

Bill Ethier

From: Legal Services Department <legal@memun.org>
Sent: Thursday, July 22, 2021 8:18 AM
To: ceo@greenvilleme.com
Subject: Greenville - Legal Information Request - Drafting Town Ordinances
Attachments: SAMPLE RP POLICY-Final 6-28-21.pdf; Remote Board Meetings Legal Note - 6-28-21 FINAL.pdf

Bill,

Concerning remote meetings, an ordinance is not required. The new law allows each municipal board/committee to adopt a remote meetings policy. I think the selectboard could direct that appointed boards, such as the planning board, adopt a particular version of this policy (such as one prepared by the town attorney) but the town meeting or selectboard can't adopt one policy for all town boards. MMA Legal does have a summary of the law and a sample policy. They are attached. In the future we may have some more samples from individual municipalities on our website. I do know that many municipal attorneys are drafting their own policies, so the town may wish to check with Greenville's attorney to see if he/she has a sample policy that he/she prefers. As planning boards deal with quasi-judicial proceedings and testimony, etc., your attorney might recommend that the planning board's remote meetings policy address some of these issues.

Concerning noise ordinances, there is no law that requires a particular board to draft a noise ordinance. However, as you may know, the selectboard has final authority (absent a citizen petition) to schedule town meetings, draft warrant articles and decide whether an ordinance will be presented to the voters. So, if the selectboard has not asked the planning board to draft a noise ordinance, before the board spends time on this project, it would be wise to consult the selectboard to confirm they are in favor of the planning board drafting the ordinance. I would also strongly recommend that the town's attorney review any noise ordinance before it is finalized. Noise ordinances are tricky to draft since it is hard to describe noise in a manner that does not have problems with vagueness. There are also a few statutes that limit noise regulation. See a 2013 Legal Note on noise regulation: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/190/Regulating-Noise>. Unfortunately, we don't have any sample noise ordinances.

Please let me know if you have any questions.

Susanne F. Pilgrim, Esq., Director
Legal Services Department

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
Phone: 207-623-8428
1-800-452-8786 (in state)
FAX: 207-624-0187
legal@memun.org

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

From: Webmail
Sent: Tuesday, July 20, 2021 2:58 PM

To: Legal Services Department <legal@memun.org>

Subject: Greenville - Legal Information Request - Drafting Town Ordinances

Legal Services - Web Member Inquiry - Bill Ethier - Greenville

Municipality Greenville
Subject Drafting Town Ordinances
Full Name Bill Ethier
Title CEO

Email Address ceo@greenvilleme.com
Telephone 695-2421
Fax Number: 695-4611

Address 7 Minden Street
City/ Town Greenville
Zip 04441

Comments:

Hello, Our Planning Board asked me a question and i did not know the answer, so they advised I contact MMA. The town is in the beginning stage of creating a Noise Ordinance and a Remote Meeting Ordinance. Does MMA have any guidelines on what Board should draft these Ordinances? I know our Select Board has to approve then a town meeting to adopt, but does it matter who drafts these ? Thanks for your help. Bill Ethier

Inquiry ID: 5ac2a76d-92e0-456b-b3eb-9127bc639f7e
IP Address: 72.95.115.250

SAMPLE

[This sample policy is provided by MMA Legal Services. It adheres to the requirements of 1 M.R.S. § 403-B, and may be tailored to meet the needs of individual board/committees. We strongly encourage municipalities to consult their municipal attorney prior to enacting any policy.]

REMOTE PARTICIPATION POLICY

(name of body)

Pursuant to 1 M.R.S. § 403-B, and after public notice and hearing, the above-named body adopts the following policy to govern the participation, via remote methods, of members of the body and the public in the public proceedings or meetings of the body.

Members of the body are expected to be physically present for meetings except when not practicable, such as in the case of an emergency or urgent issue that requires the body to meet via remote methods, or an illness or temporary absence of a member that causes significant difficulty traveling to the meeting location. The chair or presiding officer of the body, in consultation with other members if appropriate and possible, will make a determination that remote methods of participation are necessary in as timely a manner as possible under the circumstances. A member who is unable to attend a meeting in person will notify the chair or presiding officer of the body as far in advance as possible.

Remote methods of participation may include telephonic or video technology allowing simultaneous reception of information and may include other means necessary to accommodate disabled persons. Remote participation will not be by text-only means such as e-mail, text messages, or chat functions.

The public will be provided a meaningful opportunity to attend via remote methods when any member of the body participates via remote methods. If public input is allowed or required at the meeting, an effective means of communication between the body and the public will also be provided. The public will also be provided an opportunity to attend the meeting in person unless there is an emergency or urgent issue that requires the entire body to meet using remote methods.

Notice of all meetings will be provided in accordance with 1 M.R.S. § 406 and any applicable charter, ordinance, policy, or bylaw. When the public may attend via remote methods, notice will include the means by which the public may access the meeting remotely and will provide a method for disabled persons to request necessary accommodation to access the meeting. Notice will also identify a location where the public may attend the meeting in person. The body will not restrict public attendance to remote methods except in the case of an emergency or urgent issue that requires the body to meet using remote methods of attendance.

The body will make all documents and materials to be considered by the body available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the body.

All votes taken during a meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the body and the public. A member of the body who participates remotely will be considered present for purposes of a quorum and voting.

This policy will remain in force indefinitely unless amended or rescinded.

Dated: _____

Signed: _____

Remote Board Meetings Now OK'd Permanently

The Legislature has made remote participation in public board meetings permissible on a permanent basis, but only under limited circumstances. PL 2021, c. 290, was enacted as an emergency measure and took effect on June 21, 2021, with the Governor's signature. It adds a new provision (§ 403-B) to Maine's Freedom of Access Act or FOAA (1 M.R.S. §§ 400-414).

Meanwhile, FOAA's temporary provision (§ 403-A) authorizing remote participation in public board meetings during the COVID-19 pandemic remains in effect until July 30, 2021.

Under the new law board members are expected to be physically present for meetings, but may attend board meetings via remote methods of participation in the case of an emergency or urgent issue that requires the board itself to meet remotely, or an illness or temporary absence that causes a board member significant difficulties in traveling to a meeting.

The public must have a meaningful opportunity to attend via remote methods when board members participate via remote methods. If public input is allowed or required at a meeting, an effective means of communication between the board and the public must also be provided. A board must provide a location where members of the public may attend in person. A board may not limit public attendance to remote methods only except in case of an emergency that requires the board itself to meet remotely.

Remote methods include telephonic or video technology allowing simultaneous reception of information and also permits other means necessary to accommodate disabled persons. But remote participation cannot be by text-only means such as e-mail, text messages, or chat functions

To enable remote participation, a board must first, after public notice and hearing, adopt a written policy governing remote participation by board members and the public that contains the limitations noted above.

Notice of all board meetings is required as usual (see § 406). When the public may attend via remote methods, notice must include the means by which the public may access the meeting remotely, and a location for the public to attend in person (except in case of an emergency).

A board must make all documents and materials to be considered by the board available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the board.

All votes during a board meeting using remote methods must be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other board members and the public. A board member who participates remotely is considered present for purposes of a quorum and voting.

Remote participation is not permitted for town meetings or regional school unit budget meetings.

As we noted above, FOAA's temporary provision authorizing remote board meetings, which does not require adoption of a local policy, remains in effect until July 30, 2021 (see § 403-A). After that date, boards are not authorized to permit remote participation without first adopting a written policy in compliance with the new law (see § 403-B). For a sample remote participation policy, see this link: _____ (By R.P.F.)