

Planning Board Rules and Procedures

DRAFT
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+ Added notes 8.29
From Chair

**CITY OF PORTSMOUTH, NEW HAMPSHIRE
PLANNING BOARD**

RULES AND PROCEDURES



ADOPTED FOLLOWING A PUBLIC HEARING: September 28, 2000

Last Amended by the Planning Board: _____, 2023

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PLANNING BOARD RULES AND PROCEDURES

A. Adoption and Purpose.

These rules of procedure have been adopted at a regular meeting of the planning board on the most recent date noted on the cover page. Any changes to these rules of procedure shall be adopted at a regular meeting of the board by majority vote and shall be placed on file with the City clerk for public inspection. (NH RSA 676:1)

These Rules and Procedures have also been adopted by the Board as an aid for better understanding the responsibilities of the Planning Board and its methods of conducting business.¹

B. Board Membership and Officers.

1. Membership: The Planning Board shall consist of nine voting members and two alternates. Board Membership, selection, qualification, term, removal of Members and filling of vacancies shall conform to the City Charter and applicable City Ordinances and Regulations.²
2. Officers: Board members shall elect annually from its membership in January of each year a Chair and Vice-Chair. The votes shall be public votes. The concurring votes of five members in attendance at a meeting shall be necessary to elect each Officer.
3. Duties of the Chair: The Chair shall:
 - a) Preside at all meetings.
 - b) Assist in the preparation of the agenda for each meeting in consultation with City staff, **and approve the agenda prior to its posting.**
 - c) Sign Board letters of decision, **and Board approved plans for recording at the registry of deeds.**
 - d) Have authority to sign agreements with consultants to the Planning Board only ~~after:~~ **1) after** a majority vote by the Planning Board specifically granting such authority; and, **2) in accord with applicable City Code.** ~~the approval of the City Council to expend funds for a consultant.~~

Commented [RC1]: There should be a mechanism for "final approval" of the agenda in the case of disagreement-however unlikely. That is usually the chair of a board, but the board should discuss this point.

Commented [RC2]: Current practice.

Commented [RC3]: Simplified and clarified.

¹ NH RSA 676:1

² ~~The Board composition is set forth in the City Code.:- The City Manager, a City Councilor, the Chief Building Inspector and six persons appointed by the Council as sitting members and two who are appointed as alternate representatives .~~

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- e) Appoint alternate Board Members to sit in the absence of a regular Board members.
- f) Have complete voting privileges on all matters, including the election of officers.
- g) Report any discussion or action relative to the Board that has taken place since the last meeting.
- h) ~~Approve~~ **Receive, review** and refer **all appropriate** questions from the Board members to staff.

Commented [RC4]: Clarification and formalization of current policy as requested by staff.

- 4. Duties of the Vice-Chair: The Vice-Chair shall assist the Chair and, in the absence of the Chair, shall have all the powers and duties of the Chair.
- 5. In the absence of the Chair and Vice-Chair, Board members present and constituting a quorum shall appoint a member of their group as Acting-Chair for purposes of conducting business at that meeting.
- 6. Duties of Alternate Board Members: An alternate shall sit in the absence, for whatever reason, of a Board Member and shall have all responsibilities becoming of a Board Member in that instance. Additionally, it is the Board's practice to include Alternate members in all Board proceedings so that they may be available to participate as may be required. When serving as an Alternate, the Alternate Member shall not further participate in Board deliberations, once a motion is formally placed on the table, nor does the Alternate Member have voting authority; except, when replacing a Board member.

~~7. —~~ Duties of the Secretary: The Secretary³ shall be the Director of Planning and Sustainability, or their designee. The Secretary shall cause to be kept a complete and accurate record of proceedings of all meetings; record the roll; conduct Board correspondence and fulfill such duties as the Chair and the Board may request. Pursuant to City Ordinances, the Secretary shall act as advisor to the Board on matters coming before it. In this capacity, the Secretary shall work on materials⁴ that will further the City's Master Plan and its Master Planning Process. These materials include such other reports, studies or other topical items that come before the Board and which are deemed to be appropriate to be so included in the Master Planning Process. ~~The Secretary may appoint an Acting Secretary to take meeting minutes and perform other appropriate duties.~~

Commented [RC5]: Redundant with footnote acknowledging designee.

C. Meetings – Controlling Length of, Types of and Scheduling.

³ The Planning Director, or **designee**, shall act as the Board's Secretary but shall be without vote.

⁴ Including but not limited to the following: studies, reports, plans, maps and similar work products.

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At the start of a Regular Meeting, if an Agenda has not been previously divided by the Chair, any Board Member may request a polling of the membership to determine whether the Agenda should immediately be divided at some designated point. On an affirmative vote, the Board shall then act to ascertain if a consensus exists to divide the Agenda in order that the public may be informed, before the meeting formally starts.

If a decision is not made to divide an Agenda, and the Board's business continues to 10:00 PM, the Board shall immediately determine by majority vote, whether to remain working past 10:30 PM and complete the Agenda or to continue any business, which has been not yet been considered before 10:30 PM to a date and time certain (usually, the next Regular Meeting of the Board). One exception to this rule shall be to allow the Board to consider any time sensitive materials as which may be identified by the Chair.

1. Notice of Regular Meetings: Regular Meetings shall be held monthly, the date and time to be selected by majority vote of the Board.⁵ The Board's Secretary shall make notice of such meetings by sending out a written notice to all Members at least three days before the meeting indicating the time and the place of the meeting.
2. Special Meetings: These may be called by the Chair, or the Chair at the request of three or more Members, or by the Secretary and the Chair or Vice Chair. The Chair shall select the date, time and place of the Special Meeting. The Secretary shall give at least twenty-four hour written notice of the meeting.
3. The Secretary shall provide a meeting Agenda and a briefing on that agenda to each Board member.⁶ The Secretary shall make these materials available for public inspection in the Planning Department Office following delivery to the Board.

D. General Order of Proceedings.

At each Regular Meeting the following Agenda format shall be followed; unless, otherwise modified by the Board.

1. Approval of Minutes.
2. Unfinished Business.
3. Public Hearings.
4. New Business.

⁵ Usually, the Board's regulatory meeting is on the third Thursday of the month. If another meeting is necessary to complete the Board's business, it is usually scheduled either for the next regular Board meeting or for some other day (usually the fourth Thursday of the month ~~in this instance~~).

⁶ Agenda items, other than applications requiring a Public Hearing, should be submitted to the Planning Department at least five days before the meeting.

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5. City and Board Business.
 6. Communications and Other Business.
 7. Adjournment.
- E. Quorum Requirements.
1. Five Board members in attendance at a meeting are necessary to form a quorum. No Board member shall leave a meeting without the permission of the Chair if such presence is necessary to maintain a quorum.
 2. **Remote participation: Where in-person attendance is not reasonably practical for a Board member, remote participation may be allowed in the discretion of the Chair and with a concurring vote of a majority of members physically present. Remote participation shall be limited to no more than two members and in all instances:**
 - a) **All parts of the meeting must be audible or otherwise discernable to the public physically present at the Board meeting.**
 - b) **Any member participating remotely must identify all persons present with that member in their remote location.**
 - c) **All Board votes with remote participation by a Board member or members shall be by roll call.**
- F. Brief Overview of the Statutory Duties of the Planning Board.
1. To prepare and amend a Master Plan for the City and as may be appropriate for areas lying within the City.⁷ In this capacity the Board has the “responsibility” for promoting the public’s “interest in” and “understanding of” the Master Plan (RSA 674:1 (a)).
 2. The Board has the authority to make any investigations, maps and reports and recommendations “which relate to the planning and development of the municipality (RSA 674:1 (b)).”
 3. To report and formulate recommendations to appropriate public officials and agencies programs for development of the City, programs for the “erection of public structures” and programs for municipal improvements. In this capacity the Board shall consult with appropriate officials, the public and provide financing recommendations.⁸
 4. To “attend municipal planning conferences or meetings, or hearings upon pending municipal planning legislation.”

⁷ The Master Plan initiates the Board’s process of preparing/adopting conforming Bylaws. These consist of the following: Zoning Ordinance and Zoning Map; Subdivision Rules and Regulations; Site Review Regulations; an annual Capital Improvement Plan; and an Official Map. (In Portsmouth, the Official Map is usually deemed to be the Zoning Map.)

⁸ The Board’s annual Capital Improvement Plan addresses this responsibility.

Commented [RC6]: All remote participation edits are new and in accord with statute. Needs board consideration.

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5. On the performance of these duties, Board members may make site inspections, examinations and surveys “as are reasonably necessary” to complete these responsibilities.
6. To make recommendations to the legislative body (City Council) of amendments of the Zoning Ordinance or Zoning Map.
7. The City Council may grant to the Board such powers “as may be necessary to enable it to fulfill its function, promote municipal planning, or carry out the purposes of this Title” (Title LXIV, Planning and Zoning).⁹
8. Subdivisions. To “approve or disapprove, in its discretion, plats and to approve or disapprove plans showing the extent to which and the manner in which streets within subdivisions shall be graded and improved and to which streets, water, sewer and other utility mains, piping, connections or other facilities within subdivisions shall be installed.”¹⁰
9. Site Plan Review. To “review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units ... whether or not such development includes a subdivision or resubdivision of the site”.¹¹
10. To exercise any other authority or responsibility contemplated by State or local law.
11. Pursuant to the direction of the City Council, to represent the City before the Rockingham Regional Planning Commission.

G. General Procedures.

1. The Board intends to review, consider and act on completed applications. To accomplish this intention, the Board's application process and calendar is readily available to the public.¹² Accordingly, information presented for the Board's consideration that follows the lapse of an application time requirement (i.e. presented at a meeting), may serve as cause for the Board to determine whether or not the application is complete and if the proper action should be to table the application so as to allow the Board more time to consider the new information. To avoid this possibility, applicants are encouraged to make the original application as complete as possible and to avoid submitting new materials.¹³ The Board also acknowledges that responses to the Administrative Memorandum should not constitute new information, unless, otherwise questioned by the Board.

⁹ NH RSA 674:1

¹⁰ NH RSA 674:35

¹¹ NH RSA 674:43

¹² See City's Web page located at: <https://www.cityofportsmouth.com/>

¹³ See appropriate time requirements contained in the Subdivision Regulations and Site Review Criteria.

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2. Each application shall be considered and acted upon immediately following the close of its presentation and Public Hearing.
3. A motion shall be carried by a majority of Members present and voting in the affirmative unless other rules should require a greater number voting in the majority.¹⁴
4. When a question is put to the Board, each member present shall vote; except, if such vote would be excluded by a conflict of interest as defined by State Statute and City ordinance.
5. Roll call votes shall be taken at the request of the Chair, a Board member, or the applicant.
6. With these Rules and Procedures, the Board shall conduct its business in accord with Roberts Rules of Order; except, when these rules would dictate otherwise.
7. Planning Board members shall advise the Membership of any contact with an applicant or a representative of the applicant before the initiation of an action on that matter. If a Board member has any questions concerning a contact, these should be discussed either with the Planning Director or the City Attorney as soon as possible.
8. Procedure for Public Hearings
 - a) Public hearings of the Board shall follow the following **general procedures with the actual times allowed and number and order of rounds of public comment, including remote participation, to be at the discretion of the Chair and announced at the commencement of the public hearing:**
 - (1) Presentation by the proponent
 - (2) Questions by Planning Board members
 - (3) Public comment to, for or against the application or proposal:**
 - (a) Anyone providing public comment shall provide their name and address for the record.**
 - (b) The timing for remote participation, if allowed, will be called on by the chair during the public hearing; input by "chat" or similar functions or other inaudible means shall not be allowed by remote participants unless required**

Commented [RC7]: Rather than have fixed "3-round comment" at every hearing-which we have gotten away from-allow discretion at each meeting depending in public involvement, with the same outside (maximum) Tim limits as before.

¹⁴ For example, the waiving of a requirement in the Board's Subdivision Rules and Regulations require a two-thirds majority vote of the Board (at least six votes in support).

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due to a person's inability to use audible means. Chat or other text input used by any remote means shall not be a part of the record of the meeting and shall not be read into the record, except as provided herein.

~~(a)~~(c) All comment shall be directed to the Chair

~~(b)~~(d) First round: maximum of 3 minutes per person; oral comment only

~~(c)~~(e) Second round: maximum of 10 minutes per person; may include presentations

~~(d)~~(f) Third round: maximum of 10 minutes per person; oral comment only

- (4) Chair closes public hearing
- (5) Discussion on Findings of Fact
- (6) Motion(s) on Findings of Fact
- (7) Discussion on Motion(s) on Findings of Fact
- (8) Vote on Findings of Fact
- (9) Motion(s) on the application or proposal
- (10) Discussion on the motion(s)

(a) No further public comment

(b) No addition by the applicant or proponent unless in answer to a question from the Board

- (11) Vote on the motion(s)

- b) If the public hearing is continued to a subsequent meeting of the Board, the procedure outlined above shall also be followed at the continued hearing.
- c) The Planning Board may modify the above procedure for an individual application by a concurring vote of 6 (?) members of the Board.

9. Electronic or Multimedia Presentations

- a) The Planning Board encourages (and, in some cases, requires) applicants to provide their materials in electronic format (PDF). The

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purpose of this is twofold: to publish application materials on the Planning Department's website for public review, and to project the application materials on a screen in the hearing room so that it can be more easily seen by Board members and the public. Applicants for subdivision or site plan approval must submit their materials at the same time as their paper applications.

- b) In addition, applicants are allowed to submit modified plans as PowerPoint, PDF or multimedia presentations in a format that is easier to display or view (for example, colored site plans and renderings). Any such presentations must be submitted to the Planning Department by the close of business on the day preceding the public hearing.
- c) Members of the public may use PowerPoint, PDF or multimedia presentations in a public hearing during the second round of public comment, subject to the 10-minute time limit specified in paragraph 8(3)(c) above. Any such presentation must be submitted to the Planning Department by the close of business on the day preceding the public hearing, as is required of the applicant.
- d) Other presentation formats may be permitted during a public hearing subject to the prior approval by the Director of Planning and Sustainability.

H. General Practice and Guidelines.

- 1. Board members shall not text each other during public hearings or board deliberations. All deliberations must be done in public.
- 2. When, for purposes of conducting a Public Hearing, Board attendance at the meeting is five members, the applicant shall be afforded the opportunity to request that the application or item be rescheduled to the next available meeting. Any such rescheduling shall not count against any time standards requiring the Board to act.
- 3. In instances where there are more than five members participating in a Public Hearing associated with a duly advertised application; the Board, at its sole discretion, may conduct a Public Hearing so as to afford the public, who have responded to the Public Hearing Notice, their opportunity to participate and comment on an application.
- 4. Board Decisions and Motions:
 - a) The Board shall decide to either Approve, Conditionally Approve or Disapprove an application pursuant to State Law. Board decisions are not final until one of these decisions has been reached.

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- b) A motion that receives a tie vote of the Board means the motion fails to pass.
- c) A motion shall receive a majority vote of the Board members present to pass.
- d) The Board shall issue a written Letter of Decision to the Applicant, including Findings of Fact conforming with the Board's decision and signed by the Chair pursuant to State Law.

5. Motions for Rehearing: The Planning Board shall entertain motions for rehearing **filed within thirty days** of its decisions and shall grant such motions **at its next regular meeting** ~~when if~~ it finds that the motion presents good cause to hold a ~~rehearing~~.

Commented [RC8]: These provisions for rehearing added after discussion with legal dept. I added timeframe for filing and consideration.

~~6. Appeals: In general, appeals from a Planning Board action shall be filed with the Rockingham County Superior Court within thirty days of the Planning Board's action.¹⁵ Other appeals would only be considered by the Board for action upon a recommendation by administrative staff.~~

Commented [RC9]: This does not cover all avenues of potential appeal (ZBA & HAB etc). Since those are all by statute, I felt there was no need to put them in Board rules of procedure- other than a rehearing, they do not involve the planning board at all.

I. Definitions.

- 1. **Bylaw:** The term when used in reference to legislative action taken by a city, town, county or village district shall have the same meaning as an ordinance and shall be subject to the same procedures for enactment.¹⁶
- 2. **Conflict of Interest:** Disqualification of Member. No member ~~of a local land use board (see definition)~~ **the Planning Board** "shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law ... When uncertainty arises as to the application (of the above) to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be advisory and nonbinding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule ..."17
- 3. **Ex Officio Member:** Any member who holds office by virtue of an official position and who shall exercise all the powers of regular members of a local land use board.¹⁸

Commented [RC10]: Simplified to be Portsmouth-specific.

¹⁵ ~~NH RSA 677:15~~

¹⁶ NH RSA 21:45

¹⁷ NH RSA 673:14

¹⁸ NH RSA 672:5

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4. **Local Governing Body:** ~~Board of Selectmen in a town; The~~ City Council or Board of Alderman in a City, etc.¹⁹
5. ~~**Local Land Use Board:** Means a Planning Board, Historic District Commission, Inspector of Buildings, Building Code Board of Appeals, or Zoning Board of Adjustment established by a local legislative body.²⁰~~

¹⁹ NH RSA 672:6

~~²⁰ NH RSA 672:7~~