

**TOWN OF ARUNDEL, MAINE  
BOARD OF SELECTMEN MEETING  
SPECIAL TOWN MEETING**

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**Monday May 23, 2022  
Arundel Municipal Building  
7PM  
Zoom Taping**

- I. Call to Order
- II. Approval of Agenda
- III. Public Forum – Public comment on non-agenda items
- IV. Approve Minutes of May 9, 2022
- V. Committee and Board Reports
- VI. Manager Report
  - Sewer Discussions
  - Quit Claim for 900 Limerick Road
  - Status for permanent system for meeting room.
  - Next meeting June 13<sup>th</sup>?
- VII. Business
  - Update on efforts/ Kennebunk River Committee
  - Remote Participation in Public Proceedings
  - Roadway Safety Assessment Field Review Old Post/Log Cabin Rd
  - Draft Ordinance Review on Domesticated Fowl
  - Arundel Town Website
  - Approval of Account Payable Warrant
- VII. - Other Business /Adjournment

# **TOWN OF ARUNDEL**

468 LIMERICK RD ARUNDEL MAINE 04046 (207) 985-4201 FAX (207) 985-7589

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**BUSINESS MEETING May 23, 2022**

## **EXECUTIVE SUMMARY**

BOS Members: The purpose of this summary presented is to give you some information over and above just the mentioning of the subject matter on the agenda. It is my hope that this information assists you in your decision making.

## **MANAGERS REPORT**

- Sewer Discussions: Want to report to you the efforts undertaken by our Engineering Firm Wright-Pierce with the Kennebunk Sewer District.
- Quit Claim for 900 Limerick Road: Back taxes, interest and fees have been paid the Quit Claim deed is being processed.
- Permanent Computer System and hook-up for the Meeting Room is underway. I have a meeting with Ralph (IT Person) on Tuesday the 24<sup>th</sup> to view the site and suggest a possible system.
- Meeting of June 13<sup>th</sup>: Want to have a discussion if you wish for meeting to take place. Voting is set for the 14<sup>th</sup> with the ATM on the 15<sup>th</sup>.

## **BUSINESS**

- Kennebunk River Committee: Sam Hull and committee members will be at your meeting to report their efforts to date.
- Remote Participation in Public Proceedings. The Town Attorney has weighed in and indicated all public bodies have the approval to enact their own policy provided they follow the statute. We should talk a bit on these proceedings.
- Roadway Safety Assessment Log Cabin/Old Post: I know that Selectmen Dubois can shed additional light on this meeting and the Town's responsibilities from this meeting.
- Draft Ordinance: I have an Ordinance on Domesticated Fowl that I am looking for comment upon to see what additional materials may need to be added.
- New Website: Selectmen Dubois wishes to continue some discussions on the site and the changes undertaken.
- Approval of Account Payable Warrant as submitted for review at your meeting.

## **ADJOURNMENT**

**TOWN OF ARUNDEL  
SELECT BOARD**

Monday May 9, 2022  
Arundel Municipal Building  
7PM Meeting

Members present: Select Board Tom Danylik, Velma Hayes, Dan Dubois, Phil Labbe, Jason Nedeau

Absent: Selectmen Nedeau

Others: Town Manager Trefethen, Jack Reetz, Henry Ingwersen, Roger Taschereau, Terry Merrill.

**Call to Order:** Chairman Danylik called meeting to order @7PM.

**Chairman Danylik** opened the Public Hearing on Liquor License and Special Amusement Permit for Bentley's Saloon. No comments, hearing closed at 7:01PM

**Approval of Agenda:** *MOTION Nedeau second Labbe "approve agenda as amended" passed 5-0.(added Gilliam Field Application-Ambulance discussion-Free Range Chickens-Meeting Room)*

**PUBLIC FORUM**

-No Comments

**Approval of Minutes:** *MOTION Dubois second Hayes "approve minutes of 4-25-22 as presented" passed 5-0.*

**Committee & Board Report:** No reports

**Manager Report:**

-Manager will be out of the office from May 12 to May 18, 2022

**Business:**

-Automatic Foreclosure: Contact has been made by all family members on these properties. Quit Claim deed approved for one and working out a payment plan upon the other

-Per Ton Paving Cost: Roger was present to inform the Board of the increase in per ton paving for the upcoming season. Board felt that he should prioritize paving and accomplish what can be done with the funding established.

-Truck Frame: Roger was seeking permission to send truck for Frame repair and pay \$2,500 out of Capital for down payment before vote actually taken. ***MOTION Dubois second Hayes Pay \$2,500 from Capital and prepare truck to be sent for frame repair before Annual Town Meeting” passed 4-1 (Nedeau)***

-Mass Gathering Permit: Presented by the Arundel Conservation Trust for their Annual Trail fest. Henry Ingwersen was present to answer questions. ***MOTION Dubois second Labbe “approve mass gathering application from Arundel Conservation Trust for Trail fest to include the placement of two porta potties for the event and the waiver of the fee” passed 5-0.***

-Bentley’s Saloon Applications: ***MOTION Dubois second Hayes “approve the liquor license and special amusement application for Bentley’s Saloon” passed 5-0.***

-Annual Town Meeting Warrant: ***MOTION Hayes second Nedeau “sign Annual Town Meeting Warrant as presented” passed 5-0.***

Application for Gilliam Field Use: ***MOTION Nedeau second Labbe “approve the use of the Girls Softball field by the Little League for the upcoming season with no activity to take place on the baseball field as it was recently re-constructed” passed 5-0.***

-Free Range Chickens: The Board approved the development of a local ordinance to control the roaming of free range fowl and instructed the Manager to work with Planner-ACO in its development.

-Meeting Room: Selectmen Dubois suggested after his observation of the Planning Board meeting that a desk top computer should be installed exclusively for the meeting room and the TV Mounts on the side TV’s should be able to be angled towards the conference table.

***-MOTION Hayes second Nedeau “approve account payables as presented and reviewed” passed 5-0.***

***ADJOURNMENT MOTION Nedeau second Dubois “to adjourn” passed 5-0 @ 7:57 PM***

Respectfully submitted,  
Keith M. Trefethen  
Town Manager

**Kennebunk Sewer District  
Board of Trustees**

*Responses to Town of Arundel's Questions (on behalf of Chris Dwinal, Wright-Pierce)  
May 3, 2022 Meeting*

- Is Kennebunk Sewer District still “open” to the possibility of the Town of Arundel connecting to the District’s collection system for treatment at the KSD wastewater treatment facility?

*Maybe. There are a lot of details to be discussed with staff, the KSD Board of Trustees, the Town of Kennebunk, and the town of Arundel. This would create a very unique situation and KSD wants to make sure we have all the details and information available.*

- Would KSD require all of the collection system improvements identified by Underwood in 2018 be paid 100% by Arundel, or would KSD share in those improvements considering they also benefit KSD users and some of these assets are nearing end of useful life? If KSD would share in the cost, what formula would be used to determine the cost share?

*KSD would require Arundel to cover these costs. KSD has only identified these areas to take on the additional flow that would take this path. These sections in their current state are acceptable for our collection system and are not in our forecasted 10-year capital improvement plan.*

- The Town of Arundel would likely be willing to fund the cost of an appraisal, but would like to understand first the level of detail KSD would require and the cost of such effort. Assuming the appraisal is completed, we assume Arundel would buy-into the value of the existing WWTF, and then pay for the cost of future upgrades similar to every other user through user charges?

*We would assume this would be the best route to come up with a value. The Town of Arundel would be responsible for funding the appraisal. KSD is in the process of several major upgrades at the wastewater treatment facility over the next 4 years. These improvements will greatly affect an appraisal or value assessment, so timing of an appraisal would need to be looked at in depth.*

- Is KSD comfortable with giving Arundel up to say 140k gpd capacity without a study of Kennebunk regarding their growth? Based on our call last week, it seemed that even if KSD accepted Arundel, KSD would still have nearly 0.5 mgd of capacity for Kennebunk which you indicated might be plenty to serve growth needs in Kennebunk.

*This section we are not prepared to answer at this time. Without in depth conversations with our staff, Board of Trustees, Town of Kennebunk officials, and Town of Arundel officials; it is difficult to determine what effect this would have on future growth.*

## Town Manager

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**From:** Sam Hull [samhull33@roadrunner.com]  
**Sent:** Wednesday, May 11, 2022 4:06 PM  
**To:** Keith Trefethen  
**Cc:** Henry Ingwersen  
**Subject:** Re: Use of meeting room for Arundel River Restoration Advisory Committee

Thanks Keith! We look forward to using the space for our Advisory Committee meeting on May 18th at 6:30 pm.

On the 23rd, we're planning on a 15 minute (or longer if necessary) briefing session with the SB to bring them up to speed on things like:

1. The river restoration public awareness & engagement campaign we're planning for Arundel and also outlining our "3 Towns-1 River" cooperation & coordination program with Kennebunk & Kennebunkport
2. The YCSW & Maine DEP current Phase 1 remediation program, focusing on Arundel. Discussion of funding sources for phase 1 program, including property owner responsibility.
3. Discussion of possible Town role in Program and other matters.

See you on the week of the 23rd!

Sam Hull

On May 11, 2022, at 1:49 PM, Town Manager <[townmanager@arundelmaine.org](mailto:townmanager@arundelmaine.org)> wrote:

You are all set for Wednesday the 18<sup>th</sup> for use of the room. I also have you on the BOS Agenda for Monday the 23<sup>rd</sup> to speak with the Selectmen. Today is my last day in the office this week as I will be out of the area until Friday the 20<sup>th</sup>. Keith

## Town Manager

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**From:** Leah B. Rachin [LRachin@dwmlaw.com]  
**Sent:** Monday, May 16, 2022 7:58 AM  
**To:** 'Town Manager'  
**Subject:** RE: Arundel - Legal Information Request - In-Person Meetings

Hi Keith,

This email is in response to the question that you sent to me below regarding whether individual municipal boards have the authority to develop their own policies for remote participation.

As described in more detail below, we have consistently read the state statute's use of the term "public body" as referring to an individual board or committee, rather than to a municipality as a whole. In our view, the remote participation statute requires individual boards to adopt their own policies following public notice and hearing.

In general, 1 M.R.S.A. § 403-B states that any "public body" otherwise subject to the Maine Freedom of Access Act ("FOAA") "may allow members of the body to participate in a public proceeding using remote methods" *only* under conditions imposed by the statute. Those requirements include public notice, public hearing, and adoption of a written policy *by that public body*.

The term "public body" is not defined in the statute. However, because the law refers to members of a "public body" as those voting members of the body, our guidance to our municipal clients has been that towns should treat the law as applying to each board individually, requiring adoption of a remote participation policy at the board level. The upshot is that our recommendation has been and continues to be that each board should follow the process of adoption established in 1 M.R.S.A. § 403-B to ensure compliance with the statute.

The use of the word "may" in the statute implies that the decision as to whether to adopt a remote meeting policy is a choice at the discretion of each board. As noted in the MMA materials that you provided, the statute's preference is that boards conduct their business in-person, and requires the board to affirmatively pass a remote policy that clearly defines when and how remote meetings will be held. Any policy adopted by a board, including the conditions in which the board is permitted to hold a remote meeting, must comply with the state law.

While Section 4.5 of the Town's charter notes that the Select Board "as a body" exercises all administrative and executive powers not otherwise delegated by local, state or federal law, given that the statute appears to require policy adoption at the board level, in most instances one administrative board cannot force a separate board to vote on a certain issue a certain way. While the Select Board can certainly provide proposed standard language and strongly recommend that individual boards adopt that language, absent ordinance or charter language compelling a board to adopt a particular remote participation policy (whether such an ordinance or charter provision would be deemed to conflict with 1 M.R.S.A. § 403-B is untested and such outcome would not be free from doubt), the statute appears to give that discretion to the individual board.

To be clear, however, this does not mean that any board can ignore the provisions contained in FOIA regarding when and why a remote meeting can be held or how a policy must be structured. To the extent that a board refused to comply with those provisions, their actions may be subject to legal challenge.

I would be happy to discuss this issue in more detail at your convenience.

Best,

Leah

**From:** Town Manager <townmanager@arundelmaine.org>

**Sent:** Wednesday, May 11, 2022 11:33 AM

**To:** Leah B. Rachin <LRachin@dwmlaw.com>

**Subject:** FW: Arundel - Legal Information Request - In-Person Meetings

Leah: I am going to need you to weigh in on this matter. The Arundel Planning Board wants to implement its own Remote Participation Policy based upon **MRSA 1403-B Remote participation in public proceedings** in the statute it indicates "A public body" may allow remote participation only after the adoption of a written policy (I am paraphrasing). The Arundel Board of Selectmen on July 26, 2021 after a Public Hearing established a Remote Participation Policy that includes the BOS, Planning Board, ZBA & Budget Board. This was completed in and around the Pandemic to provide legal flexibility for boards to continue to carry on business.

Presently the members of the Planning Board want to argue that by statute they have the right to establish their own policy. I have told them that the policy was enacted by the Board of Selectmen to include them under their authority within the Municipal Charter Section 4.0 Selectmen subsection 4.5 General Powers & Duties and that if they wish to make changes suggest to the Selectmen these changes.

I guess what I will need is a legal opinion if each respective Board has the authority to develop their own policies for participation or if this is a decision best left with the Board of Selectmen.

Keith

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**From:** Town Manager [mailto:townmanager@arundelmaine.org]

**Sent:** Wednesday, May 11, 2022 10:51 AM

**To:** 'td@woodedlaw.com'; 'DUBOIS, DAN L PW'; 'Dan Dubois'; 'phillabbe@ne.twcbc.com'; 'Jason Nedeau'; 'Velma Jones-Hayes

**Subject:** FW: Arundel - Legal Information Request - In-Person Meetings

As a follow-up to the Planning Board meeting held on May 9<sup>th</sup> I spoke to the Planning Board Chairman again this morning. The Planning Board would like to meet with you all again. They still feel that they prefer to write their own policy for their meetings and wish to have some Clarity if a Municipal Charter trumps

Title 1: GENERAL PROVISIONS  
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS  
Subchapter 1: FREEDOM OF ACCESS

## **§403-B. Remote participation in public proceedings**

**1. Remote participation.** This section governs remote methods of participation in public proceedings of certain public bodies. For the purposes of this section, "remote methods" means telephonic or video technology allowing simultaneous reception of information and may include other means when such means are necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means such as e-mail, text messages or chat functions.

[PL 2021, c. 290, §1 (NEW).]

**2. Requirements.** A public body subject to this subchapter may allow members of the body to participate in a public proceeding using remote methods only under the following conditions:

A. After notice and hearing the body has adopted a written policy governing the conditions upon which members of the body and the public may participate in a public proceeding of that body by remote methods; [PL 2021, c. 290, §1 (NEW).]

B. The policy adopted pursuant to paragraph A ([../title1sec403-B.html](#)) must provide that members of the body are 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:

- (1) The existence of an emergency or urgent issue that requires the public body to meet by remote methods;
- (2) Illness, other physical condition or temporary absence from the jurisdiction of the body that causes a member of the body to face significant difficulties traveling to and attending in person at the location in the notice under section 406 ([../title1sec406.html](#));
- (3) With respect to a public body with statewide membership, significant distance a member must travel to be physically present at the location in the notice under section 406 ([../title1sec406.html](#)); and

(4) The area of the public body's jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges; [PL 2021, c. 290, §1 (NEW).]

C. The policy adopted pursuant to paragraph A ([./1/titlesec403-B.html](#)) must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities; [PL 2021, c. 290, §1 (NEW).]

D. If the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between the members of the body and the public must be provided; [PL 2021, c. 290, §1 (NEW).]

E. Notice of the proceeding must be provided in accordance with section 406 ([./1/titlesec406.html](#)). When the public may attend by remote methods pursuant to paragraphs C ([./1/titlesec403-B.html](#)) and D ([./1/titlesec403-B.html](#)), the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may not determine that public attendance at a proceeding will be limited solely to remote methods except under the conditions in paragraph B ([./1/titlesec403-B.html](#)), subparagraph (J); [PL 2021, c. 290, §1 (NEW).]

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting; [PL 2021, c. 290, §1 (NEW).]

G. All votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by the other members of the public body and the public; and [PL 2021, c. 290, §1 (NEW).]

H. The public body must make all documents and other materials considered by the public body available, electronically or otherwise, to the public who attend by remote methods to the same extent customarily available to members of the public who attend the proceedings of the public body in person, as long as additional costs are not incurred by the public body. [PL 2021, c. 290, §1 (NEW).]

[PL 2021, c. 290, §1 (NEW).]

**3. Remote participation not permitted.** This section does not authorize town meetings held pursuant to Title 30-A, section 2524 ([./30-A/title30-Asec2524.html](#)) or regional school unit budget meetings held pursuant to Title 20-A, section 1482-A ([./20-A/title20-Asec1482-A.html](#)) to be conducted using remote methods.

[PL 2021, c. 290, §1 (NEW).]

**4. Application.** This section does not apply to:

A. The Legislature; or [PL 2021, c. 290, §1 (NEW).]

**B. A public body to which specific statutory provisions for remote participation apply. [PL 2021, c. 290, §1 (NEW) .]**

[PL 2021, c. 290, §1 (NEW) .]

SECTION HISTORY

PL 2021, c. 290, §1 (NEW) .

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes (mailto:webmaster\_ros@legislature.maine.gov) 7 State House Station State House Room 108 Augusta, Maine 04333-0007

## **Domesticated Fowl**

**Fowl defined:** *“Usually refers to chickens or other kinds of domesticated birds that lay eggs or raised to be eaten. They include Chickens, Ducks, Geese, Pheasant and Turkey”*

### **Purpose**

The purpose of this article is to provide standards for the keeping of domesticated fowl. It is intended to reduce the potential for conflicts between neighbors that may arise if the keeping of domesticated fowl which could create a nuisance. A nuisance may be created when the keeping of domesticated fowl is not done in a way that maintains the health, safety, and welfare of the community. This includes, but is not limited to, noise, odor, disease, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of rodents and parasites/insects, nonconfined animals leaving the owner's property.

### **Applicability**

This applies to the keeping of four (4) or more fowl per lot developed with a single-family home. Fowl six (6) months old or older must be female. There is no restriction on fowl species. This provision shall not apply to allowed animal husbandry and agricultural uses.

### **Permit requirements**

The keeping of fowl authorized under this section shall require the issuance of a permit from the town clerk.

Fowl shall be kept as pets and for personal use only; no person shall sell eggs or engage in breeding or fertilizer production for commercial purposes unless they are located in a zone which allows the Agricultural Uses.

### **Enclosures**

1. Enclosures shall be erected to confine animals to an established area of the property behind the lots primary structure. Fencing shall be of a height that does not allow the animals to leave the fenced-in area without human assistance. Fencing shall take into account existing conditions in the neighborhood. Appropriate types of fencing include chicken wire, stockade, and picket.
2. Structures and fenced areas for fowl, and manure storage areas must be located in rear yards and shall not be located within twenty (20) feet of any lot line. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the twenty-foot setback is met. A henhouse type structure shall not be placed in a front yard.
3. All stored manure shall be covered by a fully enclosed structure or container. No more than three (3) cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed from the property.
4. Fowl shall be secured in a henhouse type structure with roof and siding during non-daylight hours.
5. The materials used in making the henhouse type structure shall be uniform for each element of the structure and the use of scrap material shall be prohibited.

**Feed and Water**

Fowl must be provided with access to feed and clean water at all times; such feed and water shall be unavailable to rodents, wild birds, and predators. Feed shall be stored in rodent proof containers.

**Lighting**

Lighting to protect domesticated fowl from predators and intruders shall be a ninety-degree cut-off luminaire. All lighting must be set to a motion detector so that the lighting is turned off when no motion is detected.

**Rodents and Insects/Parasites**

1. The property owner shall take necessary action to reduce the exposure and spread of disease as well as the infestation of insects and parasites. Domesticated fowl found to be infested with insects and parasites that may result in unhealthy conditions to humans and other animals shall be removed.
2. The property owner shall take necessary action to prevent the entry of rodents and/or predators into the domesticated fowls living area.