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Memorandum

To: LUPC Commissioners
From: Stacie R. Beyer, Acting Director
Date: January 5, 2022
Re: Remote Participation Policy

Introduction

At its December 8, 2021 meeting, the Commission discussed its Remote Participation Policy (hereinafter Policy) and provided staff with guidance on possible revisions. This memo includes background information about the Policy and its implementation so far and provides a staff recommendation on policy revisions to incorporate the guidance provided by Commissioners in December. Based on advice from the Office of the Attorney General, the Commission will have a hearing before a deliberation and decision on revisions to the Policy.

Background Information

On September 8, 2021, the Commission adopted a Remote Participation Policy pursuant to Public Law 2021, Chapter 290. The Policy includes required provisions, such as confirmation that:

- Commissioners are expected to be physically present except for circumstances identified in the Policy; and
- Members of the public will be provided a meaningful opportunity to attend by remote methods when Commission members participate by remote methods.

In addition, the Commission's Policy:

- Affirms the value of in-person meetings, while also facilitating expanded public access to observe or participate in Commission meetings and hearings either in-person or remotely; and
- Communicates the Commission's commitment to consistent and predictable notice, fairness, public participation, and access to the governing body.

Section B(2) of the Policy includes criteria for determining when a hybrid meeting is appropriate, and states that a Commissioner's physical attendance at a hybrid meeting is expected unless that is not practicable, and it goes on to provide examples of such circumstances.

Section B(2)(c) currently reads:

Commissioners must notify the Chair and the Director in advance of the meeting of their absence and remote participation. Pursuant to 1 M.R.S. § 403-B(2)(E), a Commissioner's remote participation may not be allowed if notice of a Commissioner's absence is provided less than forty-eight hours in advance.

Advance Notice of Remote Participation and Commissioner Feedback

On November 10, 2021, the Commission held its first hybrid meeting after adoption of the new Policy. In preparing for and conducting that meeting, several questions and concerns emerged regarding the implementation of the new Policy. One question focused on whether a Commissioner should be allowed to participate in a meeting remotely if advance notice of remote participation is provided less than 48 hours before the meeting.

The requirement for a 48-hour advance notice of remote participation by a Commissioner was included in the Policy to provide the public sufficient notice of the opportunity to attend virtually, and give Commission staff ample time to prepare for public access to the meeting by remote means. The adoption of the "Meeting Owl" technology, in conjunction with the Commission's commitment to maximizing opportunity for public involvement, has allowed the Commission to offer the public the opportunity to participate remotely at all meetings, mitigating the concern related to public notice. There are additional important factors that continue to support advance notice of remote participation by Commissioners in the hybrid meeting format. These include providing notice to the meeting facilities and caterer given the associated expenses if inadequate notice is provided, for example the potential for the Commission to lose deposits on lodging or facility rental, and the caterer to lose money on pre-ordered provisions.

In contrast to factors supporting advance notice, Commissioners recognize the reality that unforeseen circumstances can arise to prevent a Commissioner from attending a meeting in-person but still allow for effective remote participation, such as a sudden illness, a recent change in physical condition, mechanical issues with a vehicle, or a change in local travel conditions. In these cases, it may be beneficial to allow remote participation with short notice. Feedback provided by Commissioners at the December meeting indicated a consensus that the benefit of allowing a Commissioner's remote participation in a meeting, when unforeseen circumstances arise, outweigh identified concerns associated with providing short notice of remote participation, at least in the case of a properly noticed hybrid meeting.

At the December 8th meeting, Commissioners provided the following direction to staff:

- Draft revisions to the Policy that provide more flexibility in the requirement for a Commissioner's advance notice of remote participation;
- Keep the tests of "not practicable" and "unforeseen circumstances" broad; and
- Maintain the honor system for compliance with the Policy.

In response to this guidance, staff have prepared a revised draft of the Policy incorporating changes, primarily in Section B(2)(c), as follows:

Commissioners must notify the Chair and the Director in advance of the meeting of their absence ~~from the meeting~~ and ~~intent to participate using~~ remote ~~participation methods~~. Advance notice must be provided at least 48 hours before the meeting, unless the nature of the event making in-person attendance impracticable is caused by unforeseen circumstances such as sudden illness or local travel conditions. Pursuant to 1 M.R.S. § 403-B(2)(e), ~~a Commissioner's remote participation may not be allowed if notice of a Commissioner's absence is provided less than forty-eight hours in advance.~~

The revisions also include deletion of a footnote regarding “drafting notes” from page 1 of the Policy that no longer appears relevant.

Staff Recommendation

Following consideration of any comments provided at the public hearing, staff recommends the Commission adopt revisions to its Remote Participation Policy as drafted.

Attachment:

Draft Remote Participation Policy

MAINE LAND USE PLANNING COMMISSION

REMOTE PARTICIPATION POLICY STATEMENT[‡]

Adopted September 8, 2021; Revised January 12, 2022

A. Purpose

The following serves as the Maine Land Use Planning Commission’s policy regarding public meetings conducted with or without remote participation. For the purposes of this policy, participation is described in three ways:

“In-person” is a means of participation or type of meeting that allows or otherwise accommodates for in-person interaction, meaning that the participants will be located within the same physical space.

“Remote” is a means of participation or type of meeting that is conducted through remote means, where individuals may participate by telephonic, video, electronic or other similar means of communication that allows an individual to participate in a meeting without being physically present. Remote technology which requires a social media account, specific membership, or software that must be purchased will not be employed as the sole method of attending remote meetings.

“Hybrid” is a means of participation or type of meeting where Commissioners, staff, or the public may participate either in-person or remotely.

As a matter of overall policy, the Commission affirms both the value of face to face interactions and the benefit of maximizing opportunities for public participation in its deliberations. Thus, the means adopted in this policy support a hybrid model that favors in-person participation at Commission meetings when feasible, within or near the Commission’s service area, in locations dictated by the issues before the Commission at any particular meeting, and supports technological innovation to encourage or otherwise facilitate public participation by the means of their choosing.

The Commission reserves the right to act in a manner that may vary from this document, consistent with its statute and regulations. Provisions of this document must not be construed to supersede or replace the statute, rules, or the Comprehensive Land Use Plan administered by the Commission.

This policy is authorized by and adopted pursuant to 1 M.R.S. § 403-B and 12 M.R.S. § 684.

~~[‡]In the event the Commission adopts this or a similar policy, the “drafting notes” will not be included in the final policy; “drafting notes” are included herein are intended for explanatory purposes.~~

B. Participation

1. Remote Participation

Unless otherwise required or limited by the Constitution of Maine, statute, or the Commission's rules, the Commission, at the discretion of the Chair and Vice Chair, in consultation with the Director, may choose to conduct any public meeting entirely through remote means due to the existence of an emergency or urgent issue that requires the Commission to meet by remote methods. An "emergency" or "urgent issue" includes but is not limited to, significant weather events; unsafe travel conditions due to inclement weather; or due to an executive order of the Governor of the State of Maine, mandate of the Maine Legislature, or other credible and widespread concern regarding public health or safety.

2. Hybrid Participation

The Commission, at the discretion of the Chair and Vice Chair, in consultation with the Director, may choose to conduct any public meeting in a hybrid manner, pursuant to this policy, according to the following:

- a. Due to the geographic scope of the matter(s) to be addressed by the Commission;
- b. Due to the anticipated public involvement and related absence of suitable venues for in-person meeting or hearing;
- c. During public meetings or hearings conducted by the Commission, each Commissioner is expected to be physically present for public proceedings except when being physically present is not practicable. Circumstances in which physical presence for one or more members is not practicable may include:
 - (i) Concern based on individual health risks associated with in-person participation in public gatherings;
 - (ii) Illness, other physical condition or temporary absence that causes a Commission member to face significant difficulties traveling and attending in person;
 - (iii) A significant distance a Commission member must travel to be physically present at the meeting location; and
 - (iv) Geographic characteristics or travel conditions within the Commission's jurisdiction that impede or slow travel.

Commissioners must notify the Chair and the Director in advance of the meeting of their absence from the meeting and intent to participate using remote participation methods. Advance notice must be provided at least 48 hours before the meeting, unless the nature of the event making in-person attendance impracticable is caused by unforeseen circumstances such as sudden illness or local travel conditions. Pursuant to 1 M.R.S. § 403-B(2)(e), a Commissioner's remote

~~participation may not be allowed if notice of a Commissioner's absence is provided less than forty-eight hours in advance.~~

C. General Provisions

The following apply to each meeting scheduled or carried out as a remote or hybrid meeting.

1. To the extent required by law or otherwise practicable, all other requirements, policies, and practices applicable to Commission meetings or Commission conducted public proceedings apply.
2. Each Commission member, the Director, and the Commission's legal counsel participating in the public proceeding must be able to hear and speak to all other members and members of the public must have a meaningful opportunity to attend the public proceeding. When any vote is taken by the Commission, all members of the public must be able to hear, if using only audio technology, or see and hear, if using both audio and video technology each Commissioner and any other speaker. Any member of the public needing and requesting special accommodation to access a public meeting or hearing should contact the Commission staff in advance of the meeting or hearing at (207) 287-2631 or by email at lupc@maine.gov. All reasonable requests will be considered but may be limited by practicality and agency resources.
3. A Commission member who is participating remotely is considered present, including but not limited to for the purposes of a quorum.
4. Votes: All votes taken during a public proceeding conducted through remote means must be taken by roll call vote.
5. A technical failure on the part of a person or a group of people that interrupts that person's or people's electronic or telephonic connection to the meeting or proceeding does not invalidate any action taken by the Commission within that meeting or proceeding.
6. Commission members and Commission staff participating in a public meeting or hearing conducted through remote means must not transmit as part of their video, any sign, logo, slogan, images, prop, or paraphernalia, except those that are commonly accepted DACF or LUPC logos or slogans, or as part of an appropriate presentation.
7. Public participation: To the maximum extent practicable, opportunities for public participation within any meeting conducted through remote means must be substantially equivalent to such opportunities within comparable in-person meetings.
8. Individuals wishing to offer questions or comments must be called upon by the Chair.
9. Comments and remarks included in a 'chat' or similar medium are not part of the meeting record unless recognized by the Chair or presiding officer.

10. Disruption or Threat: Upon not less than two prior warnings, the Chair or presiding officer maintains the authority to uninvite, remove, or otherwise block any individual who repeatedly fails to be respectful of the proceeding or of any individual, who is repeatedly disruptive, or whose audio or video feed results in the transmission of inappropriate materials or information. Notwithstanding the prior provision, the Chair or presiding officer maintains the authority to:
 - a. uninvite, remove, or otherwise block any individual whose statements or actions are threatening in any way or otherwise unlawful, and
 - b. may require attendees to mute their microphones or turn off their camera, or direct staff to do so.

D. Notice

1. Notice of each meeting or hearing conducted by the Commission must clearly indicate, either:
 - a. the location where the meeting or hearing can be attended in-person, and either identify the means by which members of the public may participate through remote means, or confirm that remote participation will not be available; or
 - b. identify the means by which all individuals may participate through remote means.
2. Except as limited by law, any public meeting or hearing conducted by the Maine Land Use Planning Commission may be scheduled or rescheduled, or the venue changed to be conducted through hybrid or remote means as needed, provided notice of any change in venue or means of participation (*e.g.*, from in-person to only remote) is provided as soon as possible, and through the Commission's GovDelivery system. In all instances, the applicable information must also be posted on the Commission's calendar webpage (www.maine.gov/dacf/lupc/about/calendar/index.shtml).