

AGENDA
RULES AND POLICIES COMMITTEE
Thursday, March 14, 2024 – 4:00 PM
HYBRID

TO VIEW MEETING AND MAKE PUBLIC COMMENTS:

<https://scarboroughmaine.zoom.us/j/86578751804>

TO VIEW MEETING ONLY:

<https://www.youtube.com/channel/UCD5Y8CFy5HpXMftV3xX73aw>

Item 1. Call to Order.

Item 2. Roll Call.

Item 3. Approval Minutes – June 15, 2023

Item 4. Discussion Items:

- Review term limits on Committees/Boards.
- Process on public comments at Town Council meeting.
- Planning Liaison to the Conservation Commission.
- Notice for Agenda items to be filed with Town Clerk.
- Notice Requirement for Workshop Materials Prior to Any Town Council Action
- Executive Session Requirements, Use by Committees and ground rules as to who can participate.
- Charter or TC Policy amendment(s) to have two full voting members of the LRPC from the general public, outside the development community.

Item 5. Future Agenda Items.

Item 6. Public Comment.

Item 7. Adjournment.

**CHAPTER 302A
TOWN OF SCARBOROUGH
TOWN COMMITTEES/BOARDS MANUAL**

ARTICLE I - PROCEDURES

Purpose

This Guide is to give Town Committee/Board members an overview of what is to be expected from each Committees/Boards. The Town Clerk's Office is the first point of contact by the public when requesting information and it is very important that we maintain a complete and accurate record of all meetings.

Appointment/Re-Appointment

Once an application for a committee/board is received in the Town Clerk's Office, it is then copied and sent to the Appointments and Negotiations Committee for review. The Appointments and Negotiations Committee will then refer its recommendation(s) to the Council. Pursuant to Section 201.00 of Chapter 302 – the Rules and Policies Manual for the Scarborough Town Council: "Appointments to town committee/boards must go through a two-meeting process. Name(s) of individual(s) will be posted at one Council meeting and approved at the next Council meeting. Current members will serve until a replacement is named by the Appointments and Negotiations Committee and certified by the Council."

Once names are posted, notices are sent notifying the individuals their names have been posted and that upon approval by the Town Council another notice will be sent notifying the individuals that they have been appointed, when their term expires and they must be sworn in before they can participate at the committee/board meetings.

New members will receive a copy of the members and the charge for the committee/board they are serving on.

Starting in January 1, 2024, committee/board members shall serve no more than three (3) consecutive full terms of office and until your vacancy is filled on all committees with one year off before they can apply to the same committee/board.

Agenda

Those who are elected as Chair for each committee/board are responsible for conducting the meeting, preparing the agendas and making sure there is a record of each meeting. In order to be consistent with Council guidelines, it is required that any meeting agendas, whether it is a regular or special meeting, and any supporting documentation must be filed in the Town Clerk's Office by 2:00 p.m. seven days prior to the next scheduled meeting. Attached you will find Exhibit A – page 29 – an example on how to structure an Agenda

Notice of any special meetings must be posted at least 24 hours before the meeting. Such notice will state the time and place of such meeting and business to be transacted.

Broadcasting of Board and Committee Meetings [Adopted 10/20/2021]

All meetings of the Planning Board, Zoning Board of Appeals and the Long Range Planning Committee, whenever possible, shall be broadcast live and recorded for rebroadcast at a later date.

Minutes

The meeting minutes shall be motion/action minutes only. The only items recorded in the minutes are those in attendance, the motions made and the action taken [vote]. Attached you will find Exhibit B - Minute/Notes for Meeting Form – page 30.

Please be reminded that *approved* minutes must be filed [either electronically and/or via hard copy] with the Town Clerk, along with any information that may have been handed out at the meeting, within seven (7) days of the meeting. **Any** information that is passed on via e-mail must also be forwarded to the Town Clerk's Office. The minutes of each meeting shall be provided electronically and/or via hard copy to the committee council liaison.

The only exceptions regarding filing of the minutes are the Planning Board and the Zoning Board of Appeals in which instance, the Clerk's Office would only need the agendas to any meetings.

Annual Report

All special committee and/or boards [as defined in Chapter 302 Council Rules and Policies-subsection 204.1] shall submit an Annual Report, electronically and/or via hardcopy, to the Town Council regarding the summarization of the committee/board activities for the year.

Quorum

A quorum is defined in the majority of the Council Charges for each committee/board. In the event that the quorum is not defined in the committee/board charge it would then be defined as the majority of the members appointed to that committee/board.

All committees/boards must have a quorum in order to conduct any business. If there is no quorum of the members then the meeting will be considered a workshop and no business shall be conducted.

Alternate Member[s]

Alternate members may participate in the discussion of a meeting; however, they cannot vote. The only time an alternate member can vote is if they are replacing a full voting member who is absent.

In the absence of a full voting member, unless otherwise stated in the Council Charge, the Chair of said committee/board shall allow the first [or second] alternate to participate and vote on committee/board business. Therefore, it is strongly recommended that Alternates receive all meeting materials and attend all meetings.

Attendance Requirement

Pursuant to the Town Charter, Section 204.11. The Town Council may remove any board appointee and appoint a successor for the unexpired term of any member who fails to attend four (4) consecutive regular meetings or who fails to attend seventy-five percent (75%) of all meetings during the preceding twelve (12) month period of the appointee's board. The Town Council may waive attendance provisions for due cause.

Vacancy on Committees/Boards

Any vacancy during the unexpired term of any member appointed to any committee/board by the Town Council shall be filled by the Town Council for the remainder of the term. The Town Clerk's

Office shall be notified, in writing, by either the Chair of the committee/board or by the individual wishing to resign.

Copying

Any copies that need to be made should be provided to the Clerk's Office the day before the meeting so that we may fit it into our daily schedule.

Room Requests & Public Notice

Due to the high volume of room requests, it is important that set meeting schedules be followed. We realize that it is not always possible for all members to attend every meeting. Meeting dates are posted in the area newspapers for public notice; therefore, the committee/board should make every effort to hold its scheduled meeting. Any cancelled meetings that are to be rescheduled must be put in writing by the Chair and submitted to the Town Clerk's Office. Please be aware that cancelled meetings must be posted for the public at least 24 hours in advance. **ALL ROOM REQUESTS MUST GO THROUGH THE CLERK'S OFFICE.**

GUIDANCE ON PUBLIC COMMENT AT BOARD MEETINGS

MMA Legal Services

In light of several recent incidents involving disruptive “remote” attendees at municipal board meetings, we thought it would be helpful to remind readers of our guidance on administering public comment at such meetings. In a nutshell, our advice is virtually the same whether members of the public attend in-person or via a “remote” method (e.g., Zoom).

Laws Governing Public Comment at Municipal Board Meetings:

Public comment at municipal board meetings in Maine is primarily governed by two authorities:

- **Maine Freedom of Access Act:**

Except at a public hearing, members of the public have no legal right to speak at a public board meeting whether they are attending in-person or via a remote means such as Zoom. Maine’s Freedom of Access Act (FOAA) entitles the public to attend and record in-person and “remote” meetings but not to speak at or otherwise participate in them (see 1 M.R.S. §§ 403, 403-B, 404).

A board may voluntarily set aside time during its meetings for public comment – when, for example, any member of the public is allowed to address the board on agenda items, matters relating to municipal business or more broadly, any matter of bona fide public concern.

If the board allows public input from those present at a board meeting, it must allow an effective means of communication from “remote” attendees. 1 M.R.S. § 403-B(2)(D).

- **Constitutional First Amendment Protections:**

Most courts view the public comment portion of a municipal board meeting as a “limited public forum” under constitutional First Amendment jurisprudence, assuming the comment period is limited to discussion of certain topics. *See e.g., McBreaity v. Sch. Bd. of RSU 22*, 616 F.Supp.3d 79 (D.Me. 2022); *Steinburg v. Chesterfield Cty. Planning Comm.*, 527 F.3d 377 (4th Cir. 2008). A limited public forum is a forum the government voluntarily creates to allow expressive activity for specified purposes. In a limited public forum, the government may restrict expression provided that the restriction (a) does not discriminate against speech on the basis of viewpoint and (b) is reasonable in light of the purpose served by the forum. *See e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, (2001). Limiting the subject matter of the speech may

be permissible if the limits are reasonable, are intended to preserve the purposes of that limited forum and are not an effort to suppress expression merely because public officials oppose the speaker's ideology, opinion or perspective. The municipality must be able to articulate a basis for its limits. *See e.g., Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995).

It is also possible for a board to establish a public comment period as an “open” “designated” public forum at which any matter might be discussed by the public. In those situations, the government’s ability to limit the content of the public’s speech is more limited and limits on content usually require a compelling justification. *See e.g., Pleasant Grove City v. Summum*, 555 U.S. 460 (2009).

Recommendations:

If your board establishes a public comment period for its meetings, we suggest the following:

1. Adopt A Written Policy with Clear Parameters.

We recommend that public participation guidelines be adopted in a written policy clearly stating the parameters of the comment period to make clear (if desired) that the comment period is a “limited” forum for public comment. Although an unwritten policy or custom may limit the scope of a public comment period, a written policy formally adopted by the board provides firmer and clearer support for content limits and reduces potential misunderstandings or legal claims as to the intended scope of the public comment period.

The policy should expressly state the purposes of the public comment period and any time limits or restrictions on subject matter (e.g., whether public comment will be limited to agenda items, or to concerns relating to your municipality’s government business). In addition to providing board members and members of the public, alike, with “rules of the road” for public meetings and participation, a written policy is critical to successfully enforcing limits on disruptive speech. In the event that a speaker engages in disruptive speech or other behavior during a meeting, a written policy will provide a solid basis during the meeting (if necessary) to ask a speaker to limit their comments. A clear policy also may help avoid claims that the board has opened its public comment period to discussion of any topic at all. If a policy merely specifies a time during meetings for public comment with no further limitation, it may leave the board open to claims that it has created an open (“designated”) forum for expression on any content (limits on content must meet a much higher standard in such forums).

2. Establish A Schedule and Time Limits.

We recommend the policy schedule public comment periods for regular meetings only, and at a time convenient for the public, for example, at the beginning of the meeting or after each agenda item. Some boards choose to provide a time for comment on agenda items and a separate time for comment on “non-agenda” matters of municipal concern.

It is helpful to establish reasonable time limits for each speaker (e.g., 3-5 minutes) and for the entire comment period (e.g., 20-30 minutes). If limits are established, we recommend including a process for the board to modify or extend the time limits if needed.

3. Use Available Remote Security Tools.

Use available tools to control the “remote” technology. Most videoconferencing platforms provide controls to assist the meeting’s host. For example, Zoom has security recommendations for its meeting platform. See: “[Preventing OnZoom Event Disruptions as a Host](#).” These suggestions include disabling options for attendees to change their screen name during the meeting, disabling file sharing and screen sharing for public attendees to prevent “hijacking” or sharing of obscene material, muting public attendees, and disabling their ability to unmute themselves until public comment is allowed or they are recognized to speak. Turning off any chat function or allowing it only for hosts is also an option.

4. Require Recognition/Identification.

Require speakers to be recognized by the chair before speaking. “Remote” speakers should be muted until recognized. The policy may require speakers to identify themselves but should not require speakers to provide home addresses. Some boards find it helpful to ask whether commenters are municipal residents or from a particular district within the municipality, but someone who refuses to provide the information should not be prohibited from speaking. (In contrast, there is no basis in the FOAA to require those merely *attending* the meeting --whether remote or in-person -- to identify themselves.) Require all comments and questions to be directed to the chair or through the chair to others. It is also helpful for the chair to summarize participation rules for the public before each comment period.

5. Immediate Response to Comments Not Required.

Do not feel compelled to respond to comments or answer questions immediately; feel free to take matters under advisement. Most boards use a public comment period simply as a forum to hear from constituents.

6. Define Limits on Speech Carefully.

As discussed above, a written policy may establish the public comment period as a limited forum and limit speech to specific subject-matter (e.g., agenda items, municipal business issues, etc.). A board may prohibit public comments on topics outside the scope of those policy limits. A policy may also prohibit obscene, threatening, disruptive or overly repetitive comments. As noted above, muting remote attendees until recognized to speak and disabling screensharing for remote attendees are acceptable ways to limit sharing of “off-topic” comments or material prohibited by the policy.

However, a policy may not limit public comment based on the viewpoint or ideology of the speaker; even if that viewpoint is offensive or upsetting. For example, comments that *are germane to the topic under discussion* may not be prohibited merely because they are critical, reflect opposing opinions, are discriminatory, extreme or offensive. Generally, we advise that a policy should not state that it prohibits comments that are “offensive,” “intolerant,” “abusive,” or “inappropriate,” as these terms are likely too broad to meet constitutional requirements. (It is, however, likely appropriate to indicate that personnel complaints pertaining to misconduct of individual employees are handled through a different, confidential process.)

Remember that there is a distinction between an offensive or unpopular viewpoint that is offered as part of comments within the scope of the allowed subject-matter and comments that are outside allowed content limits, disruptive or prohibited.

7. Focus on Disruptive, Not Offensive, Behavior.

A policy may prohibit disruption and disorderly behavior that interferes with the orderly conduct of the meeting. For example, a policy may prohibit repeated shouting, yelling, interrupting other speakers, stomping feet, blocking the view of others, jeering or booing that disrupts the meeting. Remember, however, that activity that is distracting or offensive, but not necessarily disruptive, may require a different response. For example, persons that stand in the back of the room, or who (via “remote” access or in-person) make faces or offensive hand gestures (e.g., middle finger, Nazi salute) might not actually disrupt the meeting or require removal (see below).

Courts have recognized that boards have a legitimate interest in conducting meetings with relative orderliness and fairness. Although it is permissible to request and

encourage proper decorum and respectful behavior necessary for the board to conduct public business, commenters should not be muted or removed from the meeting simply for being rude or disrespectful in their comments if the comments are germane to the topic under discussion and not disruptive. This includes comments or viewpoints that may be racist, discriminatory, or extreme. In contrast, a person that simply shouts slurs or insults when they are unmuted or recognized to speak should be told to cease on the basis that the comments are outside the subject matter allowed during the public comment period (assuming this is consistent with the board's written policy). Such comments may also be prohibited as disruptive if, for example, they engender outbursts by others or create such a distraction that the board is unable to conduct its business effectively. Likewise, someone whose comments stray from the topic under discussion into commentary on political or social issues may be asked to refrain at that time on the basis the comments are outside the allowed topic.

8. Apply The Policy Uniformly.

During board meetings, the board's policy should be applied fairly and uniformly regardless of who is speaking and without distinction between members of the public attending in-person or via remote means. State/federal constitutional principles apply equally to viewpoints expressed in-person or via "remote" means.

9. Take a Measured Enforcement Approach.

Drawing the line between protected speech and speech that may be prohibited can be extremely difficult, particularly when the speech is rude or offensive. It is helpful to focus on (1) whether disruption is occurring, (2) whether the speech is within or outside the topic allowed, and (3) whether it is the speaker's viewpoint alone that is the issue.

In most cases, we recommend using the least extreme initial response and progressing to greater response if needed. For example, if a member of the public is violating the policy or disrupting the meeting, politely but firmly remind the person of the policy requirements and ask the person to limit their comments and/or sit down and be quiet. If they refuse, ask them to leave or mute "remote" speakers. In many cases, simply muting a remote speaker may be sufficient to end the disruption. If muting is sufficient, it is not necessary to remove the person from the remote meeting platform. If disruption continues, ask a police officer, if available, to escort the person(s) out or call a recess until matters are under control and/or tempers have cooled. The board may also consider adjourning the meeting to another time. Since members of the public have a right to attend a public meeting, removing someone

from the meeting should be done only when necessary for orderly conduct of the meeting.

10. Consult the Municipality's Attorney.

We strongly recommend that boards work with their municipal attorney to draft a public comment policy. The legal issues surrounding public speech rights are very complex and because constitutional rights are implicated, there is potential municipal liability for infringement of those rights. Developing a policy will require a number of judgments and choices. For this reason, there is no “one-size fits all” public comment policy; a board and its attorney will need to discuss the objectives and risks of various approaches.

Similarly, because decisions about when and how to limit public comment – even with a written policy in place – are very fact specific and the line between offensive and disruptive speech is often nuanced, MMA strongly recommends that board chairs talk with their town attorneys about how best to administer the policy during public meetings.

Summary:

As discussed above, this is a complicated area of the law. As each situation involving public comments is unique, the written guidance above cannot address every fact pattern or potential circumstance. We encourage members to contact MMA Legal Services to discuss their own meetings and concerns individually with our attorneys or to discuss these issues with their municipal attorney.

Contact MMA Legal Services:

Tel. (800) 452-8786

Fax (207)624-0187

legal@memun.org

PORTION OF CHAPTER 302 – COUNCIL RULES & POLICIES MANUAL

200.0: Procedures For Addressing The Council.

Any person wishing to address the Town Council will be given an opportunity to do so in accordance with the following procedures:

202.1: Procedure.

A Public Comment Period shall be conducted prior to the start of any Council business at each regular Town Council meeting, at which time citizens shall be given the opportunity to be heard on matters concerning Town business in general. Additional public comment shall be allowed during public hearings and on agenda items. Such public forums and/or public comment periods may be waived if no member of the public wishes to speak. Persons wishing to speak will preface their comments by giving their name and address. [amended 10/21/09]

202.2: Time Limit.

All such public forums, public comment periods and public hearings shall be conducted under the following guidelines:

202.2a: General Public Comment: Persons addressing the Town Council during the public comment period at the beginning of the meeting shall limit their comments to (3) three minutes. Individuals may be permitted to speak more than once at the discretion of the Chair of the Council. The first (30) thirty minutes of the Council meeting will be allocated for general public comment. If it appears that the public comment period will exceed 30 minutes, public comment may be suspended by the Chair, so the Town Council may conduct its business, in any case to occur prior to adjournment. [amended 10/21/09]

202.2.b.: Public Hearing Comment: Persons addressing the Town Council during a public hearing shall limit their comments to the particular agenda item and shall limit their comments to (3) three minutes. Individuals may be permitted to speak more than once at the discretion of the Chair of the Council. [amended 04/18/01][amended 10/21/09].

202.2.c: Public Comment on Agenda Items: Following the reading of each agenda item, the Chair shall ask if any member of the public wishes to speak on that item. Persons who have previously addressed the Town Council during the public comment portion and wishes to speak on an agenda item may do so only if there is new and pertinent information to be added and limit their comments to (3) three minutes. [amended 10/21/09]

202.2.d: Council Member Comments: Each Council Meeting Agenda schedules an opportunity for Council Member to share personal comments that may be of community interest, at the close of each meeting. Town Council members shall limit their comments to (10) ten minutes. Individual Councilors may be permitted to speak more than once at the discretion of the Chair of the Council.

202.3: Decorum.

Persons present at Council meetings, including Elected Officials, are requested not to applaud or otherwise express approval or disapproval of any statements made or action taken at such meeting.

202.3.a: Persons addressing the Council shall direct their remarks exclusively to the Council Chair unless the Chair allows otherwise. Persons will strive to be accurate in their statements and avoid making personal, rude or provocative remarks. All statements should respect the dignity and seriousness of the proceeding. Persons conduct themselves in a manner expected of all meeting participants. [amended 04/18/01; amended 04/01/15]

202.3.b.: It shall be at the discretion of the Council Chair to ask any persons making in-appropriate statements, and/or conducting themselves in a disrespectful manner to cease such action or risk being asked to be seated or removed. [adopted 10/21/09]

CONSERVATION COMMISSION

[Established 08/04/1979; Adopted 08/02/2000, Amended 07/18/2001; Amended 09/03/2008; Amended 04/06/2022]

Established

Pursuant to the provisions of the Town Charter and Title 30-A M.R.S.A. §3261, Conservation Commissions, and Title 30-A M.R.S.A. §3001, Ordinance Power, there is hereby established the Conservation Commission of the Town of Scarborough. (Amended July 18, 2001)

Organization and/or Membership

The Conservation Commission shall consist of seven (7) members and two (2) alternate members appointed by the Town Council for three-year terms. Members whose terms expire shall continue to serve until their successors are appointed and qualified. ~~The Town Council may appoint one of its members to serve as a Council liaison to the commission~~ A representative from the Town Council and a representative from the Planning Board shall serve as Liaison and are non-voting members. The Town Manager or his/her designee shall serve as staff liaison to the Commission. Neither the Town Council liaison nor the Town Manager or his/her designee shall be a voting member of the Commission.

The Commission may also recommend to the Town Council that associate members be appointed to assist the commission, as the commission requires. Associate members are nonvoting members. Their terms of office shall be for one, two or three years.

Four (4) members of the Commission constitute a quorum. The alternate members of the Commission shall have voting authority if a quorum is lacking. The Commission shall select one (1) member to service as chair and one (1) member to serve as vice chair. The Commission shall set its own meeting schedule, which will be open to the public.

Duties and Powers

The Conservation Commission shall:

- Keep minutes of meetings including those attending; adopt procedures for conducting business; and file minutes and procedures with the Town Clerk;
- Coordinate activities and programming with other conservation groups within the community;
- Keep an index of all open areas within the Town of Scarborough, whether publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information relating to the proper protection, development or use of those open areas. The Conservation Commission may recommend to the Town Council or any municipal body or board, or any body politic or public agency of the State with prior knowledge of the Town Council, a program for the better protection, development or use of those areas, which may include the acquisition of conservation easements;
- Assist various town agencies with Open Space Land Planning and with establishing Acquisition Priorities for Open Space purposes;
- Publicize the Development Transfer Program and work with Rural Landowners to both educate and encourage their use of the program in accordance with the Comprehensive Plan and the Town of Scarborough Zoning Ordinance;

- Encourage Trail Planning and promote Connectivity of a town-wide trail system;
- Collaborate with other Town Council appointed committees on Environmental/Conservation Related Regulations and Standards;
- Promote and encourage local environmental initiatives, such as education and encouraging the public with respect to environmentally sensitive lawn products, native landscaping, residential buffers to natural resources, water conservation and similar measures;
- Initiate critical environmental studies and projects; and,
- Develop Land Management Plans for Town Conservation Land in collaboration with the Scarborough Conservation Land Trust and applicable Town Departments.
- Serve as the Pest Management Advisory Committee (PMAC) to oversee a Pest Management Program that is consistent with the Town's Pest Management Policy (Ch. 104.3, adopted September 21, 2011).

The Conservation Commission may:

- Advertise, prepare, print and distribute books, maps, charts, plans, and pamphlets, which it considers necessary;
- Receive gifts in the name of the Town of Scarborough for any of the Commission's purposes with the approval of the Town of Scarborough and the Commission shall administer such gifts for those purposes subject to the terms of the gifts.
- Act as an advisory board to the Scarborough Town Council on types and sources of coastal pollution within the Town of Scarborough and to conduct research and develop data on the sources of pollutants within the coastal areas of the Town.
- Act as an advisory board to the Scarborough Town Council and applicable Town Departments on the acquisition of land for open space purposes, the implementation of land management plans of Town owned property, and the expansion of a town-wide trail system.
- Review subdivision plans, site plans or other Planning Board reviews or studies upon the request by either the Town Council or the Planning Board.

Procedures

Notice of Planning Operations - Any body politic or public agency of the State conducting planning operations with respect to open areas within the Town of Scarborough shall notify the Conservation Commission of all plans and planning operations at least 30 days before implementing any action under that plan.