

TOWN OF BRUNSWICK MEETING NOTICE REQUIREMENTS

Adopted by the Council July 15, 2024

Purpose

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The purpose of this policy is to provide uniform guidance and instruction to all public bodies of the Town of Brunswick to ensure that public proceedings are conducted in compliance with Maine's Freedom of Access Act (FOAA)¹, and the directives of the Brunswick Town Council. It is understood that certain provisions of this policy are more stringent than Maine's FOAA, and a violation of this policy should not be construed as a violation of Maine's FOAA or any other state law.

Applicability

This policy shall apply to all Public Bodies as defined herein. It shall be interpreted to meet the intent of the FOAA and Town Council's directive that Public Proceedings be properly noticed and held. Clandestine meetings, conferences, or meetings without proper notice and ample opportunity for attendance by the public shall not be used to defeat the purposes of this policy. Meetings held and conducted in accordance with the Town's Remote Participation in Public Proceedings Policy, however, meet the public attendance requirements of the FOAA and this policy.

This policy does not apply to meetings of the Town's appointed staff, unless that staff is acting as a Public Body within the meaning of this policy. As an example, the Staff Review Committee, established in the Brunswick Zoning Ordinance, is a Public Body as defined herein. Its meetings shall be noticed and conducted in accordance with this policy.

Definitions.

The following terms shall have the meanings below unless otherwise indicated:

Meeting means a gathering of members of a Public Body. A meeting may be formal or informal, scheduled or unscheduled, and occur at the Public Body's usual meeting place or at any other location. A meeting may or may not qualify as a Public Proceeding under Maine's FOAA.

MRS means the Maine Revised Statutes.

Public Body means any body that conducts public proceedings as defined under Maine's FOAA. For the Town of Brunswick, it includes the Town Council and all boards, committees, commissions, task forces, and similar bodies established by, or appointed by, the Town Council; or established in accordance with Maine Law, Town Charter, the Brunswick Code of Ordinances, or any other enabling legislation.

Public Business means a Public Body engaging in Public Proceedings.

Public Proceedings means the transactions of any functions affecting any or all citizens of the State by any public body of the Town of Brunswick. It includes, but is not limited to, regular and special meetings, emergency meetings, workshops and site walks.

¹ 1 MRS §401. et seq.

Quorum means a majority of the full membership of the Public Body, including any vacancies, unless otherwise provided by Charter, ordinance or state law (e.g. 2 members of a 3 member Public Body, 3 members of a 4 or 5 member Public Body).

Subcommittee means a group comprised of three or more members of a Public Body and intended to perform a defined, ongoing function on behalf of the Public Body.

Working Group means a group comprised of two or more members of the Public Body and established by the Public Body only for a specific, defined purpose and for a defined period of time, all to be made clear in a public meeting of the Public Body/ies. Acceptable purposes of a working group include drafting written materials, organizing events, or analyzing a particular subject matter, where the work is of such long duration or of such limited public interest that conducting it outside of a public meeting will not deprive the public of access to discussions of public interest.

Public Notice.

FOAA Requirements. The FOAA requires public notice be given for all public proceedings, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. Further, it requires that this notice be given in ample time to allow public attendance and be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the public body.

There is disagreement whether the statutory language regarding “3 or more persons” applies any time three members meet, regardless of the size of the public body. The Town Council interprets the language to mean that a public body, consisting of three or more members, is subject to the requirement, and that anytime a quorum of that body is meeting, notice must be provided. However, the Town Council has determined that unnoticed meetings of three or more members of a Public Body (or two members of a three-member Public Body), even if that meeting is fewer than a quorum of that public body, can be viewed as an attempt to circumvent the intent of the FOAA and are therefore a violation of this policy.

Prescribed Notice Requirements. When a Maine statute, the Town Charter, or a Town Ordinance specifically prescribes meeting notice requirements, those requirements supersede the requirements contained in this policy. However, the prescribed procedures may be supplemented by those contained in this policy.

General Notice Requirements. When the notice requirements are not specifically prescribed, the Brunswick Town Council has determined that a minimum of forty-eight (48) hours notice shall be provided. This notice shall be accomplished in the following manner:

Posting of the meeting date, time, location and the name of the public body on the Town’s website calendar at www.brunswickme.org. Notice shall be accompanied by a general description of the purpose of the meeting. Publishing of a meeting agenda is preferable and highly encouraged for all meetings, and is required for meetings of the Town Council, the Planning Board, and any public body acting in a quasi-judicial capacity. However, a properly noticed meeting is not constrained by the contents of the meeting agenda. The lack of an agenda, or a specific agenda item, does not invalidate the action taken at an otherwise properly noticed meeting.

Public Notice for Emergency Meetings. In the event of an emergency meeting, or when forty-eight (48) hour notice is not provided, local representatives of the media shall be notified of the meeting, whenever practical, by the same or faster means used to notify the members of the Public Body conducting the meeting. The agenda requirements and exceptions outlined herein are still applicable.

Electronic Notifications of Meetings. Anyone, including members of the media, wishing to receive meeting notices via email or text are encouraged to subscribe to the Town's NotifyMe® service through the Town's website. There should be no expectation that the Town will send meeting notifications separate from this service. Failure to receive notice through this service does not invalidate the action taken at a properly noticed meeting.

Acknowledgement of Notice. No Public Proceeding may be conducted without the affirmative acknowledgement that notice of the Public Proceeding was properly provided.

Communications Outside of Public Proceedings. The FOAA does not prohibit communications outside of Public Proceedings between members of a Public Body if those communications are not intended or used to defeat the purposes of the law. However, for purposes of this policy, the Town Council has determined that communications outside of Public Proceedings that relate to "public business" are a violation, regardless of intent.

For the purposes of this policy, communications or attendance at trainings, public events, or ceremonial and similar functions, during which there are no discussions of "public business" are not prohibited, but members of the Public Body must be mindful not to discuss matters of their Public Body's business with other members of that Body at said gatherings. Because it often cannot be determined in advance whether discussion of "public business" may arise, it is always best practice to provide public notice of such events.

This policy also does not prohibit communications between members of a Public Body regarding non-substantive or procedural matters, for example the scheduling of public meetings or dissemination of materials to be discussed at a future meeting. Members of a Public Body must be careful to avoid communications that are intended to or have the effect of discussing any matter that would otherwise be addressed during a public meeting, or of building consensus either prior to or in lieu of a public meeting.

Working Groups and Subcommittees.

Subcommittees and Working Groups, as defined above, if comprised of three or more members, are required by this policy to post all meetings. Where a quorum of the Public Body will be in attendance at a subcommittee or working group meeting, public notice is also required.

No Public Body may establish a Subcommittee unless directly authorized by the Town Council or by the Charter or ordinance(s) establishing the Public Body. A Public Body may from time to time establish Working Groups of fewer than a quorum of the body.

In all occasions, the work product of a Working Group or Subcommittee must be brought back to a public meeting for discussion by the full Public Body prior to holding such work out as the statement, opinion, decision or action of the Public Body.

Meeting Agendas.

Meeting agendas are required for meetings of the Town Council, Planning Board and any public body acting in a quasi-judicial capacity. The format for the Town Council agenda is specified in the Town Council Rules of Order and Procedure. The agenda format for other public bodies shall be similar, or as approved by the Town Manager. Every agenda shall contain an item requesting acknowledgment that the meeting was properly noticed. In instances where there is no published agenda, this acknowledgement must be requested prior to conducting any business. No business may be conducted without the affirmative acknowledgement that the meeting was properly noticed.

Policy Distribution.

This policy shall be posted on the Town's website and distributed to members of any public body serving the Town of Brunswick.