

Updated Guidance (5/14/20) The Coronavirus and “Remote” Board Meetings

On March 17, 2020, the Maine Legislature enacted emergency legislation (PL 2019, c. 617) temporarily authorizing remote participation at municipal board and committee meetings by board members and the public in light of the public health risks of COVID-19. As a result, MMA Legal Services has updated our guidance on these issues.

Although both MMA Legal Services and the Maine Attorney General’s office have interpreted existing law to prohibit remote participation, this prohibition on remote participation has been temporarily lifted if certain conditions are met. Specifically, during the state of emergency declared by the Governor, a municipal board or committee subject to the Maine Freedom of Access Act (FOAA) may conduct a public proceeding through telephonic, video, electronic or other similar means of remote participation under the following conditions:

- A. Notice of the public proceeding has been given in accordance with Maine’s FOAA (1 M.R.S. § 406), and the notice includes the method by which the public may attend in accordance with paragraph C; (*Note: boards should also comply with local notice procedures if more stringent than those in the FOAA.*)
- B. Each board or committee member who is participating in the public proceeding is able to hear and speak to all the other members during the public proceeding and members of the public attending the public proceeding in the location identified in the notice given pursuant to paragraph A are able to hear all members participating at other locations;
- C. The body determines that participation by the public is through telephonic, video, electronic or other similar means of remote participation; and
- D. All votes taken during the public proceeding are taken by roll call vote.

This legislation would allow board members to participate remotely and allow the public to observe and/or hear in real time using remote means during the COVID-19 state of emergency.

Note that the emergency law does not allow remote participation at “open” town meetings or regional school unit budget meetings pursuant to 20-A M.R.S. § 1483.

Some considerations for board meetings:

- Although a board may limit the public to attending by remote means only, the law does require that the public be allowed to hear, or see and hear, the meeting in real time. For example, applications such as Zoom, Facebook live, YouTube, cable television broadcasts, conference calls and similar methods must allow the public to attend in real time on a “remote” basis.

- Remember that all other requirements of the Maine FOAA remain in force, including requirements relating to public notice and approval of executive sessions.
- Consider postponing non-essential meetings and agenda items, limiting business at board meetings to items necessary to continue municipal operations.
- Test equipment and technology well before the meeting at which remote access will occur to minimize disruption to public access and board operations. There are a number of video-conferencing and streaming applications that may be available for boards. Relocation to a meeting space with suitable technology could also be considered.
- Make an extra effort to provide a transparent process, by providing as much notice and information to the public as possible in advance of the meeting through all means available (e.g., website, postings, email updates, newspaper articles, cable television notices, etc.).
- Consider posting agendas as far in advance as feasible, even if not required by local rules.
- If technology is available, consider making an audio or visual recording of the meeting for later reference and/or posting on the municipal website.
- Under state law, the public does not generally have a right to ask questions or offer comments at a board or committee meeting unless the board has allowed public comment or local rules so require. However, during the COVID-19 related state of emergency, boards should consider taking extra steps to allow public involvement even if accepting public comments is not required. For example, boards could provide methods for citizens to submit comments on agenda items before or after the meeting via email, phone, mail or other means. Note that allowing the public to submit comments in advance and in written form cannot substitute for the public's right to observe the meeting in real time; the law requires that the public be allowed to attend by observing a public proceeding in real time on a "remote" basis.
- If both the board and public will attend via remote means, have a staff person physically present to troubleshoot technology issues and to communicate with citizens that may arrive in person.
- If it is necessary for board members or the public to attend meetings in person, take measures to protect health and safety by following all applicable CDC recommendations and the Governor's limitation to meetings of 10 or fewer persons. Also, consider other measures such as meeting in a larger space and dispersing seating to allow greater distance between attendees.

Members are encouraged to contact MMA Legal Services for specific advice on these topics at 800-452-8786 or legal@memun.org. Additional guidance is located on MMA's "Coronavirus Updates and Resources" page at www.memun.org.

Maine Municipal Association
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