open for public inspection still apply. [1 M.R.S. § 403](#)

Can public bodies or agencies hold a closed-door discussion?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. [1 M.R.S. § 405\(1\)-\(5\)](#)

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the FOAA, such as the following: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to the FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. [1 M.R.S. § 405\(2\), \(6\)](#)

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any [Superior Court](#) in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. [1 M.R.S. § 409\(2\)](#)

Can members of a body communicate with one another by e-mail outside of a public proceeding?

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the FOAA. [1 M.R.S. § 401](#)

E-mail or other communication among the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." [1 M.R.S. § 402](#) The underlying purpose of the FOAA is that

public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. [1 M.R.S. § 401](#) Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. [1 M.R.S. § 403](#) In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record. [1 M.R.S. § 402\(3\)](#). As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.

Can I record a public proceeding?

Yes. The FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the FOAA. [1 M.R.S. § 404](#)

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The FOAA does not require that an opportunity for public participation be provided at open meetings. However, public participation may be permitted or required in certain circumstances for constitutional reasons or under various statutes, local ordinances or policies. An individual should determine the type of public meeting and consult sources of authority outside the FOAA for information about participation rights.

Is a public body or agency required to make a record of a public proceeding?

Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.

The FOAA also requires that public bodies and agencies make a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. [1 M.R.S. § 407\(1\), \(2\)](#)

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory

specifications, including a recording in a form susceptible of transcription. [5 M.R.S. § 8002\(1\)](#); [5 M.R.S. § 9059](#)

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, [1 M.R.S. § 403](#) , [407](#); [5 M.R.S. § 9059 \(3\)](#)

Can a public body or agency meet remotely?

Yes, but only under the conditions set forth in [1 M.R.S. § 403-B](#). The body must adopt a written policy on remote participation after notice and public hearing. The body may then allow members to participate by remote means if the body complies with the other requirements of the law, including allowing for remote attendance by members of the public. The body may limit public attendance at a proceeding solely to remote methods if there is an emergency or urgent issue that requires the body to meet only by remote methods.

Can a public body hold a remote hearing on a proposed written policy?

Yes. If the chair of a body determines that an emergency or urgent issue exists that prevents an in-person public meeting, the chair may call for a remote meeting to adopt a proposed remote meeting policy. If 2/3 of the members of the body vote in support of the chair's determination that an emergency or urgent issue exists, after an opportunity for hearing, the members may then vote on whether to adopt a remote meeting policy.

Does the remote meeting policy apply to boards or committees within the jurisdiction of the public body?

Yes, unless the board or committee adopts its own policy.

What is the procedure for adopting the written remote meeting policy?

The law requires public notice and a hearing prior to adopting the written policy. The body should give notice to the public in the same way it would give notice of any other public proceeding under [1 M.R.S. § 406](#). The notice should include information about how the public can participate in the meeting and the proposed policy or instructions on how to obtain a copy of the proposed policy in advance of the meeting.

What notice is required for a meeting being conducted remotely?

Notice must be given in ample time to allow the public to attend remotely and given in a manner reasonably calculated to notify the public of the time, date, location and method to be used to conduct the meeting. If any members of the body participate remotely, the notice must include

the means by which members of the public may access the meeting. The notice must also provide the physical location where members of the public may participate in person, if applicable.

What methods of remote participation may be used?

Remote participation in a public proceeding is through either telephonic or video technology. Members of the public shall be provided with a meaningful opportunity to attend by remote means when any members of the body are participating remotely. Other means may be used when necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means of communication, such as email, text message or chat functions.

What if a member of the public wants to provide public comment?

The body must provide an effective means of communication between members of the body and members of the public when public comment is allowed.

Do members of a body who are participating remotely count toward a quorum?

Yes, a member who participates remotely pursuant to the adopted policy is considered present for purposes of determining a quorum.

Is a roll call vote required for action taken during remote meetings?

Yes, all votes must be taken by roll call in a manner that can be seen and heard if using video technology, and heard if using only audio technology, by all members of the body and the public.

Do members of the public who attend remotely have access to meeting documents and materials?

All documents and other materials must be made available to members of the public participating remotely to the same extent customarily available to the public attending in person, as long as additional costs are not incurred by the public body. A proposed policy regarding remote participation must be made available in advance of the meeting if meeting remotely.

Credits

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