

## **GUIDANCE ON PUBLIC COMMENT AT BOARD MEETINGS**

### **MMA Legal Services**

*(updated 7/15/25)*

This guidance provides recommendations for administering public comment at municipal select board and council meetings. The guidelines below apply regardless of whether members of the public attend a board meeting in-person or via a “remote” method (e.g., Zoom).

*Note:* Other types of municipal meetings, such as town meetings and quasi-judicial proceedings involving appeals, licensing, permitting, abatement proceedings, etc., are governed by different rules not discussed here.

### **Laws Governing Public Comment at Municipal Board Meetings:**

Public comment periods at municipal select board and council meetings in Maine are primarily governed by three authorities:

- **Maine statute (30-A M.R.S. § 2608):**

Beginning September 24, 2025, Maine law will mandate that a “reasonable opportunity for public comment” be provided on “matters addressed by the municipal governing body at any regularly scheduled public meeting of the municipal officers” (except for select board/council subcommittee meetings). See PL 2025, c. 409. Note that the requirement does not apply to meetings of other municipal boards and committees.

The requirement to allow public comment applies only to “regularly scheduled” select board and council meetings; it will not require that public comment be allowed at special or emergency board meetings. Also, note that the public’s right to comment applies to “matters addressed” by the select board/council at the meeting (i.e., agenda items) and not to all municipal issues generally. The legislation also preserves the right of the municipal officers to adopt and enforce reasonable standards governing public comment, including time limits and conduct standards.

The municipal officers may voluntarily go beyond the minimum requirements in § 2608 to allow comment on agenda items and allow time during their meetings for public comment on additional matters, for example, on any matter relating to municipal business or any matter of public concern.

- **Maine Freedom of Access Act (1 M.R.S. §§ 400 – 414):**

Maine’s Freedom of Access Act (FOAA) entitles the public to attend and record in-person and “remote” public proceedings, including select board and council meetings. See 1 M.R.S. §§ 403, 403-B, 404. The FOAA itself does not provide the public with a

right to speak at or otherwise participate in board meetings, although 30-A M.R.S. § 2608 (discussed above) does provide a right for the public to comment at regular select board and council meetings.

When any municipal board conducting a public proceeding allows public input from those physically present at a board meeting, it must also allow an effective means of communication by “remote” attendees. 1 M.R.S. § 403-B(2)(D).

- **Constitutional First Amendment Protections:**

Generally, the protections afforded speech under the Maine and U.S. Constitutions are coextensive; they are discussed together below.

Most courts view the public comment portion of a municipal board meeting as a “limited public forum” under constitutional First Amendment jurisprudence, assuming the comment period has been limited to discussion of certain topics. *See e.g., Tyler v. City of Kingston*, 74 F.4<sup>th</sup> 57 (2<sup>nd</sup> Cir. 2023); *McBreairty v. Sch. Bd. of RSU 22*, 616 F.Supp.3d 79 (D.Me. 2022); *Steinburg v. Chesterfield Cty. Planning Comm.*, 527 F.3d 377 (4<sup>th</sup> Cir. 2008).

A limited public forum is a location or venue the government voluntarily creates to allow expressive activity for specific purposes. Although a limited public forum has been opened to the public, it is “limited to use by certain groups or dedicated solely to the discussion of certain subjects. *McBreairty v. Miller*, 2024 WL 2187436 (D.Me. May 15, 2024). In a “limited public forum,” the government may restrict speech if the restrictions (a) do not discriminate against speech on the basis of viewpoint and (b) are reasonable in light of the purpose served by the forum. *See e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, (2001). Limiting the subject matter of the speech may be permissible if the limits are reasonable, are intended to preserve the purposes of that limited forum and are not an effort to suppress expression merely because public officials oppose the speaker's ideology, opinion or perspective. The municipality must be able to articulate a basis for its limits. *See e.g., Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995).

It is also possible for a public comment period to be considered an “open” or “designated” public forum at which members of the public might have the right to discuss any matter. This is more likely if the board has not provided subject-matter limits on public comment. In a designated or open forum, the government’s ability to limit the content of the public’s speech is more limited and restrictions on subject matter usually require a compelling justification. *See e.g., Pleasant Grove City v. Summum*, 555 U.S. 460 (2009).

## **Recommendations:**

We suggest the following to guide public comment at select board or council meetings:

### **1. Adopt A Written Policy with Clear Parameters.**

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

The policy should expressly state the purposes of the public comment period and any time limits or restrictions on subject matter (e.g., whether public comment will be limited to agenda items, or to concerns relating to municipal business, etc.). Not only does a written policy provide board members and the public with helpful “rules of the road,” a written policy can also give the meeting chair a solid basis during the meeting (if necessary) to ask speakers to limit their comments or cease disruptive behavior. Clear guidelines greatly assist in successfully enforcing limits on disruptive speech and may help avoid claims that the board has opened its public comment period to discussion of any topic at all. If a policy merely specifies a time during meetings for public comment with no further limits, it may leave the board open to claims that it has created an open (“designated”) forum for expression on any content (limits on content must meet a much higher standard in such forums).

### **2. Establish a Schedule and Time Limits.**

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

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

### **3. Use available tools to control “remote” technology.**

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

### **4. Require Recognition/Identification.**

Require speakers to be recognized by the chair before speaking. “Remote” speakers should be muted until recognized. The board’s policy may require speakers to identify themselves but should not require speakers to provide home addresses. (In contrast, there is no basis in the FOAA to require those merely *attending* the meeting--whether remote or in-person -- to identify themselves.) Some boards find it helpful to ask whether commenters are municipal residents or from a particular district within the municipality, but someone who refuses to provide the information should not be prohibited from speaking.

Require all comments and questions to be directed to the chair or through the chair to others. It is also helpful for the chair to summarize participation rules for the public before each comment period.

### **5. Immediate Response to Comments Not Required.**

Most boards use a public comment period simply as a forum to hear from constituents. Do not feel compelled to respond to comments or answer questions immediately. In fact, it is likely best not to enter a dialogue with members of the public or try to respond to complex questions or contentious comments “on the spot.” Feel free to take matters under advisement.

### **6. Define Limits on Speech Carefully.**

As discussed above, a written policy may establish the public comment period as a limited forum and restrict comments to specific subject matter, such as agenda items. (Note that as of September 24, 2025, Maine law will require, at a minimum, that comment be allowed on agenda items at *regular* board meetings.) At its meetings, the board may prohibit public comments on topics outside the scope of the limits it has established.

As noted above, muting remote attendees until they are recognized to speak and disabling screensharing and chat functions for remote attendees are acceptable ways to prevent sharing of “off-topic” comments, material prohibited by the policy, or comments outside the appropriate time for comment.

A policy may prohibit truly obscene, threatening or overly repetitive comments. However, although a policy may request decorum and civility, the policy may not limit public comment based on the viewpoint or ideology of the speaker, even if that viewpoint is disrespectful or offensive. For example, comments that are relevant to the topic under discussion may not be prohibited merely because they are critical, vulgar, reflect opposing opinions, are discriminatory, extreme or offensive. Generally, we advise that a policy should not state that it prohibits comments that are “offensive,” “intolerant,” “rude,” “disrespectful,” “disparaging,” “embarrassing,” “abusive,” or “inappropriate,” as these terms are likely too vague, broad and subjective to meet constitutional requirements and are difficult to apply consistently.

Many boards desire to avoid discussion of personnel matters at public board meetings. (Per Maine law, complaints of employee misconduct are generally confidential. See 30-A M.R.S. § 2702). Courts have allowed boards to prohibit public comment on some personnel matters as long as the limits relate to *content* and not *viewpoint*. For example, allowing praise and positive comments but not complaints about identified employees impermissibly discriminates based on the speaker’s viewpoint or perspective. See *McBrearty v. Miller*, 2023 WL 3096787 (D. Me. Apr. 26, 2023). However, a policy prohibiting the public from discussing confidential personnel information generally or the job performance of an individual employee, whether the comments are positive or negative, is likely to survive challenge. See *McBrearty v. Miller*, 2024 WL 2187436 (D.Me. 2024); *Pollack v. Wilson*, 2022 WL 17958787 (10<sup>th</sup> Cir. Dec 27, 2022); *Fairchild v. Independent Sch. Dist.*, 597 F.3d 747 (5<sup>th</sup> Cir. 2010). A policy may also indicate that personnel matters are handled through a different, confidential process and provide information on who to contact. These issues may arise less frequently under a policy limiting public comment to agenda items, as it is unlikely that personnel matters would be included in a public agenda.

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

### **7. Focus on Disruptive - Not Offensive - Behavior.**

Courts have recognized that board meetings are intended to allow a board to conduct its business and that boards have a legitimate interest in conducting their meetings with relative orderliness and efficiency. Although it is permissible to request proper decorum and civility to allow the board to conduct its public business, commenters should not be muted or removed from the meeting simply for being rude or disrespectful if the comments are germane to the topic under discussion and not actually disruptive.

A policy may prohibit disruption and disorderly behavior that interferes with the orderly conduct of the meeting. For example, a policy may prohibit shouting, yelling, interrupting other speakers, stomping feet, blocking the view of others, jeering, booing or applause that disrupts the meeting. Remember, however, that activity that is distracting or offensive, but not necessarily disruptive, may require a different response. For example, persons that stand in the back of the room, or who (via “remote” access or in-person) make faces or offensive hand gestures might not actually disrupt the meeting or require removal (see par. 9 below).

In contrast, a person that simply shouts slurs or insults when they are unmuted or recognized to speak should be told to cease on the basis that the comments are outside the subject matter allowed during the public comment period (assuming this is consistent with the board’s policy). Such comments may potentially be prohibited as disruptive if, for example, they engender outbursts by others or create such a distraction that the board is unable to conduct its business effectively. Likewise, someone whose comments stray from the topic under discussion into commentary on political or social issues may be asked to refrain at that time on the basis that the comments are outside the allowed topic.

### **8. Apply The Policy Uniformly.**

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

### **9. Take a Measured Enforcement Approach.**

Drawing the line between protected speech and speech that may be prohibited can be extremely difficult, particularly when the speech is rude or offensive. It is helpful to



focus on (1) whether the speech is within or outside the topic allowed, (2) whether disruption is occurring, and (3) whether the speaker's viewpoint alone is the issue. In most cases, we recommend using the least extreme initial response and progressing to greater response if needed. For example, if a member of the public is violating the policy or disrupting the meeting, politely but firmly remind the person of the policy requirements and ask the person to limit their comments and/or sit down and be quiet. If they refuse, ask them to leave or mute "remote" speakers. In many cases, simply muting a remote speaker may be sufficient to end the disruption, and it will not be necessary to remove the person from the remote meeting platform. If disruption continues, ask a police officer, if available, to escort the person(s) out, or call a recess until matters are under control and/or tempers have cooled. The board may also consider adjourning the meeting to another time. Since members of the public have a right to attend a public meeting, removing someone from the meeting should be done only when necessary for orderly conduct of the meeting.

#### **10. Develop the Board's Policy in Consultation with an Attorney.**

We strongly recommend that boards work an attorney to draft a public comment policy. The legal issues surrounding public speech rights are complex. Because constitutional rights are implicated, there is potential municipal liability for infringement of those rights. Developing a policy will require a risk analysis and choice between various approaches depending on the board's objectives.

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

#### **Summary:**

This is a complicated area of the law. While this guide provides some recommendations, it does not address every fact pattern or potential circumstance. We encourage members to contact MMA Legal Services to discuss their own meetings and concerns individually with our attorneys, and to develop a written policy with their municipal attorney.

#### **Contact MMA Legal Services:**

**Tel.** (207) 623-8428

**Fax** (207)624-0187

**legal@memun.org**