

## Auburn Planning Board Policies and Procedures

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### CITY OF AUBURN PLANNING BOARD POLICIES AND PROCEDURES

#### **ARTICLE I. Objectives**

The objectives and purpose of the Planning Board of the City of Auburn, Maine are those set forth in the Auburn City Charter, those powers and duties delegated to the Planning Board by the City Council in Chapter 60 of the Auburn City Ordinances and those objectives and powers set forth in Maine Revised Statutes.

#### **ARTICLE II. Planning Board Membership**

- A. The membership and composition of the Planning Board shall be defined in the City of Auburn Code of Ordinances under Chapter 2. Article V. Division 4. Section 2-466.
- B. Rules regarding the appointment of Planning Board members shall be defined in the City of Auburn Code of Ordinances under Chapter 2. Article V. Division 4. Section 2-466.
- C. Attendance at all Planning Board meetings (Public Hearings and Workshops) shall not drop below 25% (3 or more meetings) within a 12-month period. If attendance does drop below this level, the Planning Board may, by majority vote of its membership exclusive of the member affected, recommend to the City Council that the attendance provision be waived for cause; otherwise, the Planning Board shall forward a recommendation to the City Council that the member be removed for failure to comply with the attendance requirement.
- D. If a situation occurs that does not allow a Board member to attend a meeting, a call to the Planning and Permitting -staff is required.
- E. The Planning Board Chairperson may forward a recommendation to the City Council to remove a single Board member for cause at any time given that such action is taken with the consensus of the Board.
- F. In keeping with their role as stewards of the public interest, Board members shall not appear on behalf of the private interests of third parties before the Board or before the City Council on behalf of the private interests of third parties on matters within the purview of the Planning Board.

- G. Nothing herein shall be construed to prohibit any Board member from representing his/her own personal interest by appearing before the Board on any such agenda item. In that instance, the Board member shall move him/herself to the area of the room occupied by the general public and shall not return to his/her regular seat as a member of the Board until deliberation and action on the agenda item is completed.
- H. Former Board members who wish to represent the private interests of third parties before the Board shall comply with 30-A M.R.S. § 2605(5), as may be amended.
- I. Board members shall complete Freedom of Access Act (FOAA) training as required by State law, 1 M.R.S. § 412, as may be amended, and upon completion file the certificate of completion with the City's Public Access Officer. In addition to completion of the initial training upon assuming office, Board members shall repeat FOAA training at least once every three years in order to stay up to date on changes to FOAA.

### **ARTICLE III. Officers and Their Duties**

- A. The Officers and their Duties of the Planning Board shall be defined in the City of Auburn Code of Ordinances under Chapter 2. Article V. Division 4. Section 2-467.
- B. The Chairperson shall preside at all meetings and hearings of the Planning Board and shall have the duties normally conferred by parliamentary usage as written in "Roberts Rules of Order."
- C. The Chairperson shall have the privilege of discussing all matters before the Board and to vote thereon.

### **ARTICLE IV. Election of Officers**

- A. Officers shall be nominated from the floor and elected at the regular February meeting.
- B. If more than one member is nominated for the same position, then the Board shall vote by written ballot, which ballots are public records within the meaning of the Freedom of Access Act.
- C. A candidate receiving a majority vote of the membership of the Planning Board present at the meeting shall be declared elected and shall serve one year or until his or her successor shall take office.
- D. Vacancies in offices shall be filled at the first possible regular meeting after the occurrence of the vacancy in the manner described in the previous Sections of this Article.

### **ARTICLE V. Planning Board Submissions**

#### **A. Complete Application**

In order to be placed on the Planning Board agenda, an application, petition or amendment must satisfy the conditions contained in Chapter 60 of the City of Auburn Code of Ordinances. The Planning Board authorizes the Planning

and Permitting Staff to review and notify the applicant within 5 working days of submission that either:

- 1.) The application is not complete and is not accepted for processing and shall enumerate the materials that are missing; or
- 2.) One or more required minor elements are missing or inadequate and need to be submitted within 8 working days or within 13 days before the Planning Board meeting or the application will be determined not to be complete; or
- 3.) The application is complete and a public hearing is scheduled for the date of the next Planning Board meeting to be held after notification requirements have been met.

**B. Corrective Action**

All deficient plans and documents must be submitted to the Planning and Permitting Staff at least thirteen (13) days prior to the meeting.

**C. Timing of Revisions and Communications**

Additional applicant revisions or communications to the Board must be submitted to the Planning and Permitting Staff no later than noon on the Wednesday before the Planning Board meeting.

**D. Exceptions**

The Board may nonetheless, in accordance with state and local law and at its own discretion, consider an application, petition or amendment that fails to meet subsections (A) through (C) above, if the Board finds by majority vote that failure to satisfy this Article was justified or due to excusable error or neglect.

**E. *Ex Parte* or Outside Communications**

To be considered by the Board, all information, such as correspondence, e-mails, data, reports, positions for and against and the like, shall be submitted so as to be available to all Board members, the staff and the public at an open public meeting. This way all parties are fully apprised of the facts and no one gains an advantage through private communications or conversations. Private communications and conversations outside of public meetings undermine this open exchange and fair play. If one or more Board members are contacted privately by an individual, such as an applicant or a person potentially affected by a proposed development, outside of an open public meeting, they must respond by saying that for information to be considered by the Board it must be submitted so as to be available to all interested persons at an open public meeting. In other words, contact between and among Board members and/or other interested parties privately and outside the context of an open public meeting is not allowed. In the event such an *ex parte* communication occurs, the Board member(s) shall disclose on the record the fact that the communication took place and share any substantive information that s/he may have received during the course

of the contact. The Board member should indicate on the record whether or not the communication left him or her unable to base the decision solely on the evidence to be presented at the public meeting, no longer unbiased. If he or she is unable to so indicate, the Board member must recuse him/herself from the proceedings.

#### **F. Site Visits**

Outside of a duly advertised site visit by the whole Board, individual Board members are prohibited from visiting the site of applications. The Planning staff may familiarize themselves with the site and the surrounding neighborhood and prepare visual or other representations of the site and neighborhood to be made available to the Board at the same time they are made available to the applicant and the general public.

#### **G. Public Comment on Planning Board Submissions or Applications**

If members of the public submit written (including electronic) comments about a pending petition or application to the Planning and Permitting Department, they should coordinate with City staff in order for the comments to be included in the meeting material to be posted with the online meeting packet, which submittal deadline is noon on the Wednesday before the Planning Board meeting.

Written (including electronic) comments from members of the public submitted *after noon on the Wednesday before* the scheduled meeting and *on or before noon on the business day preceding* the scheduled meeting will be printed and distributed to Board members by City staff and copies made available at the meeting. After that time, members of the public may, subject to applicable time limits for speakers, submit comments orally to the Planning Board at the scheduled meeting. In other words, in order for Board members, the staff and the applicant to be fully apprised of written (including electronic) comments from members of the public submitted *after noon on the business day preceding* the scheduled meeting, such comments must be presented orally within the prescribed time limits for speakers at the scheduled meeting in order to be considered a part of the record, absent special circumstances as determined by the Board.

### **ARTICLE VI. Meetings**

#### **A. Date of Meeting**

Regular meetings will be held on the second Tuesday of each month at 6:00 p.m. at the Auburn City Building provided that the Board may vote to hold its meeting on any other day in the month, or at any other place, or at any other time or day upon confirmation of a majority of the Board members.

#### **B. Quorum and Voting; No Abstentions Unless Excused**

The basis for meeting a quorum, as well as taking action by voting, shall be defined in the City of Auburn Code of Ordinances under Chapter 2, Article V, Division 4, Section 2-469. Every member of the Board who is in attendance when a question is put to vote shall, unless excluded by interest, give his/her vote, unless the Board for special reasons (*e.g.*, conflict of interest, bias) shall excuse him/her. In addition, a tie vote shall be considered final action by the Board and an application, petition or proposed amendment shall be deemed denied if the Board's final action results in a tie vote. Voting shall be by roll call where requested by any member except on unanimous vote. A record of the roll call vote shall be kept as part of the record.

**C. Special Meetings**

Special meetings may be called by the Chairperson. Special meetings shall be called by the Chairperson when requested to do so by four of the members of the Board. The notice of such a meeting shall specify the purposes for which it is called and no other business shall be considered except by unanimous consent if all Board members are present. The Staff Secretary shall notify all members of the Board at least two (2) days in advance of such special meeting.

**D. No New Business**

No new agenda items will begin after 9:00 p.m. except with the unanimous consent of all Board Members present.

**E. Postponement Due to Time**

If during the course of a Planning Board meeting it becomes apparent that the Board will not reach certain agenda items, the Board, prior to or after the 9:00 p.m. cut-off may postpone items or portions of items to the next scheduled meeting of the Board by majority vote of members present at the meeting.

**F. Associate Members**

If seven regular Planning Board Members are not present, then the Associate Board Members will take the place of the absent members for voting purposes in an alternating manner. The participating Associate Member(s) will have full voting privileges.

**G. Conduct During Meetings**

The use of individual electronic devices during meetings to obtain information or read e-mail or text messages related to matters before the Board is to be avoided unless the information or messages obtained is/are displayed on the public screen(s) for all Board Members and the public to view.

**ARTICLE VII. Order of Business**

A. The normal **order of business** for the Board shall be as follows:

1. Opening Remarks
2. Roll Call
3. Approval of Minutes
4. Public Hearings
5. Old Business
6. New Business
7. Public Comment
8. Miscellaneous
9. Planning Board Items for Discussion
10. Adjournment

B. Changing the Order of Business

The normal order of business may be altered by consent of the Board.

C. Opening Remarks

At the beginning of each meeting and following the roll call, the Chair shall deliver a set of opening remarks overviewing the procedures governing the meeting and detailing expectations for attendees.

## **ARTICLE VIII. Public Hearings**

### **A. Additional Public Hearing**

In addition to those required by law, the Board may, at its discretion, hold public hearings when it decides that such hearings will be in the public interest.

### **B. Public Notice**

The City shall publish in a newspaper, 2 public notices, the first at least 12 days before the hearing and the second notice at least 7 days before the hearing. The public notice shall also be posted at Auburn Hall at least 13 days before the hearing. Each notice shall state the time, date, place and general information on the subject to be heard.

### **C. Notification to Abutters**

Notice of Public Hearing for Subdivisions, Site Plan Reviews, Special Exceptions and Zoning Map and/or Text Amendments shall be sent to all abutters at least 14 days prior to the public hearing. Abutters mean owners of property within 500 feet of the land under consideration. The owners of property shall be considered to be the parties listed by the Assessor for the City as those against whom taxes are assessed. Failure of any abutter to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board.

### **D. Additional Notification**

The Planning Office shall post all available application materials on the City website by the close of business on the Friday prior to the public hearing. In addition, notice may be sent by requests from identified community/neighborhood groups, City Councilors, or other interested citizens or public agencies that might be interested or affected.

**E. Policies and Procedures Manual**

The Staff shall make Planning Board's Policies and Procedures Manual available to applicants during the application process and to interested parties on the City's website.

**F. Preparation for the Public Hearing**

All of the information, plans, reports and the like that may be presented or used at the public hearing shall be presented to the Planning Office no later than noon on the Wednesday before the Planning Board meeting and shall be made available to the public by the close of business on the Friday preceding the hearing. The objective is to provide time for the staff, the Board and the public to have a reasonable time period to review and analyze all the material. *No information, plan, report or the like may be submitted on the day of or at the public hearing unless approved by the Planning Board.*

The staff shall post all meeting materials including the agenda, draft minutes, the staff report, and all application materials, on the City of Auburn/Planning Board website by the close of business on the Friday preceding the hearing. Applications shall be available for inspection in the offices of the Planning and Permitting Department during business hours.

If members of the public submit written (including electronic) comments, materials or reports about a pending petition or application to the Planning and Permitting Department, they should coordinate with the staff in order for it to be included with the online meeting packet and submitted in accordance with the submittal deadlines set forth in Article V(G) above.

These Policies and Procedures will be posted on the City's website so that the applicant/petitioner and the public will be aware how the hearing will be conducted.

**G. Conduct at the Public Hearing**

**1. Status of Board Members - Disclosure of Conflict of Interest/Bias**

Any Board member who believes that he/she or a member of his/her immediate family has (i) a financial or special interest, other than an interest held by the public generally, in any agenda item before the Board or (ii) bias as relates to any agenda item before the Board, shall disclose the nature and possible extent of such interest/bias. The Board will vote to determine if there is a conflict/bias. Any member who is excused shall surrender his/her seat and either leave the chamber or sit in the back of

the room. Such member shall not communicate with other members of the Board who are acting on an application/petition except as provided in Section II(G) above.

In the case where a member does not have a conflict of interest, as defined by (Maine Revised Statutes, Title 1, Chapter 25 and M.R.S.A. Section 2605, Chapter 30-A. Conflict of Interest; and Auburn Code of Ordinances – Chapter 2, Administration, Article III, Officers and Employees, Division 2, Ethics and Conflicts of Interest) but believes he/she may have the appearance of a conflict of interest or an appearance of an impropriety, the member shall state the situation and the remaining regular members of the Board shall vote whether they believe a conflict does exist and the member should participate or not.

One Associate member shall be selected to hear and act upon the application/petition for each regular member who is absent or recuses him/her-self. Participating in a public hearing shall be alternated between the two Associate members.

In the case where a hearing is continued to a subsequent meeting and all of the members who sat on the original hearing are not present, a regular member who was absent at the earlier hearing may participate on the continued meeting provided he/she certifies on the record that he/she has familiarized themselves with the testimony and proceedings of the previous hearing.

## **2. Staff Report**

A member of the staff shall present the report prepared by the staff or any other relevant information. Board members may ask questions and seek clarification of the application/petition, potential impacts of the development, if approved, provision of the Zoning Ordinance or of other applicable regulations and laws. It is not appropriate, at this time, for Board members to comment on the merits of the application/petition and whether it should be approved or not. Those comments should be reserved until after the presentation by the applicant and testimony given by the public. The Staff Report will also contain draft motions and findings for either approval or disapproval.

## **3. Presentation by the Petitioner/Applicant**

After the presentation of the staff report and questions about it from the Board, the applicant shall make the case for approval of the application or petition and any analysis of the potential impacts of the proposed development. The applicant shall be prepared to respond to questions from the Board or the staff.



In the case of a petition to amend the Zoning Ordinance or the Zoning Map, everyone should be aware that the potential impacts are not limited to the property of the petitioner but would be applicable to all properties in the city in the same zoning district classification. Similarly everyone should be aware that approval of the petition does not limit the extent of the development to a specific proposal described by the petitioner. A change of zoning district designation, or the text of the Zoning Ordinance, entitles the petitioner, or all property owners in the same zoning district classification elsewhere in the City to the full development potential described for that zoning district classification. Other uses or a more intensive development, different than a petitioner's specific proposal, may be authorized in that zoning district classification.

#### **4. Public Participation and Comments**

A public hearing is part of a public meeting as described in the **Freedom of Access Act, 1 M.R.S. § 403** and **Auburn Code of Ordinances – Chapter 2 – Administration, Article V, Boards, Commissions and Committees, Division 4, Planning Board**). The public is entitled to listen to all public proceedings. The public is invited to participate in/speak during the proceedings at times designated herein. A public meeting does not mean the public is allowed to participate in an ongoing dialogue with the Board or the staff throughout the meeting. When the public is invited to speak, any person may speak; it is not limited to nearby neighbors or to residents of Auburn. Any person who speaks may support, or oppose the application/petition, and/or ask questions of the staff, the Board or the applicant.

The applicant, any member of the public, or any public official addressing the Board shall use the microphones in the chamber. They shall first give their name and address and if representing and speaking on behalf of another party shall so state. All public hearings are recorded to be available for the record. If a person does not use the microphone, their comments may not be recorded.

Any member of the public or any public official addressing the Board shall be limited in speaking to five minutes. At the Chair's discretion, an additional five minutes may be granted. A speaker should not repeat, at length, arguments or points made by previous speakers. They should briefly state their agreement or support for those positions. Reading of prepared speeches is not encouraged. The Board welcomes submittal of prepared written statements that will be included in the record provided that they are received in a timely fashion (see Article V(G)) and shared with the staff and any applicant.

The public hearing portion of the meeting is not intended to be a debate, dialogue or rebuttal between the speaker and the Board or staff.

Primarily the Board will listen to the testimony but may ask questions of the speaker for clarification of his/her position.

Speakers will be recognized in the order in which they come forward. The hearing is not arranged to hear all of the proponents and then all of the opponents or vice versa.

It is not the practice of the Board to take a poll of those in favor and those opposed. The number of people with a particular position is not a factor; the strength of their arguments is what matters.

In the interests of an orderly public hearing, all persons speaking shall seek recognition from the Chair and shall not speak directly to Board members, staff or other members of the public except as the Chair may direct. Board members and staff shall also seek recognition from the Chair before speaking to other persons.

The objective of the hearing is to hear testimony. There will be time for dialogue, debate and deliberation on the merits of the application/petition by the Planning Board later. Members may, through the Chair, direct a question to the applicant for clarification. Also, members may think the application/petition might be acceptable if subjected to certain limiting conditions. Through the Chair, the member may ask the applicant whether such condition is acceptable. After all persons who want to speak have done so and after all Board member questions have been answered, the Board will move to close the public comment part of the meeting, *i.e.*, close the public hearing. After the public hearing is closed, discussion will be limited to Board members and staff.

## **5. Discussion, Action by the Board**

After the close of the public hearing, the Chair will call for a general discussion among the Board to gauge their perspective on the application/petition. If a question of the applicant or other attendee arises after the close of the public hearing, the public hearing may, by affirmative vote of the Board, be reopened for the limited purpose of (i) obtaining a response to the question and (ii) allowing any public comment on the colloquy between the Board member and the person who was asked to speak by the Board, but any such vote to reopen the public hearing for a limited purpose shall not serve to reopen the public hearing generally.

After general discussion, if it appears there is a consensus, a motion will be in order. After a motion is made and seconded, there will be discussion on the specific motion. Other members may suggest amendment to the original motion and ask the maker of the motion if it is acceptable.

Following parliamentary procedure the Board will decide, by vote, whether to approve, with or without conditions, disapprove or defer action on the application/petition. The vote of the Board on the motion constitutes the decision of the Board and for determining the timing of subsequent actions, such as appeals.

After the vote is taken and the decision made, the Chair shall announce that the applicant will receive written record of the decision within 5 working days of the decision, which shall also be posted on the City’s website.

**H. Findings**

All findings by the Planning Board will be in accordance with applicable ordinance requirements for Site Plan (Sec. 60-1307), Special Exception (60-1336(b, c) and Subdivision (Sec. 60-1360(b)(7)) & (Sec. 60-1362(b)).

**ARTICLE IX. Jurisdiction and Duties**

The jurisdiction and duties of the Planning Board shall be defined in the City of Auburn Code of Ordinances under **Chapter 2, Article V, Division 4, Section 2-475.**

**ARTICLE X. Amendments**

These Policies and Procedures may be amended by a majority vote of the membership of the Planning Board present, to include both Regular and Associate members of the Board, provided that a quorum, consisting of five members is met. An affirmative vote by at least five members shall be necessary to authorize any action to amend the Policies and Procedures.

The Planning Board will review these Policies and Procedures every two years at its annual meeting in February.

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**\*Disclaimer:** These Policies and Procedures are for the benefit of the Auburn Planning Board, applicants seeking Planning Board action, and the general public. Any conflict between the Auburn Planning Board’s Policies and Procedures and State or Local Laws shall be superseded by State or Local Law.