



PLANNING BOARD HANDBOOK

Adopted: ____/____/2012

(Note: This material is based on the City of Lewiston's Planning Board Handbook)

PLANNING BOARD HANDBOOK

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ALL ORDINANCE PROVISIONS GOVERNING AND REGULATING DEVELOPMENT ACTIVITY IN THE CITY OF AUBURN, AS REVIEWED BY THE PLANNING AND CODE ENFORCEMENT DEPARTMENT, PLANNING BOARD AND ZONING BOARD OF APPEALS ARE CONTAINED IN CHAPTER 60 OF THE CITY'S CODE OF ORDINANCES OF, ENTITLED "ZONING."

I. Planning Board: ***General Information*¹**

A. Planning Board Constitution

Section 3.1 Membership: appointment, removal, terms, vacancies

(a) There shall be a Planning Board of seven (7) members. Members of the Planning Board shall be residents of the City and shall not be officers or employees of the City. Persons appointed by the City Council to serve on other boards, agencies, panels, and/or commissions shall not serve concurrently on the Planning Board.

(b) Members shall serve without compensation.

(c) Members of the Planning Board shall be appointed by the City Council for terms of three (3) years. Such terms shall be staggered so that the term of not more than three (3) members shall expire in any calendar year. Incumbent members of the Planning Board shall serve for the balance of their terms and thereafter until their successors are appointed.

(d) Permanent vacancies on the Planning Board shall be filled by the City Council for the unexpired term of the former member.

(e) Any member of the Planning Board may be removed for cause by the City Council at any time; provided, however, that before removal such members shall be given an opportunity to be heard in his or her own defense at a public hearing before the City Council.

Section 3.2 Chairperson and Vice-Chairperson

(a) The members of the Planning Board shall annually elect one of their number as chairperson to preside at all meetings and hearings, and another of their number as vice-chairperson.

(b) In the absence of the chairperson, the vice-chairperson shall act as chairperson and shall have all the powers of the chairperson.

B. Record Keeping

Section 3.3 Staff Secretary: minutes, public records

¹ Excerpted from Article III, Chapter 16, previous Code of City Ordinances, as revised (*adoption of grammatical revisions and codification of entirety pending*), Part II, Chapter 60 (*Zoning*) of the current Code of Ordinances, and Maine Revised Statutes.

(a) The City Planner shall designate a member of his staff who shall serve as **Staff Secretary** of the Planning Board and attend all of its proceedings.

(b) The Staff Secretary shall provide for the keeping of minutes of the proceedings of the Planning Board, noting the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all Planning Board meetings, hearings, and proceedings and all correspondence of the Planning Board.

C. Meetings, Hearings & Other Procedures

Section 3.4 Quorum and necessary vote

(a) As to any matter requiring a public hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four (4) members, being present. The concurring vote of at least four (4) members shall be necessary to authorize any action by the Board. If the requisite votes are not present the matter shall be tabled.

(b) If less than a quorum is present, the hearing may be adjourned. The Staff Secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

Section 3.5 Meetings, hearings and procedures

(a) Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the Board. Special meetings may be called by any four (4) members of the Planning Board, or at the request of the City Council. Testimony at any hearing may be required by the Planning Board to be given under oath.

(b) The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the State of Maine and this chapter. Such rules shall be filed with the Staff Secretary of the Planning Board and with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of Maine or by the City Council or by this chapter, may be waived by the chairperson upon good cause being shown.

Section 3.6 Workshop or informational meetings

(a) Informal meetings or workshops of the Planning Board or any of its committees may be held at the call of any of its members or the City Planner, as the case may be, for the presentation of information.

D. Record and Decisions

Section 3.7 Record and decisions

(a) The minutes of the Staff Secretary, and any transcript of the proceedings, and all exhibits, papers, applications and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.

(b) Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation.

(c) The Staff Secretary shall mail notice of any decision of the Board to the applicant and any designated interested parties within five (5) business days of such decision.

E. Conflicts of Interest

Section 3.8 Conflicts

(a) No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has a pecuniary interest. Any question of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the members whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be disqualified.

F. Legal Appeal

See, Part II, Chapter 60, Division 5, Sec. 1208, Auburn Code of Ordinances: (*Zoning; Judicial Appeal; Superior Court*); See also, Part II, Chapter 60, Division 5, Sec. 1381, Auburn Code of Ordinances: (*Zoning; Appeals and Applicability; Appeals*)

Appeals from decisions of the city planning board. . . shall be taken to the superior court within 30 days of such decision or action in accordance with Rule 80B of the Maine Rules of Civil Procedure and 30-A M.R.S.A. Section 2691(3). Except as otherwise provided by statute, every person shall have the right to inspect and copy and record of the board's proceedings, provided that, the inspection be scheduled to occur during regular hours and at such a time as will not inconvenience the regular activities of the office having custody of the record and provided further that the cost of copying the recorded or, if necessary, the translation of mechanical or electronic data compilations into some other form, shall be paid by the person requesting the copy.

G. Supplemental Jurisdiction; Committees

Section 3.10 JURISDICTION AND AUTHORITY

(a) In addition to the jurisdiction conferred on it by other provisions of State law and the ordinances of the City and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

(1) To prepare and recommend to the City Council, a comprehensive plan.

- (2) To prepare and recommend to the City Council changes in and amendments to the comprehensive plan as necessary
- (3) To aid and assist the City Council and departments and agencies of the City in implementing general plans and in planning, developing and completing specific planning related projects.
- (4) To hear, review, and approve or deny applications for subdivision approval as provided in Chapter 23 of these ordinances.
- (5) To hear, review, and offer its recommendations to the City Council on applications for zoning changes and amendments to, or revisions of, the zoning ordinance, and to initiate recommendations for zoning changes and amendments to, or revisions of, the zoning ordinance as necessary.
- (6) To review and offer its recommendations to the City Council on public planning related projects.
- (7) * To offer its recommendations to the City Council with regard to the compatibility of the City Manager's proposed capital improvements program with the Comprehensive Plan.
- (8) To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the City as it deems desirable.

Section 3.11 PLANNING BOARD COMMITTEES

- (a) The chairperson of the Planning Board shall from time to time assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to its concerning such specific items as may be assigned to them for study and report.

II. Project Submittal: **Standard Operating Procedures,** *Staff Generated*

A. Introduction

The Auburn Planning Board conducts public meetings every 2nd Tuesday of each month, and holds workshops every 4th Tuesday of each month. The Planning Board reviews all large development proposals, uses that require ‘special exceptions,’ proposed amendments to the City’s Code of Ordinances, and Zoning changes proposed. Each case needs to have the following steps completed:

1. DEVELOPMENT APPLICATION:

Developer / Applicant needs to submit a formal application including plans, application form, abutters list, project narrative, fees and in some cases stormwater management plans and traffic surveys. The application must include twenty (20) copies of the entire development proposal and shall not be filed less than thirty (30) days prior to a regularly scheduled meeting. Plans shall be folded at a size not to exceed 8-1/2 x 11 inches.

2. DISTRIBUTION OF PROPOSALS:

On the Monday following the submittal deadline, the applications need to be distributed to the various City departments for their review and comment. Copies of development proposals go to the following individuals: Gary Johnson (Engineering Department); Gary Simard (Auburn Fire Department); Phil Crowell (Auburn Police Department); Sid Hazelton (Highway); and Norm Lamie (Auburn Water District). Subdivision proposals shall also be sent to Cheryl Dubois (Tax) and Pete Bushway (Parks). These individuals are collectively known as the Project Review Group (PRG).

3. PRG MEETING:

On The 3rd Wednesday of the month, a meeting is held in council chambers to discuss the proposals and to hear comments, concerns or development conditions.

4. PUBLIC NOTICE:

Development applications being reviewed by the Planning Board require public notice in the newspaper and to property owners within five-hundred (500) feet of the development proposal. The newspaper notification requires two (2) postings. The first notice at least twelve (12) days before the hearing

and the second notice at least seven (7) days before the hearing. Each notice shall state the time, date, place and general subject to be heard. Abutters shall be mailed a notice of a Public Hearing on an application for subdivision, site plan and/or special exception approval and amendments for Chapter 60 (Zoning) at least fourteen (14) days prior to the hearing. The notice shall state the time, date, place, the general subject to be heard and a responsible party to be contacted for further information.

5. PLANNING BOARD PACKETS:

Prior to the public hearing, packets must be put together and distributed to the Planning Board. The packets should include: an agenda; minutes from previous the meeting; copies of the development applications under review; and a Staff Report.

6. PUBLIC HEARING:

The Planning Board will hold a public hearing on the second Tuesday of each month. During hearings, Staff will make a presentation, record the hearing, and take notes.

7. NOTIFICATION OF ACTION:

After a public hearing, an applicant shall be sent a letter of action taken (approval or denial of the project submittal), which shall include any conditions of approval.

8. HEARING MINUTES:

Hearing minutes must be typed up prior to the following month's public hearing. Eric will review the minutes for the correctness / content and will sign thereafter.

9. FILES:

Two (2) case files containing the application, minutes, Staff Report, Project correspondence, approval letter, etc. shall be made. One copy will be filed in the Special Exception / Subdivision by address (SE) or name (Subdivision) filing cabinets. The second file will be a "public hearing" case file and will include all cases that went before the Planning Board that particular month and will include the application, minutes (typed and written), Staff Report, and action-taken letter. The tape recording of the hearing will be filed by date. Sharon also made up a hearing book that was updated monthly by type of project.

III. Public Procedures and Freedom of Access Law (Maine Public Right to Know Law)

Maine Revised Statute Title 1, Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

A portion of which acquired from

<http://www.mainelegislature.org/legis/statutes/1/title1ch13.rtf> on January 4, 2011.

Subchapter 1: FREEDOM OF ACCESS

1 §401. DECLARATION OF PUBLIC POLICY; RULES OF CONSTRUCTION

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [1975, c. 758, (RPR) .]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. [2011, c. 320, Pt. B, §1 (NEW) .]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [1975, c. 758, (RPR) .]

SECTION HISTORY

1975, c. 483, §1 (AMD) . 1975, c. 758, (RPR) . 2011, c. 320, Pt. B, §1 (AMD) .

1 §402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[1975, c. 758, (NEW) .]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or

other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

- (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
- (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW) .]

[2009, c. 334, §§1-3 (AMD) .]

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW) .]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW) .]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD) .]

C-1. Information contained in a communication between a constituent and an elected official if the information:

- (1) Is of a personal nature, consisting of:
 - (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
 - (b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW) .]

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD) .]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD) .]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD) .]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD) .]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD) .]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical

damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD) .]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [2005, c. 381, §1 (AMD) .]

N. Social security numbers ; [2011, c. 320, Pt. E, §1 (AMD) .]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR) .]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD) .]

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; and [2011, c. 149, §2 (AMD) .]

R. Social security numbers in the possession of the Secretary of State. [2011, c. 149, §3 (NEW) .]

[2011, c. 149, §§1-3 (AMD) ; 2011, c. 264, §1 (AMD) ; 2011, c. 320, Pt. E, §1 (AMD) .]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough; [1997, c. 714, §1 (NEW) .]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and [2001, c. 477, §1 (AMD) .]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2001, c. 477, §1 (AMD) .]

[2001, c. 477, §1 (AMD) .]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[2009, c. 334, §4 (NEW) .]

SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1 (AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c. 334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD). 2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD).

1 §402-A. PUBLIC RECORDS DEFINED

(REPEALED)

SECTION HISTORY

1975, c. 483, §3 (NEW). 1975, c. 623, §1 (RPR). 1975, c. 758, (RP).

1 §403. MEETINGS TO BE OPEN TO PUBLIC; RECORD OF MEETINGS

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[2011, c. 320, Pt. C, §1 (NEW) .]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

- A. The date, time and place of the public proceeding; [2011, c. 320, Pt. C, §1 (NEW) .]
- B. The members of the body holding the public proceeding recorded as either present or absent; and [2011, c. 320, Pt. C, §1 (NEW) .]
- C. All motions and votes taken, by individual member, if there is a roll call. [2011, c. 320, Pt. C, §1 (NEW) .]

[2011, c. 320, Pt. C, §1 (NEW) .]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[2011, c. 320, Pt. C, §1 (NEW) .]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[2011, c. 320, Pt. C, §1 (NEW) .]

SECTION HISTORY

1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR). 2009, c. 240, §1 (AMD). 2011, c. 320, Pt. C, §1 (RPR).

1 §404. RECORDED OR LIVE BROADCASTS AUTHORIZED

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [1975, c. 758, (RPR) .]

SECTION HISTORY

1975, c. 422, §2 (RPR). 1975, c. 483, §4 (AMD). 1975, c. 758, (RPR) .

1 §404-A. DECISIONS

(REPEALED)

SECTION HISTORY

1973, c. 433, §2 (NEW). 1973, c. 704, §§1,2 (AMD). 1975, c. 758, (RP) .

1 §405. EXECUTIVE SESSIONS

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW) .]

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[2009, c. 240, §2 (AMD) .]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[2009, c. 240, §2 (AMD) .]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[2009, c. 240, §2 (AMD) .]

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an

executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[2003, c. 709, §1 (AMD) .]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[2009, c. 240, §2 (AMD) .]

6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [2009, c. 240, §2 (AMD) .]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [2009, c. 240, §2 (AMD) .]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [1987, c. 477, §3 (AMD) .]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR) .]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [2009, c. 240, §2 (AMD) .]

F. Discussions of information contained in records made, maintained or received by a body or agency when

access by the general public to those records is prohibited by statute; [1999, c. 180, §1 (AMD) .]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [1999, c. 180, §2 (AMD) .]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [1999, c. 180, §3 (NEW) .]

[2009, c. 240, §2 (AMD) .]

SECTION HISTORY

1975, c. 758, (RPR) . 1979, c. 541, §A3 (AMD) . 1987, c. 477, §§2,3 (AMD) . 1987, c. 769, §A1 (AMD) . 1999, c. 40, §§1,2 (AMD) . 1999, c. 144, §1 (AMD) . 1999, c. 180, §§1-3 (AMD) . 2003, c. 709, §1 (AMD) . 2009, c. 240, §2 (AMD) .

1 §405-A. RECORDED OR LIVE BROADCASTS AUTHORIZED

(REPEALED)

SECTION HISTORY

1975, c. 483, §5 (NEW) . 1975, c. 758, (RP) .

1 §405-B. APPEALS

(REPEALED)

SECTION HISTORY

1975, c. 483, §5 (NEW) . 1975, c. 758, (RP) .

1 §405-C. APPEALS FROM ACTIONS

(REPEALED)

SECTION HISTORY

1975, c. 483, §5 (NEW) . 1975, c. 758, (RP) .

1 §406. PUBLIC NOTICE

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. [1987, c. 477, §4 (AMD) .]

SECTION HISTORY

1975, c. 483, §6 (AMD) . 1975, c. 758, (RPR) . 1987, c. 477, §4 (AMD) .

1 §407. DECISIONS

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

[1975, c. 758, (NEW) .]

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[2009, c. 240, §3 (AMD) .]

SECTION HISTORY

1975, c. 758, (NEW) . 2009, c. 240, §3 (AMD) .

1 §408. PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.

[2007, c. 501, §1 (AMD) .]

2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.

[2003, c. 709, §2 (NEW) .]

3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [2003, c. 709, §2 (NEW) .]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [2003, c. 709, §2 (NEW) .]

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. [2003, c. 709, §2 (NEW) .]

D. An agency or official may not charge for inspection. [2003, c. 709, §2 (NEW) .]

[2003, c. 709, §2 (NEW) .]

4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.

[2003, c. 709, §2 (NEW) .]

5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:

A. The estimated total cost exceeds \$100; or [2003, c. 709, §2 (NEW) .]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.
[2003, c. 709, §2 (NEW) .]

[2003, c. 709, §2 (NEW) .]

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or [2003, c. 709, §2 (NEW) .]

B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [2009, c. 240, §4 (AMD) .]

[2009, c. 240, §4 (AMD) .]

SECTION HISTORY

1975, c. 758, (NEW). 2003, c. 709, §2 (RPR). 2007, c. 501, §1 (AMD). 2009, c. 240, §4 (AMD) .

1 §409. APPEALS

1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal , within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

[2009, c. 240, §5 (AMD) .]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

[2007, c. 695, Pt. C, §1 (AMD) .]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[2009, c. 240, §6 (AMD) .]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[2009, c. 423, §1 (NEW) .]

SECTION HISTORY

1975, c. 758, (NEW) . 1987, c. 477, §5 (AMD) . 2007, c. 695, Pt. C, §1 (AMD) .
2009, c. 240, §§5, 6 (AMD) . 2009, c. 423, §1 (AMD) .

1 §410. VIOLATIONS

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1987, c. 477, §6 (RPR) .]

SECTION HISTORY

1975, c. 758, (NEW) . 1987, c. 477, §6 (RPR) .

IV. Ethical Principles in Planning

(Adopted May 1992 by the American Planning Association and acquired from <http://www.planning.org/ethics/ethicalprinciples.htm> on January 4, 2012)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;

2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation

commence earlier than one year following termination of the role as advisor or decision maker;

9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.