

# Town of Mount Holly Planning Commission

## Rules of Procedure and Conflict of Interest Policy

### Section I: Authority.

- A. The Planning Commission of the Town of Mount Holly hereby adopts the following rules of procedure (hereinafter referred to as these Rules) in accordance with [24 V.S.A. § 4461\(a\)](#) and [1 V.S.A. §§ 312\(e\), \(f\), and \(h\)](#).

### Section II: Policy.

- A. These Rules are adopted to ensure consistent and fair treatment of applicants, interested persons, and participants, orderly and efficient public proceedings, and compliance with state and federal law. These Rules shall also ensure that no Commissioner will gain a personal or financial advantage from his or her work for the Commission, so that the public trust in municipal government will be preserved.
- B. Adoption: Upon adoption, the Recording Secretary, or Clerk, shall file a copy of these rules and all amendments in the town office as a public record and post a copy on the website.

### Section III: Definitions.

- A. "Planning Commission" or "Commission" shall mean the Town of Mount Holly Planning Commission duly appointed by the Select Board of the Town of Mount Holly under the authority of [24 V.S.A §4321](#).
- B. "Commissioner" means a member of the Planning Commission.
- C. "Clerk" or "Planning Commission Clerk" means an administrative assistant to the Commission. The Clerk may hold other roles in the town, such as Administrative Officer, but shall not be a member of the Commission.
- D. "Conflict of interest" (See Section X)
- E. "Deliberative session" means a private session of the Commission to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor shall a deliberative session be publicly noticed. The Commission may enter deliberative session by majority vote, and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.
- F. "Executive session" means a session of a public body from which the public is excluded, pursuant to [1 V.S.A. § 313](#). Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.
- G. "Ex parte communication" means direct or indirect communication between a Commissioner and any party, party's representative, party's counsel or any interested person in any proceeding before the Commission that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding. (See also, Section XI)
- H. "Official act or action" means any legislative, administrative or quasi-judicial act performed by any Commissioner.
- I. "Public deliberations" means the weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
- J. "Recuse" means to remove oneself from a particular Commission proceeding because of a real or perceived conflict of interest.

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## Section IV: Membership

- A. Voting Members: Members of the Commission shall be appointed by, and any vacancy filled, by the Select Board. The Commission shall have five (5) voting members. The members of the Select Board shall be non-voting ex officio members of the Commission, pursuant to [24 V.S.A. §4322](#).
- B. Officers: Officers of the Commission shall be the Chair, Vice Chair, and Secretary. Officers shall serve in their role until the next Organizational Meeting, until their membership term ends, or they are replaced by election, whichever comes first. Election of officers shall occur during the Organizational Meeting, or as needed. Any vacancy among the officers of the Commission shall be filled by election, for the unexpired term, at the next regular meeting of the Commission.
- C. Terms: Members shall be appointed for a three-year term. The terms shall be staggered so that no more than two (2) terms expire in the same year.
- D. Vacancies: At the direction of the Chair, the Clerk shall give immediate notice of any vacancy to the Select Board and request a replacement.
- E. Removal: Upon majority vote, the Commission may request that the Select Board remove a Commissioner from the Planning Commission. Planning Commissioners may be removed at any time by unanimous vote of the Select Board, pursuant to [24 V.S.A. § 4323\(a\)](#).

## Section V: Duties of Officers and Members

- A. Chair: The Chair shall call the meeting together, preside over all meetings of the Commission, put all questions, maintain order, decide all questions of order and procedure, subject to these Rules, and shall appoint any committee found necessary to carry out the business of the Commission, subject to the order of the voting members of the Commission. The Chair shall draft the agenda for each month and employ the Clerk to forward to voting members prior to each meeting. The Chair's signature shall be the official signature of the Commission.
- B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, or at the Chair's request.
- C. The Secretary shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request. The Recording Secretary shall take minutes of all meetings and ensure proper public posting in accordance with Vermont statute, unless delegated to the Clerk.
- D. It shall be the duty of all members to review the minutes and other official records of Planning Commission meetings and actions, and correct and ratify these when appropriate and necessary.
- E. Attendance: A member may be excused for nonattendance of a meeting for valid reasons if he or she notifies the Commission Chair prior to the meeting. A Commission member may be removed if he or she has three (3) consecutive unexcused absences from meetings or if the total absences exceed one fourth of the total meetings in a calendar year. Absenteeism beyond the prescribed limits shall result in a recommendation of dismissal to the Select Board.
- F. The Commission speaks with one voice. If a member objects to an official action of the Commission they shall identify the fact that it is not the official position of the Commission.

## Section VI: Meetings

- A. Organizational Meeting: Each year, at the regular meeting of the Commission in November, after the appointment of members by the Select Board, the Commission shall elect by majority vote a Chair, a Vice Chair, and Recording Secretary; shall establish the time and dates of the regular scheduled meetings and shall adopt Rules of Procedure.

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- B. Regular Meetings: Regular meetings of the Commission shall be held in the Town Office and/or by electronic means. Commissioners may attend by remote electronic means. The Chair shall give each member of the Commission forty-eight (48) hours' notice of the cancellation of such meeting. A meeting may be recessed to a later date provided that the meeting is recessed to a time and place certain prior to adjournment.
- C. Special Meetings: Special meetings of the Commission may be called by the Chair provided voting members and the public are given at least twenty-four (24) hours' notice for the purpose, time, place, and agenda of such meeting. Only items on the agenda shall be discussed.
- D. Method: Members may participate by telephone, video conference, or other electronic means as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the member.
- E. Open Meeting: All meetings of the Commission shall be open to the public, subject to the Vermont Open Meeting Law unless the Commission has entered a deliberative or executive session. The public may attend by remote electronic means. The Commission may only hold an executive session pursuant to the reasons permitted by [1 V.S.A. § 313](#), and only after a majority vote to enter executive session.
- F. Agenda: The meeting agenda shall be publicly posted prior to each regular meeting. There shall be an agenda for each meeting. Those who wish to be added to the agenda shall contact the Clerk prior to noon on the second Friday of the month. All supporting documents for agenda items shall be received by noon the Monday before the regular meeting so members have time to review them before the meeting. Items not meeting the agenda and documentation deadlines shall not be decided in the meeting and may be considered in the next month's regular meeting. The Clerk shall draft the content of the agenda with direction from the Chair. The agenda may be modified as the first order of business in each meeting.
- G. Date and Time of Meeting: Regular meetings shall be held at 7:00 p.m., on the third Wednesday of each month, unless changed by the Commission. Meetings shall not exceed two hours in length, or extend past 9:00 p.m., unless unanimously approved by members present.
- H. Notice: Notice for hearings on the adoption, amendment, or repeal of a bylaw and other regulatory tools shall be pursuant to [24 V.S.A. § 4444](#), as amended.
- I. Records: a file of all documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon question shall be kept by the Recording Secretary or Clerk as part of the records of the Commission. All records of the Commission shall be public records.
- J. Parliamentary Authority: Robert's Rules of Order Newly Revised, latest edition, shall govern all questions of procedure that are not otherwise provided by these Rules or by state law.
- K. The Chair shall rule on all questions of order or procedure and shall enforce these Rules pursuant to [1 V.S.A. § 312\(h\)](#).

## Section VII: Quorum and Voting

- A. Quorum: For the conduct of a meeting and the taking of any action a quorum must be present, which must consist of, at least, three (3) voting members of the Commission.
- B. Majority Vote Required: Except as provided otherwise in Section IX(D)(6), determination of any matter before the Commission shall require a majority of members present when a vote is needed.
- C. If quorum is not reached, informational meetings may be held but no decisions requiring a vote can be made.

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## Section VIII: Committees

- A. Committees: The Commission may establish standing or ad hoc committees to investigate and make recommendations on issues of interest to the Commission. The work of committees shall be advisory only; all official business shall be conducted by the Commission proper. Committees may include members other than Commission members.
- B. Committee Meetings: Each committee shall maintain a written record of its meetings and shall deliver such record to the Commission. The record of each committee shall include at least the following: the date and place of the meeting, members attending, and any final report or recommendation.

## Section IX: Public Hearings

- A. Public hearings shall be conducted as quasi-judicial proceedings pursuant to [1 V.S.A. § 310\(6\)\(B\)](#). Hearings shall be publicly noticed in accordance with [24 V.S.A. §§ 4464\(a\)\(1\), \(2\)](#), as amended. Hearings shall not exceed three hours in length unless approved by a majority of members present. Participation at hearings shall be limited to the applicant and to those granted interested person status.
- B. Order of Business: The Chair shall conduct the hearing in the following manner:
  - 1. Open the hearing by reading the warning of the hearing.
  - 2. Review the order of events, remind all present that the proceeding will be conducted in an orderly manner, and make copies of these Rules available.
  - 3. Request disclosure of conflicts of interest and ex parte communications.
  - 4. Review the definition of interested persons in [24 V.S.A. § 4465\(b\)](#).
  - 5. Explain that, pursuant to [24 V.S.A. § 4471 \(a\)](#), only an interested person who has participated in this proceeding may take an appeal of any decision issued in this proceeding.
  - 6. Ask all who believe they meet the definition of interested person to identify themselves, demonstrate why they qualify for interested person status, and to provide contact information.
  - 7. The Commission may grant or deny interested person status, subject to the definitions established by [24 V.S.A. § 4465\(b\)](#). The Commission may hold a short deliberative session to consider interested person status, and shall issue its decision immediately upon returning to open session.
  - 8. Direct the applicant or his/her representative and all interested persons to step forward and take the following oath; I hereby swear that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth so help me God (or, under the pains and penalties of perjury).
  - 9. Accept written information presented to the Commission.
  - 10. Invite the applicant or applicant's representative to present such application or proposal.
  - 11. Invite Commissioners to ask questions of the applicant or applicant's representative.
  - 12. Invite interested persons to present information regarding the application or proposal.
  - 13. Invite the applicant, applicant's representative, or interested persons to respond to information presented.

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14. Invite more questions or comments from members of the Commission.
  15. The Chair shall allow members of the public who were denied interested person status and other members of the public to make comments or ask questions regarding the application or proposal. Such comments shall be limited to three minutes per person, unless by majority vote the Commission sets a different time limit.
  16. Allow final comments or questions from the applicant or applicant's representative.
  17. Upon motion and majority approval, the Chair shall either adjourn the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.
  18. Upon final adjournment, the Commission shall be deemed to be in deliberative session until a written decision is issued.
- C. Service List: The Recording Secretary, or Clerk, shall create a list of individuals present at the hearing. The list shall include those who participated orally and those who participated in writing. The list shall clearly designate those who were granted or denied interested person status by the Commission. All decisions of the Commission shall be mailed to those on the list. All documents filed with the Commission must be submitted to interested persons on the list. Those on the list not granted interested person status shall be supplied with any decisions issued by the Planning Commission. The list shall include:
1. The names of those who participated, and the names of those who were granted or denied interested person status.
  2. The nature and content of participation by anyone, whether or not granted interested person status.
  3. The mailing address of each of these persons.
- D. Decisions: The Commission shall make decisions in deliberative session. Deliberative sessions are not open to the public and shall not be warned. [1 V.S.A. §§ 312](#)(e), (f). Members of the Commission who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding. Absent Commissioners may review audiotapes or written minutes of the proceedings, subject to the written consent of the applicant and all interested persons. The following rules shall apply to voting on decisions:
1. Motions shall be made in the affirmative.
  2. The chair has the same voting rights as other members and can make motions.
  3. No second shall be required for a motion to have the floor.
  4. All members present are expected to vote unless they have recused themselves.
  5. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
  6. For a motion to pass, it must receive the concurrence of a majority of the entire Commission, regardless of how many are present. [1 V.S.A. § 172](#); [24 V.S.A. § 4461](#) (a).
  7. The Commission shall issue a written Findings and Decision within 45 days of the final public hearing.
- E. Site Visits: Site visits shall be open to the public; however, no testimony shall be taken and no ex parte communication shall occur. Site visits shall be held pursuant to the following conditions:

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1. If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled immediately prior to a public hearing. Such site visits shall be publicly noticed in accordance with [24 V.S.A. §§ 4464\(a\)\(1\), \(2\)](#).
2. If necessary, the Commission may recess a hearing and conduct a site visit at a property which is the subject of an application before the Commission.
3. If necessary, the Commission may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the Commission.
4. The minutes of the proceeding shall reflect that a site visit was held, who was present, and the nature and duration of the site visit.

### Section X: Conflicts of Interest

- A. "Conflict of interest" means any one of the following:
1. A direct or indirect personal interest of a Commissioner, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Planning Commission.
  2. A direct or indirect financial interest of a Commissioner, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Planning Commission.
  3. A situation where a Commissioner has publicly displayed a prejudgment of the merits of a particular proceeding before the Commission. This shall not apply to a commissioner's particular political views or general opinion on a given issue.
  4. A situation where a Commissioner has not disclosed ex parte communications with a party in a proceeding before the Commission, pursuant to Section XII of these Rules.
  5. "Conflict of interest" does not arise in the case of a vote on a matter in which the member has a personal or pecuniary interest in the outcome no greater than that of any other persons generally affected by the vote.
- B. Participation: A Commissioner shall not participate in any official action where he or she has a conflict of interest in the matter under consideration. A Commissioner shall not, personally or through any member of his or her household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in any proceeding pending before the Planning Commission.
- C. Disclosure: At all hearings, the Chair shall request that Commissioners disclose all potential conflicts of interest. When recognized by the Chair, any interested person may request disclosure of potential conflicts of interest.

Nonetheless, after disclosing a conflict or perceived conflict, if a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall submit a one-paragraph statement describing the matter under consideration, the nature of the potential conflict of interest, and the reason(s) why the member believes he or she is able to act in the matter fairly, objectively, and in the public interest.

This statement shall be signed by the member, and filed as part of the minutes of the proceeding pertaining to the matter under consideration.

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- D. Recusal: A Commissioner shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
1. The applicant or any interested person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.
  2. A Commissioner who has recused him or herself from a proceeding shall not sit with the Commission, deliberate with the Commission, or participate in that proceeding as a Commissioner in any capacity.
  3. If a previously unknown conflict is discovered, the Commission may take evidence pertaining to the conflict, and if appropriate, adjourn to a short deliberative session to address the conflict.
  4. The Commission may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the Commission. The Commission may then resume the proceeding with sufficient members present.
- E. Consequences: In cases where these procedures have not been followed, the Commission may take progressive action to discipline an offending Commissioner. In the discipline of a member, the Commission shall follow these steps in order:
1. The Chair shall meet informally, in private, with the Commissioner to discuss the conflict of interest violation.
  2. The Commission may meet to discuss the conduct of the Commissioner. Executive session may be used for such discussion. [1 V.S.A. § 313\(4\)](#). The Commissioner may request that this meeting occur in public. If appropriate, the Commission may admonish the offending Commissioner in private.
  3. If the Commission decides that further action is warranted, the Commission may admonish the offending Commissioner at an open meeting and reflect this action in the minutes of the meeting. The Commissioner shall be given the opportunity to respond to the admonishment.
  4. Upon majority vote, the Commission may request that the offending Commissioner resign from the Commission.

## Section XI: Ex Parte Communications

- A. "Ex parte communication" means direct or indirect communication between a member of an appropriate town panel and any party, party's representative, party's counsel or any interested person in any proceeding before the panel that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- B. Ex parte communication is prohibited. Any Commissioner who inadvertently conducts ex parte communication must disclose such communication as required below.
- C. Disclosure: At each hearing, the Chair shall request that members disclose any ex parte communications. Commissioners who have received written ex parte communications shall place on the record copies of all written communications received as well as all written responses to those communications. Members shall prepare a memorandum stating the substance of all oral communications received, all responses made and the identity of each person making the ex parte communication.

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### Section XII: Amendments

- A. A proposed amendment to these Rules shall be placed on the agenda for any regular or special meeting.
- B. The text of the proposed amendment shall be presented to each member in advance of the meeting.
- C. The proposed amendment is passed by majority vote of the Commission.
- D. All amendments shall be appended to the originally approved Rules and recorded in the minutes.

**Adopted December 15, 2021**