

Maine Townsmen

The Magazine
of the Maine Municipal Association

NOVEMBER 2015

Welcome To The Future: Drones Gain Popularity

Municipal regulatory authority is limited



ALSO IN THIS ISSUE

Retaining young Mainers

MMA's Citizen Education program

Is your sign ordinance constitutional?

Concealed weapons permitting changes

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The Magazine of the Maine Municipal Association

FEATURED STORY | 15

Everywhere a Sign



A unanimous U.S. Supreme Court, no less, weighed in regarding the legality of municipal sign ordinances. The bottom line: If your ordinance regulates a sign's content in any way, it may not be legal.

MMA's 2015 Convention featured presentations on the growing number of people who live alone, community fire prevention and municipal collaboration. Next year, the Convention moves to the Cross Insurance Center in Bangor. Photos begin on [Page 25](#)

Keeping Citizens Informed

The beauty of the municipal message is that local government sells itself as the most accountable, accessible and responsive form of government that we have. Educating citizens remains a never-ending, and important, task.

[Page 5](#)

Do You Want One, Too?

Unmanned aerial vehicles, commonly known as drones, are booming in popularity. So far, local officials are limited in how they can regulate drones, as the Federal Aviation Administration plays the leading role.

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What's Left to Authorize

Maine has joined the list of states where it is legal to carry a concealed weapon and, in many cases, no permit is required to do so. The Maine State Police want to clarify the current regulatory process.

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A MESSAGE FROM MMA

BY ERIC CONRAD / EDITOR

Helping you keep your citizens informed

Like it or not, some tasks in life must be done again and again. The laundry. Seeing the dentist. Oil changes. Teaching our children and grandchildren about being reliable, honest and doing their best with the task at hand.

And this one: Explaining to the public what municipal government does, what it doesn't do, and what property and excise taxes pay for.

Our "citizen education" efforts never end because people forget what we've told them years before, and newly inspired citizens come along all the time, people who are motivated to ask about, and even challenge, what their town or city does for them. Which we know is a lot.

Maine Municipal Association has produced a variety of tools to help our members in this regard. Here is a sampling:

• **Posters.** The basic functions of municipal government are outlined in posters that are aimed at school students, but probably could inform many adults in your community as well.

• **Essay contest.** Each year, we send mailings to all the middle school principals in the state urging them to have their seventh-grade students enter our statewide essay contest, which encourages them to think about how they would lead their communities, given the chance. Your middle school principal received our mailing last month.

• **High school lesson plans.** One sad trend in recent decades has been the decline of standard "civics" curriculum in our public schools. MMA has lesson plans available for



teachers at a variety of grade levels. We offer, working with Jobs for Maine Graduates, "Municipal Literacy" curriculum in 70 Maine high schools.

• **Property-tax DVDs.** This narrated, visual tool explains how property taxes are assessed, collected and outlines what services are funded by property taxes. At 11 minutes long, some MMA members play it prior to their annual town meetings. One municipal manager told me: "Eric, if they're going to yell at me about taxes, I at least want them to have an idea what they're yelling about."

• **Town meeting primers.** Every year, we mail five copies of our "Citizen's Guide to Town Meeting" booklet to members that use the town meeting form of government. We're always willing to send more. This is a useful primer for people who may be unfamiliar with town meetings, including how they are run and the roles that citizens play.

This is just a start. I encourage you to visit our website (www.memun.org) and click on the Citizen Education link on the left-hand side. Use the tools. Ask us about them. Tell us if there are things

that we should add.

Keeping people informed about municipal government is a "can't lose" proposition. We know that local government is the most accessible, responsive and cost-effective layer of government out there. You are pillars of democracy in your communities. At MMA, we feel privileged to help you spread the word. ■

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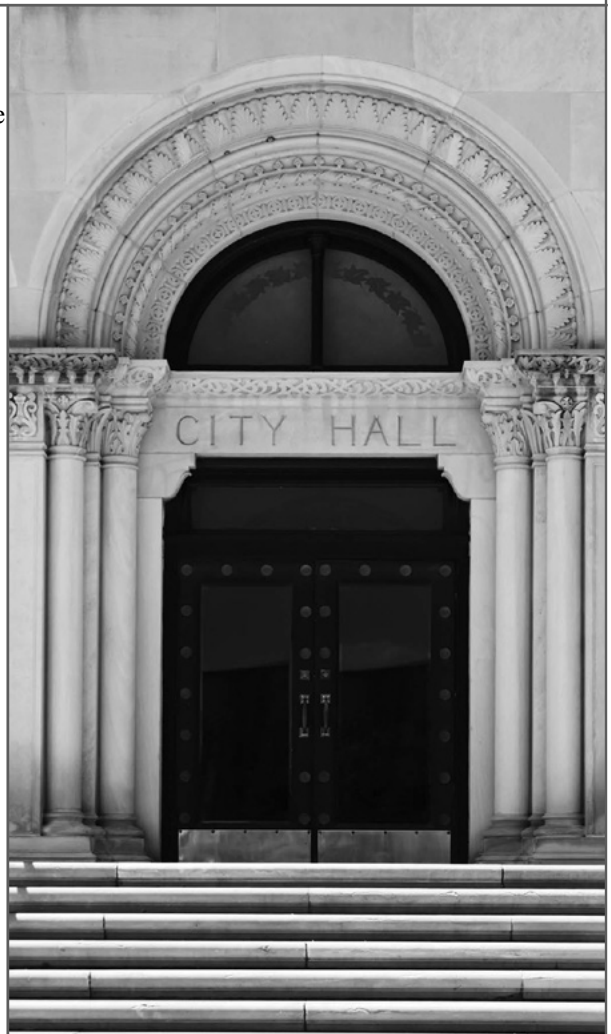
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Drones being used for search, not police operations, in Maine

The FAA wants to 'integrate,' not limit, the use of unmanned aerial vehicles. Meanwhile, experts predict 1 million will be given as Christmas gifts this season.

By Liz Mockler

Maine elected officials can regulate police use of drones under a new state law that mandates municipal approval, but only the Federal Aviation Administration (FAA) has the power to limit commercial and private use of the increasingly popular “unmanned aerial vehicles.”

Maine’s new law regulates and limits the use of drones by police only, with a heavy focus on protecting the individual rights and privacy of Maine citizens.

A spokesman for the FAA recently said state and local government laws would be “preempted” by the FAA if the laws limit operation of an aircraft, set standards for airworthiness or set standards for pilot requirements.

Les Dorr, FAA spokesman, said air space is the domain of the federal government and no other government can interfere.

“However,” Dorr said, “state and local governments retain the authority to limit the aeronautical activities of their own state and local departments and institutions.”

That authority is spelled out in-depth in Maine’s new law, (<http://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP0024&item=3&snum=127>) which ensures that city and town councils and selectmen have final say over whether their police departments can employ drones.

Search and rescue operations are considered commercial under current FAA rules, requiring an exemption pending new regulations next year.

Private drone owners – hobbyists and recreational users – operate only under FAA guidelines. However, react-

Liz Mockler is a freelance writer from Randolph and regular contributor to the Townsman, lizmockler@hotmail.com

FAA GUIDELINES FOR HOBBYISTS

Must be at least 17 years old to operate a drone.

Fly no higher than 400 feet and remain clear of surrounding obstacles.

Keep the drone within visual line of sight at all times.

Don't fly within five miles of an airport unless the operator contacts the airport and control tower.

Don't fly near people or stadiums.

Don't fly a drone that weighs more than 55 pounds, including payload.

Don't be careless or reckless with the unmanned aircraft; operator can be fined for endangering people or other aircraft.

Don't fly drones near air shows or sporting events.

Operate only during daylight.

Source: Federal Aviation Administration

ing to complaints across the nation of unauthorized or irresponsible private drone use, FAA will require all private drones to be registered with FAA.

To the rescue

While no police agencies actively use drones in regular operations, according to officials, the machines are infrequently used by fire and rescue operations in Maine. Meanwhile, an unknown number of hobbyist drone owners can operate their machines based only on FAA guidelines and common sense, with little federal oversight until a problem arises.

“If common sense was common, I wouldn’t have a job,” said Frank Roma, Auburn fire chief, who used his personal DJI Phantom 3 Pro drone in September to help rescue two boys stranded on a rock in the middle of a swollen, fast moving Androscoggin River in Mechanic Falls.

The inner tube the boys were riding in overturned, luckily right next to

a large rock. Only one of the boys was wearing a life jacket.

Roma said he would not allow first responders to paddle out and try to get the boys until they were both safely in lifejackets in the event they fell into the water and were swept away.

Using his personal drone, Roma drove to the scene and programmed the drone to fly to the boys and drop them a tether. Once they grabbed the tether, they were able to pull down a lifejacket.

When both boys were dressed in lifejackets, the first responders retrieved the boys by boat and brought them to safety.

Roma watched the operation on the control unit. “At one point, I was talking to 13 satellites to keep the drone where it needed to be,” he said.

International interest

Once the story was published in a local newspaper and picked up by national newspapers, as well as “going

viral” online, Roma began getting calls from rescue officials in Russia, Japan and Germany, among other places. They wanted to know the specifics of how he used the drone to rescue the boys.

Roma said he also got a call from the grandmother of one of the boys, who lives in New Hampshire and who wanted to buy a drone for her town’s volunteer fire department.

“I’m a dyed-in-the-wool supporter,” of drones for search and rescue, Roma said. “That said, in general they have a real bad reputation because they’re associated with military use or as an invasion of privacy.”

Meanwhile, police nationwide and in Maine are worried that private use of drones by hobbyists and recreationists could cause the biggest public concern, particularly since industry experts say 1 million drones will be under Christmas trees this year.

It’s estimated that hundreds of thousands of hobbyist drones already operate nationwide. Drones are sold in various sizes and designs. Regardless, they are essentially flying cameras that live-stream high resolution video instantly to the operator. In addition to drones, hobbyists fly model airplanes and other aircrafts that can live-stream video.

Nothing new

Richard Bowie, executive director of the Down East Emergency Medical Institute (DEEMI) based in Orono, said his private nonprofit emergency operation has used drones for years. In fact, the DEEMI was the first search and rescue agency to get FAA approval to operate in the nation, Bowie said.

Drones are cost effective, increase response time, protect first responders and help find people faster, Bowie said.

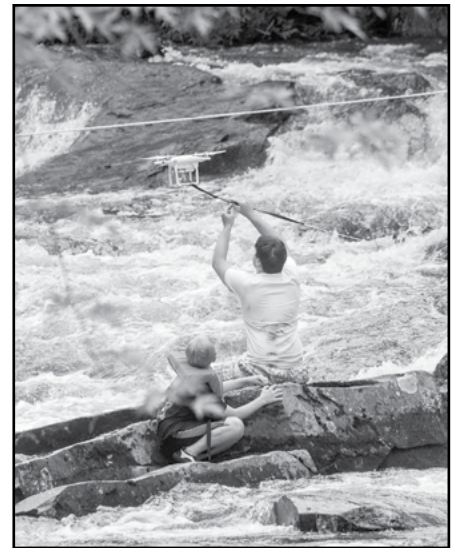
The DEEMI serves all of New England and makes an average of 25 search and rescue operations per year. Some of them are quite challenging.

Bowie used the example of a hiker allergic to bees being stung in a remote area. By using a drone, with a three-inch by seven-inch tube as a “payload,” the drone could find the hiker, help rescuers assess the emergency and then return the drone to drop the tube to the hiker with an epinephrine pen inside.

Another example, Bowie said, might



(Photo by Frank Roma)



(Sun Journal Photo)

REGULATION PROGRESSION

On Oct. 19, the U.S. Transportation Department announced it would create a registry system before Christmas to ensure all hobbyist drones are registered so the Federal Aviation Administration (FAA) and other federal agencies can track down the owner in the event of complaints or violations.

The FAA operates under the umbrella of the Transportation Department. The department has tasked a special committee, with private- and public-sector members, to develop the registry system by late November and to include some way to retroactively register hobbyist drones.

According to the U.S. DOT, the new program attempts to address the rising number of drone sightings near airports and crowded public places. It will impose fines for not registering a drone.

The FAA reports 650 unauthorized drone sightings as of early August 2015, up from 238 in 2014. If that rate is sustained, more than 1,000 complaints will be filed by the end of 2015.

In most unauthorized cases, the drones flew too close to an airport or large public gathering.

Industry experts predict 1 million drones will be Christmas gifts this year – the impetus for the Feds to scramble to create a mandatory registry.

A week before the registry effort was announced, law enforcement in Maine said they have been dealing with complaints about privately operated drones.

James Willis, police chief for both Bar Harbor and Mount Desert on Mount Desert Island, said police received two calls from security guards watching Mount Desert estates this summer.

Willis, who said drones “make people nervous,” said the property guards wanted police to tell them what they could do to make the drones stay away from the private properties with live-streaming video. They considered the drones an invasion of the property owner’s privacy.

“They wanted to know if they could shoot them down,” Willis said.

The answer? Under no circumstance.

“The safety of air space is a federal function,” said FAA spokesman Les Dorr. “Shooting down a drone is the same as shooting down an aircraft, and would be subject to criminal prosecution.”

be a man living on an island who needs heart medicine to stave off a heart attack. A drone can take him the medicine by dropping the “pod” to him with nitroglycerin inside, eliminating further need for rescue work.

Drones also can sweep into Maine coves, where aircraft could never go, Bowie said. The nonprofit agency has found drowning victims when no one else could because of its high-resolution drones.

“It’s an extremely valuable tool,” Bowie said, adding the doctors and EMTs at DEEMI are constantly trying to develop different applications for their two drones.

The DEEMI’s drones have been approved under an FAA commercial exemption. A second exemption is pending approval so the agency can use a drone modified to accommodate a heavier payload, Bowie said.

Warden Service on hold

Lt. Kevin Adam, search and rescue coordinator for the Maine Warden Service, said the state agency is discussing drones, but is not ready to make a move.

The technology changes so quickly, Adam said, and a drone for professional search efforts will cost thousands of dollars, must be maintained and upgraded and would require initial and ongoing personnel training.

“There’s a lot” to consider, Adam said. “The technology is changing and growing so rapidly it’s hard to get ahead of it.”

According to the FAA, nearly 2,000 exemptions have been granted. Most commercial exemptions have been approved for farmers and real estate agencies. Search and rescue operations also have been approved under the exemption process. Business use of drones also is expected to grow rapidly once rules

are in place.

The FAA wants to integrate drones in American air space, rather than creating so many rules that they cannot be widely used. That’s because experts on drones predict the industry will create 100,000 jobs and add \$82 billion to the U.S. economy over the next 10 years.

Some drones already are imbedded with software to block them from airports and large public events, but the effort is being more aggressively developed in response to complaints about unauthorized use of both private and commercial machines, according to the FAA.

The software would detect the drones as they approach airports, for example, and send them back to the operator. ■



Drone is used in Androscoggin rescue. (Sun Journal photo)

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

MMA’s services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.

For more information visit the MMA website: www.memun.org

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COMING NEXT MONTH

An attorney with Bernstein Shur will write an article in the December Maine Townsman with more detail about the legalities of using drones and what municipal officials should anticipate in this regard.



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Maine's dilemma: Retaining young people, preserving amenities

The author, a Norwich University grad student and Kittery town employee, concludes that providing affordable rentals and building creative economies are keys to our future.

By David Evans

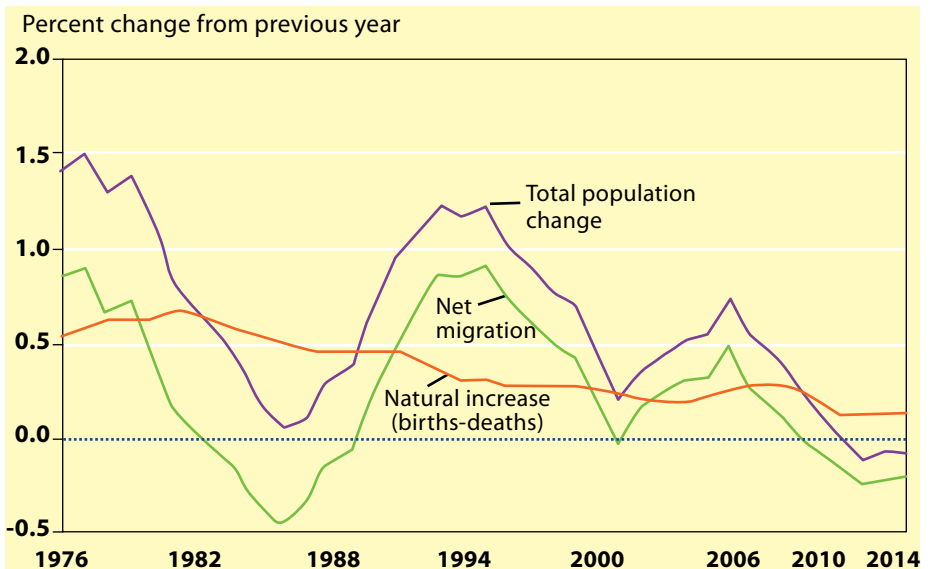
The landscape of Maine is changing, fueled by the creation of housing developments in areas that were once farmland and forest. One of the factors driving this development is a phenomenon known as amenity-driven migration. Amenity-driven migration is the movement of people from metro to non-metro areas because of the natural amenities offered by the receiving communities.

Maine, like most non-metro areas across the United States, has a shrinking population that is growing older. The demographic change worries the Maine Department of Labor, which warns that the workforce could become unsustainable. Amenity-driven migration can assist in stimulating the local economy. Amenity-driven migration, coupled with other strategies, may reverse Maine's current demographic trend.

The United States Department of Agriculture, in a 2013 report titled Rural America at a Glance: 2013 Edition, stated that the population of non-metro areas is shrinking. The main reason behind the decrease in population is the migration of people from non-metro to metro areas. The largest demographic on the move are people in their 20s and 30s who migrate for educational opportunities, the chance to start a career, social opportunities and affordable rental housing.

David Evans recently completed his Master's Degree in Public Administration at Norwich University. He specialized in Rural Municipal Governance and academic interests including cross-sector collaboration, rural to urban migration issues and organizational leadership. David lives in Kittery Point with his wife and two daughters and is an active member of the community. He possesses over 10 years of government experience at both the state and local levels and works for the Town of Kittery, devans@stu.norwich.edu.

NONMETRO POPULATION CHANGE AND COMPONENTS OF CHANGE 1976-2014



Note: Metro status changed for some counties in 1980, 1990, 2000, and 2010.

Source: USDA, Economic Research using data from U.S. Census Bureau.

The chart on this page, provided by the USDA, shows the population change for non-metro counties from 2010 through 2014 for the entire country. The map shows a majority of non-metro counties lost population during this period. Most of the counties that did produce gains in population had a rate of less than 4 percent. Non-metro counties in Maine also follow this pattern.

The rate of population change across the nation had steadily decreased over the last 20 years. Changes in the rate of metro population correlate well with rate changes at the national level. Non-metro areas, however, show wide variations in the rate of change.

Housing triggers change

This indicates that the population change in non-metro areas – like Maine – is volatile and responds to trends in housing development. The building booms of late 1970s, the late 1980s and early '90s, and housing bubble of the early 2000s, correlates with higher levels of positive population rates. The housing collapse and subsequent recession of 2008 caused the population rate to plummet to negative values.

It is no surprise then, that migration is the driving force for the rate of population change in non-metro areas. The trend lines show a strong correlation between total population change and net migration. Natural

population increase though the birth and death rates shows a steady decrease over this period, resulting in a closer relationship between total population change and net migration. The pattern again shows that migration patterns closely follow the building booms and busts. Net migration fell into the negative around 2009-10 and total population change fell into the negative about a year following.

The Maine Department of Labor developed predictions about the state's population from 2012 through 2022 for different age groups. The chart on this page shows decreases in most age groups in Maine, except for people aged 25 to 34 and those over the age of 65. The largest decrease is for those aged 45-54; the largest increase is for people over the age of 65. The Maine Department of Labor projects the population of Maine to shrink while growing substantially older over this projected 10-year period and warns that the population decrease of the younger segment of the population will result in an unsustainable workforce.

There is a differing point of view, however.

John Cromartie and Peter Nelson co-authored a report in 2009 for the USDA titled Baby Boom Migration and its Impact on Rural America. Baby Boomers are migrating into non-metro areas at high rates as they search for retirement options. This helps explain the higher predicted population gains in the over 65 demographic for Maine.

Hail to natural amenities

One factor Baby Boomers consider is the amenities offered by the non-metro community, including natural amenities. However, this in-migration does not offset the out-migration of other age groups. The influx of retiring Baby Boomers can also affect the provision of social and health services, adding to burdens on an already stressed system. Remember, amenity-driven migration is the movement of people to a particular area because of the location's natural amenities.

The valuation of non-metro amenities depends upon the area's distance from the metro center. Researchers Guangqing Chi of Mississippi State University and David Marcouiller with the University of Wisconsin-Madison

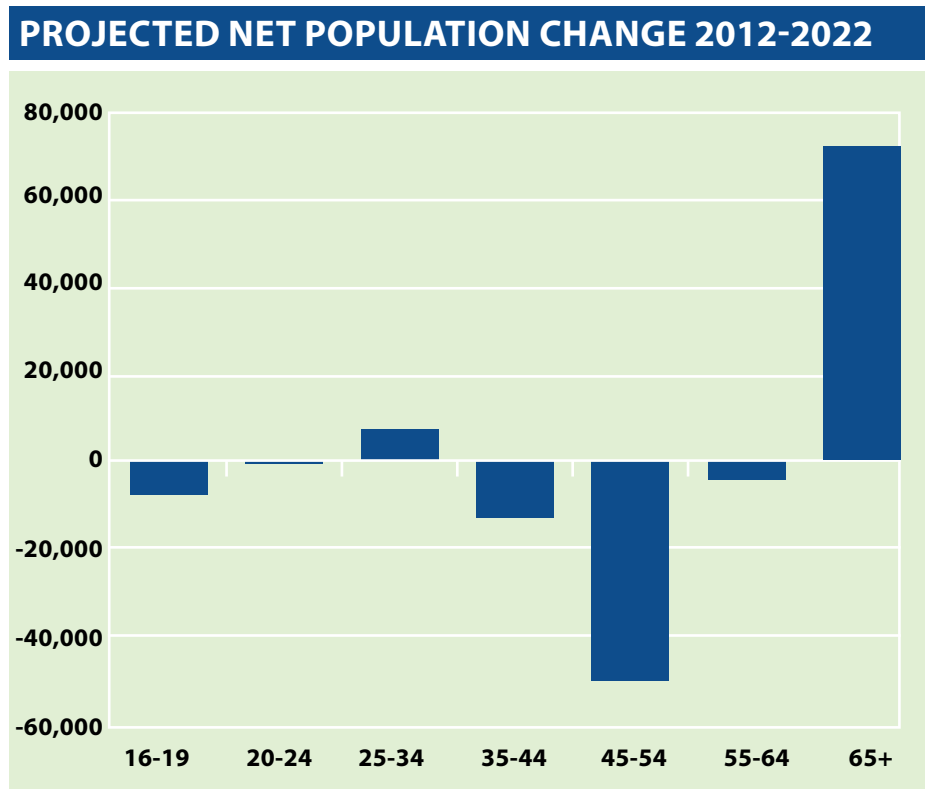
studied the relationship of amenities on migration along the urban-rural continuum. They found that natural amenities have little effect on migration in urban areas, but positively increase through suburban and rural-adjacent areas. There is little difference to the effect natural amenities have on migration between rural-adjacent and rural-exurban. Natural amenities have a negative effect on migration in rural-remote areas.

In a case study of rural coastal communities in North Carolina, Hannah Gosnell and Jesse Abrams (Amenity Migration: Diverse Conceptualizations of Drivers, Socioeconomic Dimensions, and Emerging Challenges) found that conflict arose between

long-term residents and those migrating into the community. The findings suggest that differences centered on land-use policies and preservation of historical properties.

People migrating into non-metro communities want stricter land development policies and the preservation of historical structures. Long-term residents want land-use policies to remain unchanged and balk at the costs associated with the preservation of historical places.

The USDA published a map (See page 13) highlighting the value of amenities. The criteria for the values included natural amenities offered by the region, climatological conditions and economic conditions. The highest



Source: Maine Department of Labor.

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values resided along the Pacific Coast and through the Sun Belt. The Upper Mid-West possessed values that indicate a negative effect on migration. Amenity values for the State of Maine were either zero, meaning it had no effect on migration, or very low positive numbers, suggesting a minimal impact on migration.

The major benefit of amenity-driven migration is an increase in local economic activity which can lead to residual benefits for other strategies that assist in reversing the trend of losing population demographic, which can threaten the sustainability of the work force. Some of the weaknesses of amenity-driven migration includes the gentrification of an area where some long-term residents could be priced out of a community and valuation conflicts over property usage. Additionally, the State of Maine scores low on the value of amenities to migration. Amenity-driven migration is a piece of the larger puzzle to retaining the youths of this state.

Economic puzzle pieces

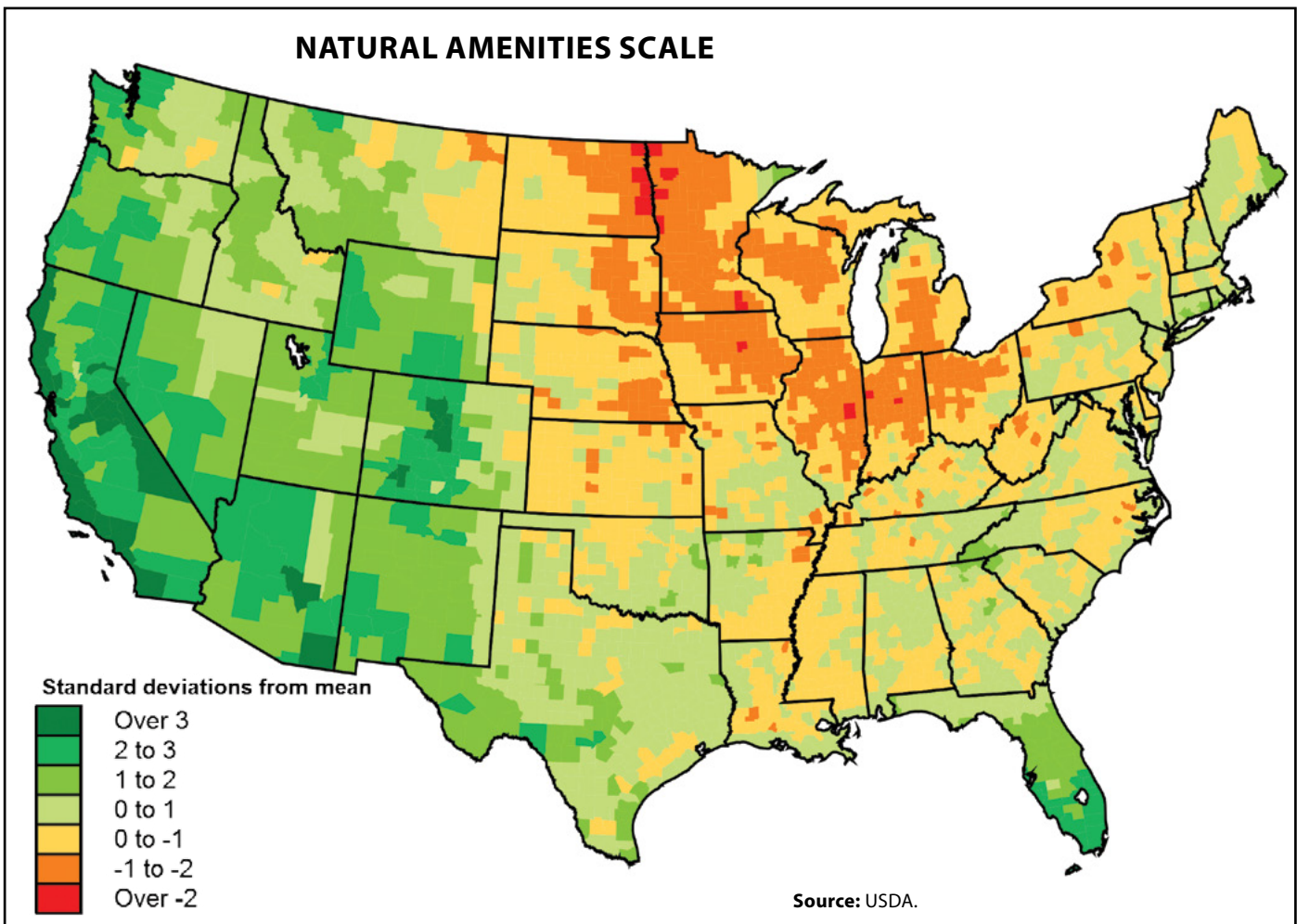
The current migration patterns for Maine indicate that the trend will continue for a decreasing population that is growing older. Out-migration of young people is a major contributor to this demographic trend. The main reason for out-migration, according to the USDA, is the pursuit of economic opportunities. Amenity-driven migration can help boost the local economy, but this effect is residual in nature and requires other strategies to help create economic opportunities for young people.

Former coal mining communities in the Appalachia area of Kentucky are transforming their depressed economic conditions. These non-metro areas are turning their economies from natural resource extraction based, mainly the extraction of coal, to creative-based. The creative business sector allows for an influx of cash and spills over into other business sectors leading the creation of sustainable economic development.

The turnaround of economic development in Appalachia Kentucky is leading to the retention of people in their 20s and 30s because of increases in economic and social opportunities, while rental housing options remain affordable.

Maintaining housing at affordable rates for those in the community is another way to retain those who would otherwise migrate to metro areas. Non-metro locales should work with non-profits operating within the region to provide low-cost housing options. Robert Wiener and Char Kaslow Thompson wrote a chapter in the book *Rural Housing, Exurbanization, and Amenity-Driven Development: Contrasting the "Haves" and the "Have Nots."*

The co-authors state non-profits, while faced with many challenges, possess a tremendous track record in the provision of affordable housing in non-metro areas. Another tactic to keeping housing affordable for those in the community is to enact land-use



policies capping the amount of development that takes place. Many land-use regulations promote the continuation of development in a community resulting in land valuations that price current and long-term residents out of the area.

Keeping housing affordable in non-metro areas, then, is a two-pronged effort. The first is to enact policies that cap development and create market conditions that allow current residents to remain – and keep the next generation, which provides for the sustainability of the workforce. The second is for communities to collaborate with non-profits for the provision of affordable housing that would allow for the retention of younger workers and increase the viability of a sustainable workforce.

Maine needs action

The current population trend for the State of Maine produces a declining population that is growing older and jeopardizes the sustainability of the state's workforce. Amenity-driven migration can increase the economic activity of a receiving area, but can

also bring about conflict due to differing values between those migrating in and the long-established residents. Rural communities should manage housing developments that cater to amenity-driven migration in order to maximize the economic benefits, minimize the negative aspects, and develop sustainability.

In addition, communities need to keep young people from leaving the

state. Rural communities can help make rental housing affordable to people in their 20s and 30s through collaboration efforts with non-profit organizations. Communities can also foster the development of tourism and creative-sector businesses to retain young professionals. In order to change the current demographic trends for Maine, the retention of the out-migrating young people is key. ■

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A recent ruling by the U.S. Supreme Court shows how quickly municipalities encounter problems when they try to regulate what signs say, rather than factors like size and location.

By **Agnieszka A. Pinette**,
Drummond Woodsum Attorneys at Law

This past June, in a relatively brief and seemingly mundane opinion, the U.S. Supreme Court invalidated a municipal sign ordinance that gave less favorable treatment to signs that advertised church services than signs promoting other messages. The case may not appear remarkable at first glance, but its implications are far-reaching: By many accounts, the opinion calls into question the constitutionality of virtually every municipal sign ordinance in the country.

In *Reed v. Town of Gilbert*, the Supreme Court considered a sign ordinance that allowed the display of temporary outdoor signs without a permit, so long as the signs met certain restrictions enumerated in the ordinance. Not unlike many sign codes, the town's sign ordinance imposed different size, quantity and length-of-display requirements on different types of signs. Under the town's ordinance, "ideological signs" that communicated a message or idea could be up to 20 square feet in size, whereas "political signs" designed to influence the outcome of an election could be up to 32 square feet in size – although political signs could only be displayed during an election season. In contrast, "temporary directional signs" that directed the public to assemblies, gatherings, or meetings sponsored by religious or non-profit organizations were limited to a maximum of four signs per advertised

event, each of which could not exceed six square feet in size and could not be displayed more than 12 hours before the event or one hour after the event.

The case arose when the Good News Community Church displayed a dozen or so temporary directional signs bearing the church's name and the time and location of the next service. Members of the church would install the signs around town on Saturday morning and would remove them around midday Sunday. The town cited the church for exceeding the time limits for displaying temporary directional signs and for failing to include the date of the event on the signs. In turn, the church challenged the constitutionality of the Town's sign ordinance, contending that the ordinance unlawfully allowed some groups wide latitude to communicate messages through signage while stymying the ability of other groups to do so. In other words, the church argued that because the ordinance established rules for temporary directional signs that were more restrictive than the rules for other categories of temporary signs, the ordinance abridged the church's right of free speech guaranteed under the First Amendment.

Protecting free expression

Under the First Amendment, a government may not restrict expression because of its message, its ideas, its subject matter or its content. When a regulation singles out specific subject matter for differential treatment, courts will therefore presume that the regulation is unconstitutional. So-called content-based laws are justified only if they satisfy the most rigorous judicial test called strict scrutiny – that

is, the law must further a compelling governmental interest using the least restrictive means possible. This is a steep judicial hurdle. As Adam Liptak succinctly explained in a recent New York Times article discussing the case: "Strict scrutiny, like a Civil War stomach wound, is generally fatal."

In *Reed*, the Supreme Court determined that because the town's sign ordinance defined the categories of directional, political, and ideological signs on the basis of their messages and then subjected each category to different restrictions, those restrictions "depend[ed] entirely on the sign's communicative content" and were therefore content-based. Although the town offered two long-recognized compelling governmental interests in support of its sign ordinance – preserving the town's aesthetic appeal and traffic safety – it could not explain why temporary directional signs posed a greater threat to aesthetics or safety than other types of temporary signs. Because the town failed to justify its more restrictive rules for directional signs, the court concluded that the sign ordinance failed the strict scrutiny test and was unconstitutional.

Notably, the Supreme Court struck down a previously applied judicial rule that might have saved the town's sign ordinance from its unconstitutional fate. Before *Reed*, a rule restricting "who" is speaking (say, a Realtor versus a political candidate) or "what event" is occurring (say, a community supper versus a mattress sale) was usually deemed content-neutral so long as the rule paid no regard to the message itself. Content-neutral laws are constitutional if they further an important governmental interest by means that are

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substantially related to that interest – a judicial test far less demanding than strict scrutiny. The Supreme Court rejected this analytical approach, however, and instead adopted a novel theory: Whenever a law treats different categories of public expression differently, the law discriminates against those *entire categories* of speech and only passes constitutional muster if it survives strict scrutiny. Consequently, a sign code based on who is speaking about what event, without regard to the substance of the message, is no longer safe from a free speech challenge.

Effective sign laws still OK

Even though the Supreme Court clearly raised the bar on constitutionally permissive sign regulations, the Court stressed that its decision would not prevent governments from enacting effective sign laws. The Court noted that sign regulations might well survive strict scrutiny if they are “narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers – such as warning signs

POST-REED POINTERS

The *Reed* decision implicitly calls on municipal officials to reexamine their sign ordinances in light of the Court’s expansion of what constitutes a content-based sign regulation. This is not a simple task. Determining whether a rule is content-based involves complex legal analysis, even with the guidance provided in the concurring opinion. But municipal officials can quickly spot whether their sign ordinance is at risk based on a relatively straightforward question:

Does your code enforcement officer need to classify a sign in order to figure out if it violates your sign ordinance?

Put another way, does your sign ordinance make reference to *types* of signs (for example, real estate signs, political signs, business relocation signs, construction signs, open house signs, farm stand signs or community events signs) and does the ordinance establish rules (such as dimensional requirements, quantity limits or restrictions on the time of year or duration when a sign may be displayed) that *vary* based on those sign types? If so, then your ordinance is probably content-based.

Just because an ordinance is content-based does not mean it is per se unconstitutional. But a municipal official who answers the above question in the affirmative should not wait to take action. There are many ways to fix a sign ordinance so that it does not run up against *Reed*, and towns do not necessarily need to abandon the common practice of regulating signs based on categories to be on the right side of the First Amendment. The key to avoiding a legal challenge is to spot the issue early and consult with a qualified legal professional on ways to safely enforce your existing sign ordinance while making revisions that pass constitutional muster.



Meet Our Attorneys Andrew Hamilton

Andy brings many years of experience to counseling municipalities. He has served as General Counsel for a number of Maine towns, and provides advice on economic development initiatives and environmental/land use matters.

Andy is committed to improving Maine communities through public and private investment, and has served in many leadership roles in the Bangor region and eastern Maine.

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marking hazards on private property, signs directing traffic, or street numbers associated with private houses.” The Court also acknowledged that governments have “ample content-neutral options available to resolve problems with safety and aesthetics” by regulating aspects of signs – such as size, building materials, lighting, moving parts and portability – that have nothing to do with a sign’s message.

Indeed, in a concurring opinion, three of the Supreme Court Justices enumerated the following rules that would likely be lawful:

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be placed, including rules that distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the

placement of signs on commercial and residential property.

- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on temporary signs.

While a concurring opinion is not binding on courts, it does signal that a sign ordinance is keeping with these

rules would likely satisfy the heightened *Reed* test – at least in the view of three Supreme Court Justices.

In sum, while the *Reed* decision instructs courts to be highly skeptical of codes that impose different standards for different categories of signs, the ruling is not intended to prevent governments from regulating signs in a way that protects public safety and serves other legitimate governmental objectives. ■

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Additional thoughts on signs, after *Reed v. Town of Gilbert*

By Breana Behrens, Staff Attorney
Maine Municipal Association Legal Services

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* (135 S.Ct. 2218 (2015)) clarifies what constitutes a content-neutral sign regulation by establishing a new black and white rule: If you have to read the sign's message or determine who is "speaking" through the sign to apply your sign ordinance, it is probably unconstitutional. Because the Court has established this stricter test for determining what is a content-based restriction, many regulations that were previously thought to be content-neutral may now be content-based and an unconstitutional restriction on free speech.

The Court found that ordinances that distinguish between the size and location of signs, and number of signs per mile of roadway are still likely permissible. In addition, ordinances that distinguish between certain types of signs may be permissible, such as between lighted and unlighted signs. However, municipalities will need to prove that when an ordinance distinguishes between different types of signs it is to further a compelling governmental interest and the ordinance is narrowly tailored to that end, such as for traffic safety or aesthetic purposes.

This decision will not likely affect municipalities' ability to regulate commercial speech. Commercial speech is still less protected than non-commercial speech and there is little reason to believe the *Reed* decision intended to prohibit this distinction. However, some courts across the country are finding that on-site and off-site distinctions in sign regulations could be an unconstitutional content-based distinction. This is happening despite the fact that a concurring opinion in the *Reed* decision postulated that this distinction would not be subject to strict scrutiny. We will need to stay tuned as this issue develops.

As municipalities across the state, and nation, work to comply with this more stringent test for content-neutral sign regulations, discussion with local

legal counsel and the public will be necessary. Municipalities will have to find a "Goldilocks" balance where regulations are not so fine-tuned as to treat different types of signs differently, but also not so general that the rules become overly broad. This may be especially difficult when adopting regulations that address temporary signs, such as political and event signs, and regulations that address issues of local concern, such as panhandling and roadside solicitation.

Outright bans problematic

It is important to note that outright bans on all types of speech can be problematic as well. For example, the City of Portland recently adopted an ordinance restricting all people from standing, sitting, staying, driving or parking on the median strip to address the safety concerns with panhandling and other activities in the median. The U.S. Court of Appeals found that the ordinance was not content-based since it prohibited all types of speech, but declared the ordinance unconstitutional because it was not narrowly tailored to serve a significant government interest (*Cutting v. City of Portland*, Docket No. 14-1421, 2015 (1st Cir. Sept. 11, 2015)). Even when the court applied this low level of judicial scrutiny, the city was not able to show that the ordinance restricted only enough speech to meet the government's interest in promoting public safety in the medians. Therefore, the ordinance was found to be unconstitutional.

The Court's decision further reminds municipalities that a traditional public forum, or place that is tradition-

ally used by the public to assemble, communicate thoughts and discuss matters of public concern is treated differently than private and other municipally owned property. A traditional public forum generally includes sidewalks and parks, and as in the *Cutting* decision, medians. A content-based regulation that restricts speech in a public forum raises serious concern that the government is using its power to tilt public debate in a direction of its choosing, which means that Courts will apply strict scrutiny.

So what do you do now? First, carefully review your sign ordinance to make sure all parts are truly content-neutral. Your ordinance should contain a strong purpose statement that complies with the new content-neutral test and legislative findings on why the regulation furthers a governmental interest. We highly encourage municipalities to contact local legal counsel for review as well.

At MMA, we are working to develop guidance on these issues and sample provisions for sign regulations for Maine municipalities. In addition, if you are in a position where you may need to enforce your current sign regulation, contact local legal counsel before taking any action.

We will monitor any changes that may be made to the Maine Traveler Information Services Act, or what is commonly known as the State's billboard law (23 M.R.S.A. sections 1901-1925). If the state law is amended to better comply with current court decisions, this may affect how municipalities regulate signs as well. ■

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4. promoting market development and cooperative marketing opportunities.

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Concealed weapons law changes: Maine State Police clarify

Reaction from municipal police chiefs, while not one of outright criticism, can be characterized accurately as 'concern.' Some hope the old law will be reinstated.

By Janine Pineo

You don't need a permit to carry a concealed handgun in Maine.

There are exceptions, but the law change that went into effect Oct. 15, 2015, raised questions about the changes and the role municipalities would play if a resident needs or wants a permit to carry a concealed handgun.

We contacted the Maine State Police, which is the issuing authority for permits, for a written Q&A to clarify some points for municipalities. The Special Investigations Unit of the State Police oversees the issuing of permits for 360 municipalities and for out-of-state permits. The unit processed more than 9,600 permits last year.

A number of municipalities issue permits "under the authority of the town pursuant to state," according to Sgt. Michael P. Johnston of the Maine State Police Special Investigation's Unit, Division of Licensing, Weapons and Gaming.

Johnston answered the following questions for the MSP.

Q. *What changes were made earlier this year to the concealed weapons law?*

A. (MSP) Please see the Statute summary (on Page 24).

Q. *Under what circumstances will a permit be required now?*

A. Please see the summary.

Also, there will be some circumstances in which an optional handgun permit will authorize the permittee to carry in certain locations or during an activity when an unpermitted person could not:

- Acadia National Park (Permit required; 12 M.R.S. §756)



- State Parks (Permit required; open carry not permitted; 12 M.R.S. §1803(7))

- Regular archery hunting-deer only (Permit required; 12 MRS §11403)

- Employees' vehicles on work premises (Permit required; vehicle must be locked and firearm must not be visible; 26 M.R.S. §600)

Q. *Are there minimum age requirements?*

A. An individual must be 21 or older, or 18-20 and currently in the armed forces, or a veteran of the armed forces to carry without a permit under the new law.

Q. *Where is it illegal to carry a concealed firearm?*

A. See the summary. The law does not otherwise change where a person may carry or who may possess a firearm. It will still be illegal to possess a firearm in the following places, with some very limited exceptions:

- Courthouses (17-A M.R.S. § 1058)

- State Parks (12 M.R.S. § 1803(6), (7) and Bureau of Parks and Lands Rules Chapter 1)

- Acadia National Park (12 M.R.S. § 756)

- Schools (20-A M.R.S. § 6552)

- Federal buildings (18 U.S.C. § 930)

- State Capitol area (25 M.R.S. § 2904 & DPS Rule Chapter 41)

- Private property when prohibited by the property owner

- Establishments licensed for on-premises consumption of liquor, if the premises are posted. Note that even if there is no posted prohibition, it is illegal to carry on these premises while under the influence of intoxicating liquor or drugs. (17-A M.R.S. §1057)

Q. *Scores of municipalities were involved in the permit process previously. What is their role now?*

A. The permitting system has been

Janine Pineo is a freelance writer from Hudson and relatively new Maine Townsman contributor, jepineo@gmail.com.

left in place. All municipalities that were issuing authorities prior to this law taking effect continue as issuing authorities under the law.

Q. *If a municipality has questions about the law, whom should they contact or where should they look?*

A. 1. Local police chief (if the town has one). 2. Municipal attorney. 3. Maine Municipal Association attorney.

Q. *How does the law change affect residents with current permits?*

A. No change

Q. *Did the Maine State Police support the changes in the law? Please explain.*

A. Yes, we did support the change

Q. *Is there one thing regarding this law change that the MSP would most like municipal officials, both elected and appointed (staff), to be aware of?*

A. The concealed handgun permitting system remains in place for those who want to continue to apply for or renew permits. The processing of those applications and the issuing criteria in terms of background checks, mental health checks etc. is the same now as it was before the law took effect.

Local reaction: concern

Police chiefs of three municipalities with issuing authority reported that since the law changed, residents in Skowhegan, Dover-Foxcroft and Ellsworth continue to seek permits.

Skowhegan Police Chief Donald Bolduc said that one of the positives he has seen is that almost everyone who has inquired about a permit still wants to go through the permitting process. Those people are not the ones that concern him, he said, but the ones who were denied permits previously.

In addition to a criminal background check, mental health records also are investigated.

“There have been times when we’ve denied a permit,” Bolduc said. “It was a system that was working. It was labor intensive.”

The Somerset County town has about 8,600 residents and has issued more than 340 permits since 2013. Permits are active for four years.

Bolduc, who started as Skowhegan’s chief on Sept. 1 and has been in law enforcement since 1989, said of the law change: “I’m disappointed in

the direction it’s sending us in these times,” adding that it is always difficult to reinstate a law after it is rescinded.

Dover-Foxcroft Police Chief Dennis Dyer said, “We kind of lost a little bit of control.”

Residents of the Piscataquis County town continue to seek permits. “I haven’t seen any difference,” he said, speculating that one reason might be requirements elsewhere in the country. “A lot of other states accept our permit,” he said.

There are between 350 and 400 active permits in the town of 4,200

residents. Dyer said that he has denied only one permit in about 15 years.

Dyer, who has been in law enforcement for 43 years and chief since 1985, said there has been one unexpected development. “More people coming in are wanting me to do a safety course,” he said.

Ellsworth Police Chief Chris Coleman said he hasn’t seen a noticeable change either way on permits. “All of them still have requested one,” he said.

Coleman, who has served as chief of the Hancock County city for nearly



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For more information visit the MMA website: www.memun.org

a year and been in law enforcement for 26 years, said of the law requirements: "I wish they had stayed the way they were." He cited the loss of the checks as a concern. "I think it was a pretty good system," he said.

The law also could change to require permits again, Coleman said, and that would likely grandfather any current permit holders.

Vassalboro Police Chief Richard Phippen agreed. "I think there's a possibility it may go back to the original law."

The Maine State Police issue permits in the Kennebec County town of 4,300 residents, with about 290 active permits.

Phippen, who has been in law enforcement for 48 years and 19 at his current post, said he liked that the law before the change required a gun safety course.

As to safety protocols for officers, Phippen, Coleman and Dyer all remarked on what officers have to consider. "I think I have to assume that everyone is carrying a gun," Phippen said. ■

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Summary of Public Law 2015, Chapter 327 (127th Legis., LD 652)

Effective Oct. 15, 2015, Public Law 2015, Chapter 327 (LD 652), “An Act To Authorize the Carrying of Concealed Handguns without a Permit,” allows a person who is not otherwise prohibited from possessing a firearm to carry a concealed handgun in the State of Maine without a permit. This law also authorizes a person to possess a loaded pistol or revolver while in a motor vehicle, trailer or other vehicle being hauled by a motor vehicle.

The Maine State Legislature adjourned Thursday, July 16, 2015.

Please be advised that, pursuant to the Constitution of Maine, Article IV, Part Third, Section 16, the general effective date for nonemergency laws passed in the First Regular Session of the 127th Legislature is **Thursday, Oct. 15, 2015**.

It amends statutes in Maine Titles 12 and 25.

Concealed carry without a permit is limited to people who are 21 or older, with the following exception: If a person is 18 years of age or older, and is on active duty in the Armed Forces of the United States or the National Guard, or has been honorably discharged from the Armed Forces or the National Guard, and is not otherwise prohibited from carrying a firearm, the person may carry a concealed handgun. A person who is 18-20 years old and without the referenced military qualifications must have a permit to carry concealed. The law applies to both residents of Maine and non-residents.

The law does not otherwise change where a person may carry or who may possess a firearm. It will still be illegal to possess a firearm in the following places, with some very limited exceptions:

- Courthouses (17-A M.R.S. § 1058)
- State Parks (12 M.R.S. § 1803(6), (7) and Bureau of Parks and Lands Rules Chapter 1)
- Acadia National Park (12 M.R.S. § 756)
- Schools (20-A M.R.S. § 6552)
- Federal buildings (18 U.S.C. § 930)

- State Capitol area (25 M.R.S. § 2904 & DPS Rule Chapter 41)

- Private property when prohibited by the property owner

- Establishments licensed for on-premises consumption of liquor, if the premises are posted. Note that even if there is no posted prohibition, it is illegal to carry on these premises while under the influence of intoxicating liquor or drugs. (17-A M.R.S. §1057)

There will be some circumstances in which an optional handgun permit will authorize the permittee to in certain locations or during an activity when an unpermitted person could not:

- Acadia National Park (Permit required; 12 M.R.S. §756)

- State Parks (Permit required; open carry not permitted; 12 M.R.S. § 1803(7))

- Regular archery hunting-deer only (Permit required; 12 MRS § 11403)

- Employees’ vehicles on work premises (Permit required; vehicle must be locked and firearm must not be visible; 26 M.R.S. §600)

If an individual is carrying a concealed handgun without a permit, he/she has a duty, when coming into contact with any law enforcement officer during a routine stop, detention or arrest, to immediately inform the law enforcement officer that the individual is carrying a concealed handgun.

The law pertains only to handguns, not all weapons. It is important to remember that this law does NOT autho-

size persons who are prohibited from possessing firearms to carry them. If a person is prohibited from owning or possessing a firearm, this law does nothing to change that prohibition. A person may be prohibited from possessing firearms or ammunition under state law, federal law, or both. Prohibitions include convictions (felony and qualifying misdemeanor crimes of domestic violence); some juvenile adjudications; many protection from abuse orders, dishonorable discharge from the military; immigration status; deferred disposition status; certain mental health adjudications (civil involuntary commitment; finding of not guilty by reason of insanity; finding of not competent to stand trial) and certain probate adjudications. Prohibitions may also be imposed by conditions of bail, probation, and deferred disposition agreements.

Firearms laws are complex. The summary above is necessarily an overview. Persons may wish to contact qualified private counsel and or review the applicable law if they have questions regarding whether they can legally possess firearms or ammunition. This agency is not authorized to give legal advice. This summary cannot be used as a defense to illegal activity involving firearms or ammunition.

This agency strongly recommends that all persons carrying firearms be familiar with firearms safety and the circumstances under which deadly force may be used. ■



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Contact Elizabeth McCarthy, Senior Account Manager, Government and Education, at 207.797.1269 or send an email to Fiber4towns@Fairpoint.com to discuss your plans, or to set up a broadband technology evaluation for your town.

PEOPLE

Poland Finance Director **Cherie Sargent** died of cancer in August at the age of 43. Sargent served the town since 2008 and fought “a valiant battle” against the disease for three years, said Town Manager Bradley Plante. Sargent, who lived in Turner, worked until a month before she died. Plante said he believed she wanted to give her family, including four school-aged children, financial and health care security for as long as she could. **Sharon Chamings** has been named the new finance director. She served more than four years as Fryeburg finance director after working as finance chief for the town of Paris for two years. In all, Chamings has 20 years of experience in finance and accounting.



Donald Strout

Former state legislator, Corinth Town Manager and Selectman **Donald Strout** died Oct. 17 at the age of 78. Strout served on the planning board and as selectmen in the 1970s until he was hired as town manager in 1979. He managed the Penobscot County town until 2010. He served as a state representative from 1973 to 1996. Strout also is a former member of the Maine Municipal Association Legislative Policy Committee. A full-length article about Strout’s municipal contributions is planned for the December Maine Townsman.

Emily Carrington has been named South Portland city clerk, replacing longtime clerk **Susan Mooney**, who retired this fall after a total of 40 years of service to the community. Carrington, who started her new job on Oct. 28, most recently worked as campus operations administrator and assistant to the president of Kaplan University in South Portland. Carrington was selected from a pool of nearly 40 candidates.

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Former Paris Code Enforcement Officer **Fred Collins** was hired in early October to work for the Town of Woodstock.

Bethel CEO **Jeff Warden** filled the gap for several months before resigning.

Ellsworth Police Chief **Christopher Coleman** said in late September he will resign within a month or two while the city searches for a replacement. Coleman was a state trooper for 25 years before taking the top police job in Ellsworth in September 2014. Coleman said he had hoped the Ellsworth job would be different than his work with a major crimes unit, but it was not. Coleman said he would like to do community work in some way, but said he had no immediate plans for work.



Dan Coombs

Stonington residents and town employees marked the late-September retirement of **Dan Coombs**, who has served 40 years in the volunteer fire department. His interest in firefighting dates back to his high school years, when he worked on the junior crew with friends.

Dale Earle was named new Eastport police chief on Oct. 14, just two weeks after the resignation of Chief **Frances LaCoute**. Earle, who ended his retirement to take the position, started his career in the late 1970s with the city police department. He then worked as a firefighter for several years before joining the Maine State Police, working as a trooper from 1982 to 2002. He is a fourth-generation law enforcement officer. LaCoute, who was hired as chief on Jan. 23, resigned apparently to return to

the Pleasant Point Police Department. LaCoute, 60, has been a police officer for only nine years, all of them spent with Pleasant Point department.

Norridgewock Town Manager **Michelle Flewelling** announced in October she will leave her job to manage the Town of Fairfield. She will start her new job on Dec. 1. She will replace **Josh Reny**, recently hired as assistant city manager of South Portland. Flewelling, who previously worked as Clinton town clerk, has managed Norridgewock since 2008.

Portland Fire Chief **Jerome LaMoria** resigned his job in early October after less than two years. LaMoria came to Maine after serving as Lieutenant Colonel in the Prince Georges County Fire Department in Maryland. An interim chief will be named while the city searches for a permanent replacement. Meanwhile, Public Services Director **Michael Bobinsky** also resigned in October following a two-month leave of absence. **Stuart “Tuck” O’Brien** was named new director of the city’s Planning Division. O’Brien will replace **Alex Jaegerman**, who resigned in June to take the job as Yarmouth town planner. O’Brien has served on the planning board, the past two years as chairman.

James Moulton defeated **Keith Thompson** to win a seat on the North Yarmouth Board of Selectmen. The tallies in the special election on September 22, to fill the vacancy left by Clark Whittier, was 387-270. Moulton is a former longtime school committee member and former selectman. He was narrowly defeated in June for a selectman seat. ■

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

MMA’s services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.

For more information visit the MMA website: www.memun.org

If your municipality submits a news item for the Townsman, consider sending a corresponding photo to: [Eric Conrad](mailto:econrad@memun.org) or [Jaime Clark](mailto:jclark@memun.org)

CARIBOU

A group of rural residents hoping to secede from the city hit a wall in October when the Maine Legislative Council refused to advance a bill to create the Town of Lyndon. Neither side is sure what comes next in the effort, or whether it will continue. The rural residents would take 80 percent of Caribou's land mass under its plan. The secession advocates complained that rural city residents pay taxes to support municipal government while not enjoying the same benefits and services provided to city dwellers. "Lyndon" was the name of the new town in 1869 and renamed Caribou in 1877. It was incorporated as a city in 1967.

COLUMBIA FALLS

It's not every day that a municipality finds a "mystery" bank account with nearly \$20,000 in it. After a routine review by the town's auditors, the Machias Savings Bank account was discovered last month. The town treasurer has tried to find out why the account was created, and who opened it, to be sure the money is used as intended. Officials said it appears the money, originally about \$9,000, was transferred from another bank to the Machias Savings account.

DIXFIELD

Voters overwhelmingly rejected spending \$46,850 from surplus as part of a 20 percent match for new sidewalks under the Safe Routes to School grant program though the Maine Department of Transportation. The decision was made during an Oct. 1 special town meeting. The total project was expected to cost nearly \$485,000, with the state paying 80 percent. Some residents rejected the project because of future town maintenance and snow removal costs. Town Manager Carlo Puiia reminded residents that 5,000 cars a day drive by the middle school along Route 2. Presently, there is no sidewalk. Some residents were satisfied that a police officer with radar slowed cars down and kept the route safe. They also noted that no child had been struck by a car while walking the route. Selectmen have not given up on a modified sidewalk plan.

HALLOWELL

City and state officials have inked an agreement to commit to the engineering work needed to reconstruct the down-

NEW ON THE WEB www.memun.org

Highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

Fiscal Survey. Maine Municipal Association's latest Fiscal Survey is out, and it shows how municipalities fund services from road and bridge repair to maintaining public parks. The report also outlines how 67 percent of property taxes collected state-wide pay for K-12 education and county government administration.

Ethel Kelley Award Winner. William Thompson of Guilford, a long-time select board member and chairman, won MMA's Ethel Kelley Memorial Award this year. He was feted at the 2015 MMA Convention in Augusta recently.

Convention Presentations. Speaking of the convention, during the weeks afterward we are often asked to post handouts and Power Point presentations used by our top-notch presenters. These are now available.

Snow and Ice Control. The Maine Local Roads Center is hosting a series of workshops around the state on Best Practices for Snow and Ice Control.

town's main thoroughfare, Water Street. The project is not yet funded, but both parties agree major improvements are critical in one of Maine's favorite downtowns. The work will include excavating underground utilities and rebuilding the street, to level the sidewalks and the street. City and state transportation officials are working on ways to mitigate the inconvenience and possible loss of visitors for businesses. The project is still at least three years from starting, but will require significant planning upfront.

LINCOLN

Anticipating nearly 200 lost jobs this month at the bankrupt Lincoln Paper and Tissue mill, the town council in late October voted to use \$150,000 from the town's \$2.5 million fund balance to lower property taxes for the third straight year. In making its decision, the council said it had heard the concerns of residents over the tax rate at a time of the mill closing and 179 job losses. The mill's value dropped from \$145 million to \$70 million. It represented 7 percent of the town's tax base, or \$570,000 in property taxes annually. The mill owners blame the bankruptcy on the explosion of a boiler that ended paper production. The property tax rate for the new fiscal year will be \$22.20 per \$1,000 in valuation, down from \$22.40 last year and \$22.96 the year before.

MILLINOCKET

Bad behavior by residents using fire-

works has led the town council to consider a total ban on fireworks. Among the complaints involved people shooting fireworks at each other and shooting them from the back of moving pickup trucks, officials said. Town officials have started drafting an ordinance to ban fireworks. About 40 other Maine cities and towns have banned fireworks, and others have limited their use, following a state law allowing citizen use of the fiery party favorites. Public hearings on a draft ban ordinance will be held this month.

YORK

Selectmen are considering converting streetlights from standard lights to LED bulbs at a cost of about \$500 each. The board is studying various options, including partnering with a contractor to share the costs and benefits. The town has 880 streetlights. Early estimates show the project would cost \$440,000 and take six years to recover the initial conversion costs. Although LED lights cost more than traditional lights, they last far longer and cut energy costs over the long term. ■

CLARIFICATION

The South Portland-based Leadership Academy, written about in the October edition of the *Maine Townsman*, is organized by Southern Maine Community College, which is located in that city. SMCC runs leadership academies for employees of South Portland, Cape Elizabeth and Scarborough.

MUNICIPAL BULLETIN BOARD

NOV. 13

Foundations of Negotiations, Labor Relations

The Maine Local Government Human Resources Association will sponsor a seminar designed to benefit all management employees who are involved with collective bargaining and labor relations. The one-day training event will be held on Nov. 13 at Kaplan University in South Portland.

Topic areas will include: the negotiations process; the arbitration process and grievances; good and bad contract language. There will be plenty of real-life examples and ample time for discussion. The workshop begins with registration at 8:30 a.m. and will conclude at 3 p.m. Cost is \$65 for MLGHR members and \$75 for non-members.

NOV. 17

Social Media Dos & Don'ts: Augusta, Caribou (via video)

If your municipality has jumped into the realm of social media, or is just musing about it, this 2.5-hour workshop will provide important legal and hands-on advice on how to communicate via Facebook, Twitter, YouTube and the Internet. The class will be instructed by: Amanda Meader, an attorney with MMA's Legal Services Department; Detective Dorothy Small of the Ellsworth City Police Department; and, Eric Conrad, Director of Communication & Educational Services at MMA.

Social media can be effective commu-

nication tools for cities and towns, but they do carry some risk. Guidelines and strong management go a long way. The workshop will be held at MMA's Christopher G. Lockwood Conference Center in Augusta and video-cast live to the Northern Maine Development Commission office in Caribou. It starts at 2 p.m. on Nov. 17 and ends at 4:30 p.m. Cost is \$35 for MMA members and \$70 for non-members.

DEC. 4

MTCMA Leadership Exchange: Portland

The Maine Town, City & County Management Association will hold its annual training session that is combined with its New Hampshire counterpart organization on Dec. 4 at the Holiday Inn by the Bay in Portland.

Among the many topics to be explored are: regionalization of services; working together among municipal managers; and, hiring the best and effectively managing employees. Cost for the exchange is \$65 for MTCMA members and \$95 for non-members. The instructors vary, depending on the individual sessions that one attends.

DEC. 8

Roles of Elected Officials and Municipal Managers

Spring Meadows Golf Club and Banquet Center in Gray will be the site as MMA holds its popular, and important, seminar that helps elected officials and

managers understand their differing roles and establish a top-notch working relationship. The workshop will be held on Dec. 8, starting with registration at 4 p.m. and ending at 8:30 p.m.

The session will be led by: Pam Plumb, former Mayor in the City of Portland and co-founder of Great Meetings! Inc.; Don Gerrish, a long-time municipal manager who works for the Eaton Peabody Consulting Group; and, David Barrett, Director of Personnel and Labor Relations at MMA. Cost is \$55 for MMA members and \$110 for non-members.

DEC. 14, 15, 16, 17

MBOIA 'Significant Changes' Training

The Maine Building Officials Inspectors Association, in conjunction with the state Department of Community Development and the Maine State Fire Marshal's Office, will hold two sets of training sessions on 2009-2015 "significant changes." These sessions are intended for code enforcement officials, builders and design professionals.

Workshops dealing with the IRC code will be held Dec. 14 at Keeley's Banquet Center in Portland and Dec. 16 at Jeff's Catering in Brewer. Workshops dealing with the IBC code will be held Dec. 15 at Keeley's in Portland and Dec. 17 at Jeff's in Brewer. Prices for the day-long workshops vary depending on whether early-registration deadlines are met. Municipality-appointed CEOs can attend free of charge. ■

"The expertise that CES brought to the Phase I Landfill closure project was a critical element in keeping construction costs below estimates and finishing ahead of schedule. This was a very satisfying conclusion to the City's first ever design build project." *Dana Fowler, PE, Public Services Director*



In 2015, the Presque Isle Landfill Closure project received an ACEC of Maine Engineering Excellence Award, a Governor's Award for Environmental Excellence, and a Build Maine Award from AGC Maine.

As the City of Presque Isle's trusted consultant, CES helped save over \$900,000 and the project was completed ahead of schedule.

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LEGAL NOTES

Can a Board Meeting Be Held on Private Property?

Question: Can a municipal board meet on private property, such as at a member's home?

Answer: While no law expressly prohibits it, we strongly discourage it unless there is no suitable public venue available. (It needn't be a municipal facility, nor must it be located within the corporate limits of the municipality, as long as it's a public space.) There are several reasons for our advice. First, holding a municipal board meeting on private property may falsely imply that the meeting itself is private, which of course it can't be. Any meeting of a municipal board, regardless of where it is held, is a "public proceeding" under Maine's Freedom of Access Act or "Right to Know" law (see 1 M.R.S.A. § 402(2)). Prior public notice is required, and the general public has the right to attend (see 1 M.R.S.A. §§ 406, 403).

Second, private property, especially private homes, may not meet accessibility standards under the federal Americans with Disabilities Act (ADA). Thus, even though the public has the right to attend, disabled persons may not be able to, and this could violate the ADA.

Third, by hosting a public meeting, a private property owner might be at greater risk of liability for injuries resulting from a negligent act or condition. If public meetings in a private place became the norm, it's even possible that the property could be deemed a public building for which the municipality itself could be held liable (see *Rodriguez v. Town of Moose River*, 2007 ME 68).

There is one notable exception to our advice that municipal boards should generally not meet on private property: site visits. Many boards, especially planning boards, appeals boards and boards of assessors, find it useful, sometimes even indispensable, to physically inspect the property or site that is the subject of a pending matter. For a few tips on how to conduct a site visit, see "Site Visit Dos & Don'ts," *Maine Townsman*, "Legal Notes," October 2004.

For more on the "open meeting" requirements of the Right to Know law, see our "Information Packet" on the subject, available free to members at www.memun.org. (By R.P.F.)

MUNICIPAL CALENDAR

ON OR BEFORE DECEMBER 15 — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333-0011 [22 MRSA §4311].

DECEMBER 25 — Christmas Day - a legal holiday (4 MRSA §1051, 20-A MRSA §4802).

DURING DECEMBER — Towns that elect officials by secret ballot under 30-A MRSA § 2528 must make nomination papers available 40 days before the filing deadline. The filing deadline must be at least 45 days before the election date. For most towns with March elections, papers must be made available beginning sometime in December, depending on the date of the election.

BY JANUARY 1 — Each owner or keeper of a dog or wolf hybrid at the age of 6 months or more shall obtain a license for that animal from the municipal clerk (7 MRSA § 3922). ■

Traffic & Parking Ordinances

Question: Who has the authority to adopt traffic and parking ordinances, and what is the process for doing so?

Answer: The municipal officers (selectmen or councilors) have the *exclusive* authority to enact ordinances regulating vehicle and pedestrian traffic and parking on public ways and public property within their jurisdiction (see 30-A M.R.S.A. § 3009(1)). This is true even where town meeting is otherwise the municipal legislative body. Traffic and parking ordinances are two of a small number of ordinances that *only* the municipal officers can adopt (see "Municipal Officers' Legislative Authority," *Maine Townsman*, "Legal Notes," May 1999).

The enactment process is relatively simple. The municipal officers must give at least seven days' notice of their meeting "in the manner provided for town meetings" (30-A M.R.S.A. § 3009(3)). We interpret this to mean a notice signed by a majority of the municipal officers, attested by the clerk, and posted in at least one public place by a resident or constable, with an executed return. The notice should give the time, date and place of the meeting and include a certified copy of the proposed ordinance.

Once the municipal officers' meeting is convened, they should explain the rationale for the ordinance and how it works and then invite public questions and comments. Following this, the municipal officers may deliberate and, if

they wish, adopt the ordinance by motion, second, and majority vote. Unless otherwise specified, the ordinance takes effect immediately.

A certified copy of the ordinance, together with a record of the motion and vote, should be kept on file with the clerk.

For the record, traffic ordinances may regulate vehicle weights as well as the movement of vehicles (stopping, standing, yielding, and so on). For details, see our "Information Packet" on road weight limits, available free to members at www.memun.org. Municipalities, however, have no authority to regulate speeds (see "Speed Limits on Local Roads," *Maine Townsman*, "Legal Notes," July 2015).

Municipalities also have no authority to permit vehicles that are not highway-registered to operate on public ways, except for ATV- and snowmobile-access routes (see "Designating Public Ways as 'ATV-Access Routes,'" *Maine Townsman*, "Legal Notes," May 2005).

For some sample traffic and parking ordinances, see our online ordinance collection at www.memun.org. (By R.P.F.)

Prohibited Employment

For many years Maine law has prohibited a municipal officer (selectman or councilor) from being hired for any employment position or appointed to any "civil office of profit" with the municipality if the position was created or

LEGAL NOTES

the compensation was increased by action of the municipal officers during that person's term of office (see 30-A M.R.S.A. § 2606).

The purpose of this prohibition is obvious: Elected officials should not be allowed to use their office to create for themselves an employment opportunity or a paid appointment.

The prohibition lasts for the municipal officer's full term plus one year thereafter. It also applies regardless of how that person actually voted or whether they are willing to be paid less.

It does not apply, though, if the position was created or the compensation was increased by action of some other body, for example, by town meeting vote, even if the municipal officers recommended the action.

Nor does it apply if the employment or appointment is allowed or required by State or federal law or municipal ordinance or charter.

We should note that it is not otherwise illegal for a municipal officer to be a municipal employee unless the employment position is a sworn office with duties that conflict with those of a municipal officer, or unless the municipality has prohibited it by charter or ethics policy (see "Can a Selectman be Hired as a Town Employee Too?," *Maine Townsman*, "Legal Notes," July 2013).

For more on prohibited employment and related issues, see our "Information Packet" on ethics and conflicts of interest, available free to members at www.memun.org. (By R.P.F.)

Town Ways vs. Public Easements

Question: What's the difference, legally, between town ways and public easements?

Answer: While the public has the legal right to travel over both, the most fundamental difference is the municipality's maintenance obligation. Municipalities *must* maintain town ways, whereas municipalities *may* but are not legally required to maintain public easements. (Note that public easements include "private ways" created under prior law, see 23 M.R.S.A. § 3021(2). These should not be confused with private roads, which the public has no right to use or maintain, see *Opinion of the Justices*, 560 A.2d 552 (Me. 1989).)

Specifically, a town way must be "kept in repair so as to be safe and convenient for travelers with motor vehicles" (23 M.R.S.A. § 3651); if blocked or encumbered with snow, it must also be rendered "passable" (23 M.R.S.A. § 3201). In contrast, a public easement may be maintained by a municipality, but since this is strictly a local option, the level

and frequency of maintenance, if any, is wholly discretionary (see 23 M.R.S.A. § 3105). (Private parties also may maintain public easements at their own expense, see *Wade v. Wenal*, 1999 Me. Super. LEXIS 14 (Jan. 13, 1999).)

One major consequence of this distinction is that while municipalities can be held liable for defects in town ways, they are not liable for defects in public easements (see "The 'Pothole Law,'" *Maine Townsman*, "Legal Notes," April 2014).

If a municipality wants to eliminate its maintenance obligation and its liability exposure for a town way, it can do so by discontinuing the way. This is a multi-step process culminating in a vote by the municipal legislative body (town meeting or town or city council) and payment of damages to abutters. Unless the required order of discontinuance provides otherwise, a public easement is automatically retained in the way. This ensures that the public may continue to use it and that abutters are not inadvertently landlocked (see "Landlocked Lots," *Maine Townsman*, "Legal Notes," December 2013).

A town way may also be discontinued by a statutory process called "abandonment" (i.e., failure to keep the way passable at public expense for at least 30 consecutive years). A town way that has been abandoned is relegated to the same legal status as if it had been formally discontinued, including automatic retention of a public easement if abandoned on or after September 3, 1965.

For full details on town ways, public easements, discontinuance and abandonment, see MMA's *Municipal Roads Manual*, available free to members at www.memun.org. (By R.P.F.) ■



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