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**TOWN OF ESSEX  
PLANNING COMMISSION  
RULES OF PROCEDURE AND  
CONFLICT OF INTEREST POLICY**

Adopted September 12, 1985  
Last Amended: September 22, 2022

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**Section I: Authority.**

10 The Planning Commission of the Town of Essex hereby adopts the following Rules of  
11 Procedure and Conflict of Interest Policy (hereinafter referred to as these Rules) in  
12 accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h).  
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**Section II: Policy.**

16 These Rules are adopted to ensure consistent and fair treatment of applicants and  
17 interested persons, and participants, orderly and efficient public proceedings, and  
18 compliance with state and federal law. These Rules shall also ensure that no Commission  
19 member will gain a personal or financial advantage from his or her work for the  
20 Commission, so that the public trust in municipal government will be preserved.  
21

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23

**Section III: Definitions.**

- 24 A. “Applicant” means the individual, organization, or entity representing any application  
25 for review before the Planning Commission, or their designee.  
26
- 27 B. “Commission” means the Planning Commission.  
28
- 29 C. “Commission member” means a regular or alternate member of the Planning  
30 Commission.  
31
- 32 D. “Conflict of interest” means any one of the following:  
33
- 34 1. A direct or indirect personal or financial interest of a Commission member, his or  
35 her spouse, household member, child, stepchild, parent, grandparent, grandchild,  
36 sibling, aunt  
37 or uncle, brother or sister-in-law, business associate, employer or employee, in the  
38 outcome of a cause, proceeding, application or any other matter pending before  
39 the Planning Commission.  
40
  - 41 2. A situation where a Commission member has publicly displayed a prejudgment of  
42 the merits of a particular proceeding before the Planning Commission. This shall  
43 not apply to a Commission member’s particular political views or general opinion  
44 on a given issue.

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- 3. A situation where a Commission member has not disclosed ex parte communications with a party in a proceeding, application, or any other matter pending before the Commission, pursuant to Section XII of these Rules.
- E. “Deliberative session” means a private session of the Commission to weigh, examine, and discuss the reasons for and against an act or decision. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed. By motion and majority vote, the Commission may enter deliberative session during a hearing to consider a matter before it.
- 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 Commission member and any party, party’s representative, party’s counsel or any person interested in the outcome of any proceeding before the panel, that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding, application, or any other matter pending before the Planning Commission.
- H. “Official act or action” means any legislative, administrative or quasi-judicial act performed by the Commission or any Commission member.
- 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, application, or any other matter pending before the Commission because of a real or perceived conflict of interest.

**Section IV: Regular Officers.**

The Planning Commission shall consist of seven regular members appointed by the Selectboard. The Planning Commission shall hold an organizational meeting on or around July 1st each year and elect by majority vote, a Chairperson, Vice Chairperson and Clerk.

- A. The Chairperson shall preside at all meetings, hearings, and deliberations, decide all points of order or procedure, and appoint members to any committee of the Commission. The Chairperson may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration. The Chairperson or Vice-Chairperson shall sign all decisions on behalf of the

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91 Commission. The opportunity for all members to sign decisions will be provided but  
92 is not required.

93

94 B. The Vice Chairperson shall assume the duties of the Chairperson whenever the  
95 Chairperson is absent, or at the Chairperson's request. The Clerk shall assume such  
96 duties whenever the Chairperson and the Vice Chairperson are absent, or at their  
97 request.

98

99 C. The clerk shall conduct all official correspondence of the Planning Commission that  
100 has not been delegated to the Community Development Director.

101

102 **Section V: Attendance Policy.**

103

104 Less than 75% attendance in any fiscal year or two unexplained absences by a  
105 Planning Commissioner in a row is grounds for recommendation of dismissal to the  
106 Selectboard.

107

108 **Section VI: Regular and Special Meetings.**

109

110 Regular meetings to conduct business of the Planning Commission shall be held in the  
111 Town Hall at 6:00 p.m. on the second and fourth Thursday of the month, or as warranted.  
112 The Chairperson may cancel meetings at any time.

113

114 A. A quorum shall be required to open any meeting. A quorum consists of a majority of  
115 the members of the entire Planning Commission regardless of vacancies or  
116 disqualifications.

117

118 B. Members may participate by telephone or video conference as long as the absent  
119 member can hear everything that is occurring at the meeting and everyone present at  
120 the meeting can hear the Commission member.

121

122 C. All meetings shall be open to the public unless the Commission, by majority vote,  
123 enters into a deliberative or executive session. The Commission may only hold an  
124 executive session pursuant to the reasons permitted by 1 V.S.A. § 313, and only after  
125 a majority vote to enter executive session.

126

127 D. All business shall be conducted in the same order as it appears on the agenda, except  
128 that by majority consent, the Chairperson may alter the order of items to be  
129 considered and/or the time allotted.

130

131 E. The Chairperson shall rule on all questions of order or procedure and shall enforce  
132 these rules pursuant to 1 V.S.A. § 312(h).

133

134 F. At each meeting, there shall be a period of time reserved for public comment near the  
135 beginning of the meeting. The Chairperson may extend or reduce this period of time  
136 as necessary. Speakers may participate at other times throughout the meeting but only

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137 when recognized by the Chairperson. Such comment shall be limited to three minutes  
138 per speaker, unless by majority consent the Commission sets a different time limit.  
139 The Commission shall apply consistent time limits to all recognized to speak.

140

141 G. Notice for hearings on the adoption, amendment, or repeal of the bylaws and other  
142 regulatory tools shall be pursuant to 24 V.S.A. § 4444, as amended.

143

144 H. Open meetings: The Planning Commission shall conduct all meetings and business  
145 in accordance with the Vermont Open Meeting Law. 1 V.S.A § 310 et seq. *Robert’s*  
146 *Rules, Newly Revised* shall be used for reference.

147

148 I. Executive Session: The Planning Commission may enter into Executive Session to  
149 discuss matters as permitted by statute, provided that all decisions shall be made in  
150 public.

151

152 J. Minutes: Meeting minutes shall be taken by staff or the Planning Commission clerk if  
153 staff is unavailable. After a Planning Commission meeting, minutes shall be made  
154 available to the public and placed by staff on the Town’s website in accordance with  
155 *1 V.S.A. § 312 (b)(2)*. Unapproved minutes shall be marked “draft”. Such “draft”  
156 minutes will meet the requirements of *1 V.S.A. § 312(b)(1)* and will contain, at a  
157 minimum, the names of all Planning Commission members present at the meeting, all  
158 active participants, all motions, proposals, and resolutions made, and their  
159 disposition, and the results of any votes taken.

160

161 Staff may prepare more detailed “draft” minutes and provide them to the Planning  
162 Commission prior to its next meeting. It shall be the duty of all members  
163 to review the “draft” minutes and correct and approve those minutes.

164

165 Comments by the public on any set of “draft” minutes may be submitted to staff in  
166 writing. Such comments will be provided to the Planning Commission prior to its  
167 next meeting. The Planning Commission will also entertain comments on the “draft”  
168 minutes in person at the meeting. The Planning Commission will not amend the  
169 minutes after they have been approved.

170

171 All Planning Commission minutes and official papers shall be filed promptly by staff  
172 with the Town Clerk as a public record.

173

174 K. The Planning Commission Chairperson shall sign and date the minutes with the date  
175 of approval by the Planning Commission.

176

177 L. Digital recordings of meetings will be made available for the Planning Commission’s  
178 use, or for the public, for a period of two years after the official minutes of the  
179 meeting have been approved.

180

181 M. For the conduct of any hearing and the taking of any action, a quorum shall not be  
182 less than a majority of the members of the panel, and any action of the panel shall be

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183 taken by the concurrence of a majority of the panel pursuant to 24 V.S.A. § 4461(a).

184

185 N. Tie vote: A tie vote constitutes no action by the Planning Commission.

186

187 O. Special meetings may be called by the Chairperson, provided at least 24 hours notice  
188 is given to each member and the time and place of each special meeting is publicly  
189 announced at least 24 hours before the meeting.

190

191 **Section VII: Public Hearings and Order of Business.**

192

193 Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. §  
194 310(5)(B). Hearings shall be publicly noticed in accordance with 24 V.S.A. §§  
195 4464(a)(1),(2), as amended. Hearings shall not exceed three and one-half hours in length  
196 unless approved by a majority of members present.

197

198 Public comment may be offered during the hearing with the permission of the  
199 Chairperson. Such comment, if recognized, shall be limited to three minutes per speaker,  
200 unless by majority consent the Commission sets a different time limit. The Commission  
201 shall apply consistent time limits to all persons recognized to speak.

202

203 The Chairperson may conduct the hearing in the following manner:

204 A. Open the hearing by reading the warning of the hearing.

205 B. Review the order of events, remind all present that the proceeding will be conducted  
206 in an orderly manner, and make copies of these Rules available.

207 C. Review the definition of interested persons in 24 V.S.A. § 4465(b).

208 D. Explain that, pursuant to 24 V.S.A. § 4471(a), only an interested person who has  
209 participated in this proceeding may take an appeal of any decision issued in this  
210 proceeding.

211 E. Ask all who believe they meet the definition of interested person to identify  
212 themselves and to provide contact information. The Commission shall not make any  
213 determination as to party status in all proceedings except for appeals of administrative  
214 officer decisions. As these Rules do not differentiate between persons with interested  
215 person status and those without, anyone seeking to participate in a proceeding may do  
216 so, subject to these Rules and those established by the Chairperson.

217 F. Direct the applicant or his/her representative and all persons to step forward and take  
218 the following oath: *I hereby swear that the evidence I give in the cause under*  
219 *consideration is accurate and true to the best of my knowledge.*

220 G. Accept written information presented to the Commission and staff comments and  
221 input.

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- 222 H. Ask the applicant or applicant's representative to present such application or  
223 proposal.
- 224 I. Ask Commission members to ask questions of the applicant or applicant's  
225 representative and staff.
- 226 J. Ask interested persons and members of the public to present their information  
227 regarding the application or proposal.
- 228 K. Invite the applicant or applicant's representative to respond to information regarding  
229 the application or proposal.
- 230 L. Invite more questions or comments from members of the Commission.
- 231 M. Invite more questions from interested persons and members of the public.
- 232 N. Allow final comments or questions from the applicant or his/her representative or  
233 members of the Planning Commission.
- 234 O. Upon motion and majority approval, the Chairperson shall either adjourn the hearing  
235 to a time certain, or close the proceedings by stating that this is the final public input  
236 on the matter.
- 237 P. Continuation of application: The Planning Commission may vote to continue an  
238 application if there is insufficient time or information to reach a decision. No further  
239 public notice shall be necessary, and the date, time and place that discussion of the  
240 application will resume shall be announced prior to adjournment.
- 241 Q. The Commission shall then conduct public deliberations, or may vote to enter  
242 deliberative session. See Section III-E of these Rules, 1 V.S.A. § 312(e).  
243
- 244 Procedure For Deliberative Session:
- 245 • Commission opens the application and Public Hearing;
  - 246 • Commission determines that a Deliberative Session is warranted and enters  
247 into same;
  - 248 • Noting the time, Commission Motions to go into Deliberative Session;
  - 249 • No minutes or recordings are taken during Deliberative Session however, the  
250 Commission can develop a motion to be read when they exit the Session;
  - 251 • The Commission Chairperson notes the time the PC comes out of Deliberative  
252 Session;
  - 253 • Commission Motions to close the Public Hearing (if no additional questions  
254 are needed);
  - 255 • Commission asks clarifying questions of the applicant. Commission may go  
256 back into Deliberative Session upon receiving additional information;
  - 257 • If information is not available, Commission motions to continue the Public  
258 Hearing to the next available hearing date. The Commission Chairperson

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- 259 informs the public that a courtesy mailing will be sent out to the abutters  
260 notifying them of the continued hearing date;
- 261 • Commission may direct Staff to prepare a written summary prior to the  
262 continued hearing; and
  - 263 • At Continued Public Hearing, Commission receives additional information  
264 and my determine to go back into Deliberative Session; or may entertain  
265 additional public comments; or may motion to close the Pubic Hearing and  
266 motion its decision on the application.

267  
268 S. In accordance with Title 24 Vermont Statutes Annotated Section 4464 (b)(1), the  
269 Planning Commission shall issue a written decision, including findings of fact and  
270 conclusions of law, within 45 days of the date of the final public hearing on the  
271 application.

272  
273 **Section VIII: Consent Agenda**

274  
275 Minor site plan amendments, minor subdivision amendments, simple parceling and  
276 boundary adjustments may be handled through the following consent agenda procedure:

- 277
- 278 A. Staff shall determine an application’s eligibility for the consent agenda review  
279 process. If eligible, it will place it on the agenda for next available Planning  
280 Commission meeting. All consent agenda items shall be warned as a public  
281 hearing.
  - 282
  - 283 B. Staff shall prepare a draft decision and distribute it to the Planning Commission  
284 prior to the meeting.
  - 285
  - 286 C. Staff shall notify the applicant, adjacent property owners, and other interested  
287 parties of the application, the draft decision, and the date on which the Planning  
288 Commission shall consider the item under its consent agenda.
  - 289
  - 290 D. The Chairperson shall ask for public comments on consent agenda items at the  
291 beginning of the meeting. The Planning Commission may ask clarifying questions of  
292 the applicant or other interested party. An open dialogue, between staff, the  
293 Commission, the applicant and interested parties, is encouraged during the public  
294 comment section of the meeting.
  - 295
  - 296 E. By a majority vote of its membership, the Planning Commission may approve the  
297 consent agenda as a whole without discussion. If a member of the Planning  
298 Commission, the applicant, or other interested party requests a more complete hearing  
299 on an item on the consent agenda, that item may be withdrawn from the consent  
300 agenda by a majority vote of the Commission. A hearing shall be held on that item,  
301 either later in the meeting or to be continued at a subsequent meeting, if necessary.

302  
303 **Section IX: Site Visits.**

304

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305 Site visits shall be open to the public; however, no testimony shall be taken and no ex  
306 parte communication shall occur. Site visits shall be held pursuant to the following  
307 conditions:

- 308
- 309 A. The Planning Commission determines if a site visit will be necessary and if so, the  
310 site visit shall be scheduled and publicly noticed in accordance with 24 V.S.A. §§  
311 4464(a)(1),(2).  
312
  - 313 B. If necessary, the Commission may recess a hearing to conduct a site visit at a property  
314 that is the subject of an application before the Planning Commission.  
315
  - 316 C. If necessary, the Commission may adjourn a hearing to a time certain to conduct a  
317 site visit at a property which is the subject of an application before the Planning  
318 Commission.  
319
  - 320 D. The minutes of a site visit shall reflect that a site visit was held, who was present, and  
321 the nature and duration of the site visit.  
322

323 **Section X: Service List.**

324

325 Staff shall create a list of all individuals who participated in the proceedings by providing  
326 testimony either orally or in writing. All decisions of the Planning Commission shall be  
327 mailed to those on the list. The list shall include:

- 328
- 329 A. The names of those who participated in the proceedings.  
330
  - 331 B. The nature and content of participation by those who participated.  
332
  - 333 C. The mailing address of each of these persons.  
334

335 **Section XI: Decisions.**

336

337 The Commission shall make its decisions by public deliberation, unless by majority vote  
338 it has determined to make a decision in deliberative session. Deliberative sessions are not  
339 open to the public and need not be warned. 1 V.S.A. §§ 312(e), (f). Members of the  
340 Commission who have not heard all testimony and reviewed all evidence submitted for a  
341 particular application or proposal shall not participate in that proceeding. Absent  
342 Commission members may participate if they have reviewed an audiotape or videotape of  
343 the proceedings, or minutes of the meeting, and any evidence submitted. The following  
344 rules shall apply to voting on decisions:

- 345
- 346 A. Decisions shall be made in the affirmative or the negative as brought forth and  
347 seconded by two separate Commission members. If the vote is in the negative, the  
348 Commissioner may state the reason for denial.  
349



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- 350 B. Decisions shall be in writing and shall include a statement of factual basis on which  
351 the Planning Commission has made its conclusions, as well as a statement of the  
352 conclusions.  
353
- 354 C. The Chairperson has the same voting rights as all members and can make motions.  
355
- 356 D. All members present are expected to vote unless they have recused themselves.  
357
- 358 E. Abstentions are strongly discouraged and shall not count towards either the majority  
359 or the minority.  
360
- 361 F. For a motion to pass, it must receive the concurrence of a majority of the entire  
362 Commission, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. §  
363 4461(a).  
364
- 365 G. The Commission shall issue a decision within 45 days of the final public hearing.  
366

367 **Section XII: Deemed Approved**  
368

369 As required by the Town of Essex Outside the Village of Essex Junction Zoning  
370 Bylaws, the Planning Commission shall issue a written decision approving or  
371 disapproving any Site Plan or Final Plat within forty-five (45) days of the adjournment of  
372 the final public hearing. Failure to act within such period shall result in the application  
373 being approved effective on the 46<sup>th</sup> day.  
374

375 **Section XIII: Conflicts of Interest.**  
376

377 Participation, disclosure of conflicts, and recusal shall be governed by the following  
378 procedures:  
379

380 A. **Participation.** A Commission member shall not participate in any official action  
381 where he or she has a conflict of interest in the matter under consideration as defined  
382 in Section III(D) of these Procedures.  
383

384 B. **Disclosure.** At all hearings, a Commissioner shall disclose all potential conflicts of  
385 interest. When recognized by the Chairperson, any person may request disclosure of  
386 potential conflicts of interest.  
387

388 Nonetheless, after disclosing a conflict or perceived conflict, a member who believes  
389 that he or she is able to act fairly, objectively, and in the public interest, shall disclose  
390 the nature of the potential conflict of interest, and the reason(s) why he or she is able  
391 to act in the matter fairly, objectively, and in the public interest. This shall be noted in  
392 the minutes of the proceeding.  
393

394 C. **Recusal.** A Commission member shall recuse him or herself from any matter in  
395 which he or she has a conflict of interest, pursuant to the following:

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1. The applicant or any 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 Commission member 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 Commission member in any capacity, nor remain physically present in the room.
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.

**Section XIV: ETHICS.**

When commenting on Town of Essex business or applications, be transparent and state that you are a Planning Commission member for the Town of Essex. Make it clear that you are speaking for yourself and not on behalf of the Planning Commission or the Town of Essex; use a disclaimer such as *“the views expressed here are my own and do not necessarily represent the views of the Planning Commission or the Town of Essex.*

Do not represent yourself, the Planning Commission or the Town of Essex in a false or misleading way.

**Section XV: Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.**

In cases where the conflict of interest procedures in Section XII have not been followed, the Commission may take progressive action with respect to an offending Commission member. In the discipline of a member, the Commission shall follow these steps, in order:

- A. The Chairperson shall meet informally, in private, with the Commission member to discuss the possible conflict of interest situation.
- B. If the Commission decides that further action is warranted, the Commission may admonish the offending Commission member at an open meeting and reflect this action in the minutes of the meeting. The Commission member shall be given the opportunity to respond to this admonishment.

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442 **Section XVI: Ex Parte Communications.**

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444 Ex parte communication is prohibited. Any Commission member who inadvertently  
445 conducts ex parte communication must disclose such communication as required below.

446

447 A. **Disclosure.** Commission members who have received written ex parte  
448 communications shall place in the record copies of all written communications  
449 received as well as all written responses to those communications. Members shall  
450 prepare a memorandum stating the substance of all oral communications received, all  
451 responses made and the identity of each person making the ex parte communication,  
452 which shall become a part of the record of the proceedings.

453

454 **Section XVII: Communication with Commission**

455

456 All communication to the Commission from members of the public or applicants,  
457 including e-mails, shall be coordinated through the Community Development  
458 Department staff or be provided directly to the Commission at public meetings.

459

460 **Section XVIII: Requests for Reconsideration**

461

462 In accordance with Title 24 section 4470 (a) of the Vermont Statutes Annotated, the  
463 Planning Commission may consider a request to reopen proceedings and/or reconsider an  
464 application if all of the following conditions are met:

465

- 466 1) The request must be made by the Planning Commission acting on its own  
467 initiative, or by the Applicant or an interested person who has participated in the  
468 proceeding.
- 469 2) The request must be filed within the time for filing an appeal of the Planning  
470 Commission's decision.
- 471 3) All parties must be served with copies of the request or otherwise notified of the  
472 request at the time of filing.

473

474 In determining whether or not to grant the request, the Planning Commission shall be  
475 guided by the standards of Rules 59 and 60 of the Vermont Rules of Civil Procedure.  
476 Those standards allow the Planning Commission to revisit its decisions for reasons of  
477 mistake, inadvertence, surprise, excusable neglect, newly discovered evidence or fraud,  
478 among other reasons.

479

480 If the request raises the same issues already decided or substantially the same facts  
481 already considered, the Planning Commission may deny the request without hearing by  
482 issuing a decision, including findings of fact, within ten days of the filing of the request  
483 for reconsideration. 24 V.S.A § 4470(a).

484

485 If the Planning Commission determines that a request raises new issues or new facts that  
486 if presented previously may have led it to render a different decision, it may in its  
487 discretion order the reopening of the hearing for purposes of taking additional evidence

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488 and argument. Adequate notice of the reopened hearing must be provided to all  
489 interested parties, and they should be allowed to present any additional evidence and  
490 argument at that hearing. A written decision shall be issued consistent with Section X  
491 above.

492

493 **Section XIX: Removal.**

494

495 Upon majority vote, the Commission may request that the legislative body remove a  
496 Commission member from the Planning Commission. Planning commissioners may be  
497 removed at any time by unanimous vote of the legislative body. 24 V.S.A. § 4323 (a).

498

499 **Section XX: Use of Social Media**

500

501 Members of the Planning Commission shall not post on any type of social media or  
502 submit a letter to the editor representing themselves as a member of the Planning  
503 Commission or representing the views of the Planning Commission without prior  
504 approval by majority vote by the Commission at a public meeting. Should the Planning  
505 Commission approve a letter or posting, they will direct staff to submit the letter or  
506 posting on its behalf.

507

508 If a majority of the Planning Commission agrees that a violation of this policy has  
509 occurred, it may recommend to the legislative body that the violator of this policy be  
510 removed from the Planning Commission.

511

512 **Section XXI: Amendments.**

513

514 These rules may be amended at any regular or special meeting by a majority vote,  
515 provided that each Planning Commission member has been presented a written copy of  
516 the proposed amendment at least 24 hours before the meeting at which the vote is taken.

517

518

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519 These Rules of Procedure and Conflict of Interest Policy were adopted by the Planning  
520 Commission on the 28<sup>th</sup> day of October, 2021.

521

522

523 \_\_\_\_\_  
Chairperson

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525

526 \_\_\_\_\_  
Clerk

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