



Town of North Yarmouth

Photograph Permissions (SOP)

There are certain circumstances under which express permission would be required to publish a photograph of an individual or individuals.

- If the use of the photograph is for advertising or commercial purposes, then an individual may have a right to publicity, in which case permission, and likely compensation to the individual, are required.
- The editorial use of photographs (e.g., publication in a newspaper) does not require compensation, nor does it usually require permission. However, the line between “commercial” and “editorial” use is not always clear.
- In the case of a municipality is not a commercial, for-profit business, so the chance of a successful lawsuit for the right to publicity is low. However, a person could take issue with the publication of his or her likeness, and the town would have to take time and resources to defend itself against a case in court, regardless of its likelihood for success.
- Also, an individual could have an action against the publisher of his or her likeness – whether for editorial or commercial purposes – if the publication would constitute an invasion of privacy, or it unreasonably places the individual in a false light before the public – **although, in general, individuals whose photos are taken at public events or in public places do not have a reasonable expectation of privacy.**
- Maine Law also specifically provides special protection against the photographing of children (17 M.R.S. § 261(5)). The intent of this law is to make it a crime for registered sex offenders to photograph minors, so it is very unlikely to be used against the municipality. I only identify it to make the point that special consideration should be made in obtaining parental permission to publish photographs of children.

Recommendation: Instead of trying to determine when a release might be required or not, my advice would be to err on the side of caution and request a release from any identifiable people in the pictures you would like to publish, before publishing them. The release can be very simple, stating only that the individual provides permission for the publication of the photograph for town purposes and releases the town from all claims.

MMA Legal Department 1/13/20.