

CITY OF BROCKTON  
RULES AND REGULATIONS OF THE PLANNING BOARD

ORGANIZATION

**A. NAME**

The term “Board” as it is used in these Planning Board Rules and Regulations shall refer to the Planning Board of the City of Brockton as authorized by the Massachusetts General Laws and the Ordinances of the City of Brockton.

**B. MEMBERSHIP, TERM AND FILLING OF VACANCIES**

The Board shall consist of a number of members authorized by the Ordinance of the City in accordance with the provisions of the General Laws. The term of each member shall be established in accordance with the General Laws. Vacancies shall be filled in the same manner as an original appointment.

**C. ORGANIZATION OF OFFICERS AND DESIGNEES TO SERVE ON OTHER BOARDS OR COMMISSIONS, MEMBERS OF SITE INSPECTION SUB-COMMITTEE, LENGTH OF TERM, REMOVAL, AND FILLING OF VACANCIES**

At its first regular meeting held in the month of March each year, the Board shall elect, by a majority vote from among its members, a chairperson, clerk and such other officers as the General Laws, City Ordinances, Subdivision Rules and Regulations, and Rules and Regulations of the Board may require and/or authorize or permit.

The Board shall, in addition, elect by a majority vote at the same meeting a member to serve as its designee on the Zoning Board of Appeals, the Traffic Commission and such other boards, commissions or publicly authorized entities as the General Laws, City Ordinances, Subdivision Rules and Regulations, and Rules and Regulations of the Planning Board may require and/or authorize or permit. Up to six (6) members shall be designated by the Board to serve as members of the Site Inspection Sub-committee.

Each such officer and/or designee shall serve for a period of one (1) year beginning with the first meeting in April through the organizational meeting of the Board the following year. Members of the Site Inspection Sub-committee shall be appointed on a rotating basis and shall serve in one (1) year intervals.

In the absence or temporary incapacity of the chairperson, the clerk shall preside. In the absence of the chairperson and clerk, a temporary presiding officer shall be elected by the majority of members in attendance. Such temporary officer shall serve only for that meeting. A vacancy occurring in any of the positions recited above shall be filled at the next regular meeting of the Board by a majority vote of the members present.

The Planning Board may recommend to the Mayor of Brockton that a member be removed with cause (absence, inappropriate behavior, etc). Any member of a board so established in a city may be removed for cause, after a public hearing, by the mayor, with the approval of city council in accordance to Chapter 41, Section 81A.

#### **D. SUPPORT STAFF**

The City shall employ sufficient administrative, technical, clerical and other staff to enable it to carry out its functions and responsibilities in a reasonable and efficient manner.

#### **E. VOTES**

All votes of the Board shall be conducted and recorded in accordance with the General Laws. Australian or other forms of secret ballot are prohibited.

Except as otherwise herein provided, a majority vote, of those members present and voting, is required to approve any motion or action of the Board. All motions must be seconded to properly come before the Board for consideration. A tie vote defeats the motion before the Board.

As required by General Laws a unanimous vote of the Board less one (1) member present and voting is required in order to grant permission to return to the Zoning Board of Appeals within a two (2) year period from the date of denial by the Zoning Board of Appeals.

A vote on any matter may be postponed by a majority vote of the Board provided such postponement would not interfere with any statutory obligation of the Board.

Any vote of the Board may be reconsidered provided that no party or entity has already acted in reliance on the Board's original vote. A motion to reconsider must be made at the same meeting at which the original vote was taken or no later than the next regular meeting following that at which the original vote was taken. The member requesting reconsideration must notify Director of Planning at least fourteen (14) days prior to the next regularly scheduled meeting. The motion can only be made by a member who voted with the prevailing side. The motion must be carried by a unanimous vote less one (1) member present and voting.

#### **F. QUORUM**

A quorum shall consist of a majority of the entire membership of the Planning Board as established by City Ordinance, Article II, Section 17-17. A quorum shall be presumed unless challenged prior to taking of a vote on any matter.

## **G. MEETINGS: REGULAR AND SPECIAL**

The Board shall hold a regular meeting on the first Tuesday of each month at a time and place specified in the notice of the meeting unless such date falls on a holiday or if, by a majority vote of the Board, it is determined that for the public good and convenience another date during that month is more practicable.

Likewise, a regular monthly meeting maybe canceled if it is determined fourteen (14) days prior to the meeting date that there are no agenda items to be considered. There shall not be a regular meeting in the month of July unless in the opinion of a majority of the members the public good requires that such meeting is held.

Special meetings may be held when the public good and/or weight of business so demand. An item or items that is or are of such importance to the City and/or will require a substantial amount of time to consider may require a special meeting. Such special meeting shall be scheduled at a prior regular meeting and/or by a consensus of a majority of the members available who are contacted by the chairperson, clerk or administrative staff. Such special meeting must be scheduled in accordance with the General Laws.

## **H. NOTICE OF MEETINGS AND ESTABLISHMENT OF AGENDA**

Notice of all meetings, regular or special, as well as public hearings shall be posted in the Office of the City Clerk and elsewhere as required and made available to the local media.

Notice of public hearings shall be advertised twice in at least one newspaper having local circulation.

An agenda shall be established for each meeting, regular and special. Items required to be placed on the agenda for a regular meeting must be submitted to the administrative staff person designated by the Board as responsible for receiving such requests. The request shall be in writing and clearly explain the purpose of such request. It shall be dated and signed by the individual who submits it. The staff person receiving it shall record the date and time it was received on the request.

A requested agenda item must be received no later than fourteen (14) days before the meeting at which it is to be considered. Unless by an unanimous vote, less one (1) of the members present and voting at the meeting the Board determines that a matter is of such urgency to the public good or the efficiency and operation of the City that the fourteen (14) day period should be waived.

When an administrative staff person is made aware of the request, that person shall contact the chairperson who in turn, conducts a poll or authorization by telephone to see if a majority of the members concur that a special meeting will be scheduled within twenty-eight (28) days of receipt of the request. Public notice of such meeting will be

scheduled within twenty-eight (28) days of receipt of the request. Public notice of such meeting will be in accordance with the Planning Board Rules and Regulations and Subdivision Rules and Regulations. An agenda for a special meeting shall be established as early as possible prior to the date of the meeting. Since special meetings are scheduled to consider matter generally not appropriate for regular meetings and are convened at the call of a majority of the Board, the fourteen (14) day period shall not generally apply. However, once an agenda is established for a special meeting no other matters requiring a vote of the Board may be considered at the meeting.

Notice of meetings, regular and special, and their agenda shall be sent to each member of the Board, members of the City Council, the Director of Planning and such other public officials and interested parties as are necessary to enable the Board to fulfill its responsibility. A staff person employed by the City shall record the proceedings and votes of all meetings, regular and special, and public hearings. Records of all meetings shall be retained in a permanent file maintained by the Board for that purpose. Proceedings of all meeting and public hearings may be tape-recorded.

## **I. PUBLIC HEARING PROCEDURES**

### **1. CONDUCT OF MEETINGS**

- a. Under the Open Meeting Law meetings shall be public. NOTE: Meetings may be held in executive session for the following purposes only.
- (1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual;
  - (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against a public officer, such as a member, employee, staff member or individual;
  - (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may be detrimental;
  - (4) To conduct collective bargaining sessions;
  - (5) To discuss deployment of security personnel or devices;
  - (6) To investigate charges of criminal misconduct or to discuss the filing of criminal complains;
  - (7) To discuss the purchase, exchange, lease or value of real property, if an open meeting may have a detrimental effect on the negotiating position of the Board;

- (8) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

Executive sessions may be held after the Board has first convened in a duly posted open meeting. A majority of members must vote to go into executive session and the vote of each member must be entered into the minutes. The presiding officer must state the purpose of the session. If the session is to discuss or consider the discipline of an individual, such individual must be notified in writing 48 hours before the session. The individual may require that the meeting be held in open session and shall have the following rights.

1. To be present at the executive session;
2. To have counsel or a representative present who may participate in the session;
3. To speak in his or her own behalf.

b. Minutes of meetings should be kept by the Planning Board Clerk, or designee, to be distributed to members before the next meeting.

c. Except in an emergency, notice of a meeting shall be given to the City Clerk and posted at least 48 hours prior to such meeting or as otherwise provided in the Planning Board Rules and Regulations and Subdivision Rules and Regulations.

Note: Saturdays are included in the 48 hours, Sundays and legal holidays are not.

## 2. HEARINGS

a. Hearings shall be held by the Planning Board with regard to the following:

1. Definitive Subdivision Plan;
2. Adoption of Subdivision Rules and Regulations;
3. Adoption of Planning Board Rules and Regulations
4. Proposed changes in the zoning ordinance;
5. Site Plan Review
6. Applications for approval of a project under Chapter 121-A, or Chapter 111-B of M.G.L.;
7. Removal of public shade trees or stone walls within a scenic road as established by statute;
8. Naming or changing names of ways or request for acceptance of roadway as a public way;
9. Amendment, modification or rescission of the approval of a Definitive Subdivision Plan or change in such plan;

10. Modification or removal of a way from an official map, if any, in accordance with the procedure set forth in section 81-U, Chapter 41 of M.G.L.;
11. Revocation of disapproval of a definitive subdivision plan and subsequent approval as provided by Section 81-U, Chapter 41 of M.G.L.;
12. Request for permission to return to the Zoning Board of Appeals;
13. Such other hearings as required by local, state or federal law, custom, or usage.

b. The Planning Board Clerk and/or designated staff person should keep minutes. All public hearings and meetings may be tape-recorded.

### 3. CONDUCT OF HEARINGS

Chairperson should open hearing; Clerk then reads notice

1. Chairperson introduces members of Planning Board, secretary and other city officials;
2. Proponents speak;
3. Opponents speak;
4. Proponents rebuttal;
5. Opponents rebuttal;
6. General discussion
7. Those speakers, pro, con and general commentators should give their names and addresses. They may have their comments recorded by the Planning Board Clerk but the hearing or its record should not be construed as a vote on the issue.

### 4. MANDATORY PUBLIC HEARING AND REPORT

- (1) The Planning Board shall hold a public hearing on any zoning proposal.
- (2) Such hearings shall be held within sixty-five (65) days after the Planning Board receives the proposal from the City Council.
- (3) The City Council shall also hold a public hearing on a zoning proposal. The Planning Board and City Council may want to hold a joint hearing.
- (4) The Planning Board shall report to the City Council within twenty-one (21) days after the public hearing. The report should be in writing and should include recommendations as well as whether or not the Board favors or opposes the proposal and reasons for such recommendations. The Planning Board's report might also recommend amendments to the original proposal. Such amendments may be adopted by the City Council only if they do not change the substance or fundamental character of the original proposal.

If the fundamental character of the original proposal is changed, the proposal must be resubmitted and the Planning Board must hold another public hearing and submit another report.

**J. REQUEST FOR PERMISSION TO RETURN TO THE ZONING BOARD OF APPEALS.**

Such request shall be considered only at a regular meeting and shall be submitted in accordance with the procedure for submitting any agenda items for regular meetings described elsewhere in these Rules and Regulations. A copy of the Zoning Board of Appeals denial and completed Form I shall accompany the request in accordance with the statutory requirements. A petitioner in order to be granted permission to return to the Zoning Board of Appeals must receive a unanimous vote less one (1) member present and voting.

The Board, in granting such permission, shall make the following determinations:

1. The petitioner has new and substantially different information to submit, which if submitted, might conceivably affect a subsequent decision by the Zoning Board of Appeals on the matter; or
2. From a review of the record of the hearing, the board determines that the Zoning Board of Appeals acted arbitrarily or capriciously in denying the relief sought; and
3. The relief sought by the petitioner whether by variance, special permit or other action is beneficial and not detrimental to the City as a whole, the neighborhood, and/or zoning district which the locus is situated.

In such instance where the Board grants permission to return to the Zoning Board of Appeals, the Board shall provide to the Zoning Board of Appeals a brief explanation of its reasons for such action. The explanation shall be contained in the permanent record of the meeting of which permission is granted.

**K. LIMITATION OF THE NUMBER OF TIMES A PETITIONER MAY REQUEST PERMISSION TO RETURN TO THE ZONING BOARD OF APPEALS FOR THE SAME USE.**

A petitioner is limited to two (2) requests within a two (2) year period on the same property for permission to return to the Zoning Board of Appeals. Reasons may include: Failure to appear for a hearing may result in denial. An exception to this is a petitioner appears and asks for a withdrawal or the Board recommends that the petitioner withdraws at that time.

If the petitioner wishes a third request within the two (2) year period for permission to return to the Zoning Board of Appeals, it must be in writing explaining the basis of such request. It must have the vote of the Board, unanimous less one (1) member present and voting to return.

Petitioner shall complete Form I for all requests for permission to return to the Zoning Board of Appeals.

**L. REVOLVING FUND FOR HIRING OUTSIDE CONSULTANTS**

The Planning Board shall use a special revolving fund for fees charged to applicants for permits or approvals for the specific purpose of hiring expert consultants to assist in reviewing the applications. The fees paid by the applicant are deposited into a separate project account, which may be spent without appropriation by the board to cover the professional services it needs to review the particular application. The accounts remain open until the project is completed. The unspent balance is refunded to the applicant at the end of the review process (Pursuant to G.L. Ch. 44, §53G, Employment of Outside Consultants and Bureau of Accounts Informational Guideline Release No. 91-101, Special Funds for Hiring Outside Consultants [February 1991]).

**A. CONSULTANT FEES AND SELECTION**

**1. Fees**

Applicants for permits and approvals from the conservation commission, zoning board of appeal (or other special permit granting authorities designated by zoning by-laws or ordinances), **Planning Board** or board of health may be charged reasonable fees by the board for the specific purpose of defraying the cost of hiring outside consultants as needed to perform its legal duties in reviewing the applications. The fees to be paid by applicants for particular permits and approvals must be established by rules and regulations of the commission or board (Pursuant to G.L. Ch. 40 §8C; 40A §§9 and 12; Ch. 40B §21; Ch. 41 §81Q; Ch. 111 §31).

**2. Selection**

A commission or board charging fees for hiring consultants must establish rules for choosing the consultants in order to use the special project funds.

The selection must also be consistent with any applicable charter, by-law, ordinance or statutory provisions, e.g., the Uniform Procurement Act, G.L. Ch. 30B. The rules must set qualifications for the consultants. At a minimum those qualifications must include: (a) an educational degree in or related to the field at issue or (b) three or more years of practice in the field at issue or a related field.

3. Appeal

The rules must provide the applicant paying the fee with an administrative appeal of the selected consultant. The appeal is to the city council and is limited to claims that the consultant has a conflict of interest or does not possess the minimum required qualifications. The time required for action by the commission or board on the application for a permit or approval is extended pending the appeal. The selection by the commission or board stands unless the city council decides otherwise within one month following the filing of the appeal. An administrative appeal does not preclude judicial review, if otherwise permitted by law, on the matter.

B. EXPENDITURE OF FEES

1. Allowable Use

The commission or board may spend the fees without appropriation to engage outside consultants to assist in carrying out its legal responsibilities with respect to that particular project. The fees may not be used to pay for the services of municipal employees. For example, the planning board may use the fees to hire an expert consultant to do a traffic study needed for a proposed project; the fees could not be used to defray the cost of a city employee who conducts the study.

2. Consultant Bills

The commission or board must use the same process used for payment of other departmental expenses to obtain payment of all bills being charged to the revolving fund.

C. REFUND OF UNSPENT FEES

1. Account Report

The commission or board must notify the accounting officer when each project is completed and all bills have been submitted for payment. The accounting officer must prepare a final report of the account activities for the applicant.

2. Refund Payment

Any balance remaining in the project account must be refunded to the applicant.