

CITY OF ROCKAWAY BEACH

City Planning Commission Meeting



Agenda

Date: May 19th, 2022
Time: 6:00 PM
Location: Rockaway Beach City Hall

JOIN ZOOM MEETING

<https://us06web.zoom.us/j/5137179369?pwd=S01QbzIIWTh6QnlHbmo2RXpYNTZ1dz09>

Meeting ID: 513 717 9369
Passcode: 013664
+1 253 215 8782 US (Tacoma)

CALL TO ORDER AND APPROVAL OF AGENDA FOR CITY PLANNING COMMISSION MEETING

A) **Roll Call Commission Members:** Pat Olson, Janet McIntire, Bill Hassell, Zandra Umholtz, Georgeanne Zedrick, Sandra Johnson and Kristina Woida.

Position #2 - Janet McIntire: Present (via Zoom)

Position #3 - Pat Olson: Absent

Position #7 - Georgeanne Zedrick: Present

Position #5 - Bill Hassell: Present

Position #1 - Zandra Umholtz: Present

Position #4 - Sandra Johnson: Present

Position #6 - Kristina Woida: Present

B) **Approval of Minutes**

Approval of Minutes – 4/21/22 – Bill entertained a motion – Sandra moved to adopt minutes as written and Zandra 2nd – all approved.

Position #4 - Sandra Johnson: Motion

Position #1 - Zandra Umholtz: 2nd

Position #2 - Janet McIntire: Approve

Position #3 - Pat Olson: Absent

Position #7 - Georgeanne Zedrick: Approve

Position #5 - Bill Hassell: Approve

Position #1 - Zandra Umholtz: Approve

Position #4 - Sandra Johnson: Approve

Position #6 - Kristina Woida: Approve

C) **Old Business**

- a. Short Term Rental Nuisance - Scott presented the ordinance proposal and asked for feedback specifically on the application fee. The commissioners had a discussion on amount with a suggestion of \$750+ and possibility use some of those funds to hire a code enforcement. Discussion on some edits and suggestions regarding the checklist and application process.

Scott asked for council to take a motion – Bill asked for a motion, Zandra made a motion to forward the Rockway Beach Short Term Rental Ordinance proposal to City Council for further action, Georgeanne 2nd. Sandra Disapproved, all other PC members approved.

[Position #1 - Zandra Umholtz: Motion](#)
[Position #7 - Georgeanne Zedrick: 2nd](#)
[Position #2 - Janet McIntire: Approve](#)
[Position #3 - Pat Olson: Absent](#)
[Position #7 - Georgeanne Zedrick: Approve](#)
[Position #5 - Bill Hassell: Approve](#)
[Position #1 - Zandra Umholtz: Approve](#)
[Position #4 - Sandra Johnson: Disapprove](#)
[Position #6 - Kristina Woida: Approve](#)

- b. Planning Commission Rules – Scott will send out additional information to the Planning Commission members later and item to be placed on next month agenda.

D) New Business

- a. Variance 22-01 Hess & McClaran – front yard setback reduction – Bill opened the public hearing at 5:57 p.m. Sandra went to the site and conversed with the applicant about the location of the addition. Georgeanne drove by the site. Scott gave the staff report presentation for variance. Applicant Robert McClaren spoke on behalf of the application at 553 N Coral and explained their history with Rockaway and the reason for their application. Mr. McClaren handed out some additional images of the lot to the commission members. Lydia Hess added some additional comments on the garage and overhang on 2nd story. Sandra asked about parking. Testimony from neighbor Mark T. Koehmstedt (303 N 6th Ave.) and spoke in favor of the application. No testimony against application. Sandra asked if the neighbor to the north received notification, Jenny confirmed they had. Zandra asked about parking and the location of the garage and questions about the road and gravel and possible road improvement. Other questions about the mud room and front door and placement of those in the house.

Bill moved for a motion – Zandra made a motion to close the variance application – Kristina 2nd – all approved. Public hearing closed at 7:33 p.m.

Zandra made a motion based on staff report 4/21/22 and testimony to approve the application. Sandra 2nd. All in favor. Variance approved.

[Position #1 - Zandra Umholtz: Motion](#)
[Position #4 - Sandra Johnson: 2nd](#)
[Position #2 - Janet McIntire: Approve](#)
[Position #3 - Pat Olson: Absent](#)

[Position #7 - Georgeanne Zedrick: Approve](#)

[Position #5 - Bill Hassell: Approve](#)

[Position #1 - Zandra Umholtz: Approve](#)

[Position #4 - Sandra Johnson: Approve](#)

[Position #6 - Kristina Woida: Approve](#)

E) Visitor Presentation - None

F) Citizen Comments and Concerns – Marie Hanson at 360 N Juniper Ct. and wanted to discuss the short-term rental ordinance. She commented that there are no planning commission minutes on the website and her concern about short term rentals and asked to recommend to council to pause short term rentals to council. (Update 5/24/22 – PC interactive minutes were on website but placed under City Council, all minutes are now correctly under Planning Commission as of 5/24/22.)

Mark also expressed concerns about short term rentals and garbage he sees with the short-term rentals close to his property.

Sandra asked to put an agenda item for next meeting on a moratorium for short term rentals on the next planning commission agenda. Sandra asked to make a motion to add to the next month agenda. Sandra then withdrew motion and made a new motion to recommend to City Council to put a moratorium on STR license until the city has ability to review. Scott outlined the larger discussion of STR and stressed that we need to involve public notification to have further discussion on this if we place on the agenda. Janet requested them to withdraw the current motion on table before further discussion. Sandra withdrew and then Kristina withdrew her 2nd and Sandra then withdrew the original motion. Zandra asked to table this to the next meeting. Discussion about moving forward and possibly adding to next month agenda as a discussion item.

G) Commissioner Comments and Concerns

Bill – Thank Jenny and Scott for address creation for the Nature Preserve.

Zandra – ordinance draft suggestion for STRs’ currently renting and adding something as a violation and a fine/penalty attached.

Georgeanne – no comment

Sandra – no further comment.

Kristina – thanks to applicants.

Janet – thank Bill for chairing the meeting.

H) City Planner Comments – none.

I) Adjourn at 8:09 p.m.

RULES AND PROCEDURES
OF THE
ROCKAWAY BEACH
PLANNING COMMISSION

Article I. NAME

This commission shall be known as the Rockaway Beach Planning Commission, hereinafter referred to as the Commission.

Article II. MEMBERSHIP

Section 1. The commission shall consist of seven members appointed by the City Council, with terms as included in RB City Ordinance (§ 31.01), the ordinance that created the Planning Commission and Oregon State Statute (ORS 227.030).

Section 2. Members shall attend all meetings faithfully except in such cases of illness or where a request to be absent has been approved by the President.

Section 3. Members may be removed from the Commission under the following rules:

- a) Members may request that they be removed for personal or other reasons. Such requests shall be made to the Mayor and City Council.
- b) A member may be removed by the City Council, after holding a hearing for misconduct or non-performance of duty.
- c) A member who is absent from three (3) consecutive regular meetings without an excuse as approved by the Commission and fails to notify the Planning Commission President during said period, is presumed to be in non-performance of duty.
- d) All membership powers and duties will be consistent with Oregon Planning Commission law according to ORS 227.090 and RB City Ordinance (§ 31.0(f))

Section 4. The President may appoint committees subject to approval of a majority of the members of the Commission.

Article III. OFFICERS

Section 1. The officers of this Commission shall be according to RB City Ordinance (§ 31.01(b)).

ARTICLE IV. OFFICER'S DUTIES

Section 1. It shall be the duty of the President to preside at all meetings of the Commission; to enforce observance of the rules of procedure; to decide all questions of order; offer for consideration all motions regularly made; apportion duties of the members of the Commission and advisory members; to call all special meetings with approval of the majority of the Planning Commission to appoint all necessary committees and

advisory committees, with approval of the Commission; and perform such other duties as the office may require.

Section 2. In the absence of the President, the Vice-President shall perform the duties of the President.

ARTICLE V. MEETINGS

Section 1. This Commission shall hold its regular meeting on the third Thursday of each month at 6:00 P.M at the Rockaway Beach City Hall. The third Thursday shall be for the conduct of public hearings, if all other public notice requirements are met. The Commission may hold a workshop/study session on an alternative date on an as-needed basis.

Section 2. The place, hour and date of any meeting may be changed by affirmative act of the Commission if adequate notice can be given to the public and all interested parties, in accordance with Public Meeting Law.

Section 3. All meetings shall be adjourned not later than 9:00 P.M., unless extended past that hour by quorum.

Section 4. The President may call a designated recess of the meeting. This may be done whenever it appears that a meeting will be unusually long or that a recess would be beneficial for other reasons.

Section 5. Robert's Rules of Order will be used for conduct of the meetings.

Section 6. Quorum, Expenses & Disbursements and Compensation shall all be according to RB City Ordinance (§ 31.01).

ARTICLE VI. PUBLIC HEARINGS

Section 1. All public hearings before the Commission shall be conducted by the President, except as provided by Article VI., Section 2. In the absence of the President and Vice President the remaining members will select a temporary chair for that meeting.

Section 2. Public hearings shall be held in accordance with regulations of Oregon State Statue (ORS 197.763).

Section 3. Individuals wishing to speak must first be recognized by the President, identity themselves by name and address, and if appearing in a representative capacity, identity the person being represented.

ALL INDIVIDUALS WISHING TO SPEAK SHALL ADDRESS THE SUBJECT CRITERIA; AND NOTE WHICH CRITERIA THEY ARE ADDRESSING.

ARTICLE VII. COMMISSION IMPARTIALITY

Section 1. Conflict of Interest And/ Or Personal Bias Members shall be required to vote on all matters that require a decision unless a member has direct personal or pecuniary interest in said matter. Matters on conflict of interest and personal bias shall be considered according to Section 11.060 of the Zoning Ordinance.

ARTICLE VIII. CONDUCT OF BUSINESS

Section 1 Meeting: Order of Business

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes
- D. Citizen Concerns / Correspondence & Comments
- E. Public Hearings (if scheduled)
- F. Old Business
- G. New Business
- H. Planning Commission Concerns
- I. Staff Comments/Concerns
- J. Adjournment

ARTICLE IX. AMENDMENTS

Section 1. The Rules and Procedures may be amended by a two-thirds vote of the Planning Commissioners voting, a quorum being present.

ARTICLE X. SPECIAL RECORDS

Section 1. Planning Commission Interpretations When the Planning Commission is required or requested to make an interpretation of any ordinance, either text or map, such interpretations shall be reduced to writing and placed in a special file entitled "Ordinance Text and Map Interpretations" and shall be made available upon request from files kept at City Hall. In the case of map interpretations, the official zoning maps shall be changed to reflect such interpretations.

Section 2. Annual Workshop An annual workshop shall be established and held at the first meeting held after July 1st to discuss and determine the goals for the Planning Commission for the upcoming year and to review the Planning Commission Rules and Procedures.

Adopted by the Planning Commission this **xth** day of July 2022.

Janet McIntire,
Planning Commission President

Luke Shepard,
City Manager

STAFF DRAFT

RULES AND PROCEDURES
OF THE
ROCKAWAY BEACH
PLANNING COMMISSION

Article I
NAME

This commission shall be known as the Rockaway Beach Planning Commission, hereinafter referred to as the Commission.

Article II
MEMBERSHIP

Section 1. The Commission shall consist of seven members appointed by the City Council, with terms as included in Ordinance No. 446, 31.01, the ordinance that created the Planning Commission. 116 does not exist

Section 2. Members shall attend all meetings faithfully except in such cases of illness or where a request to be absent has been approved by the President.

Section 3. Members may be removed from the Commission under the following rules:

- a) Members may request that they be removed for personal or other reasons. Such requests shall be made to the Mayor and City Council.
- b) A member may be removed by the City Council, after holding a hearing, for misconduct, upon request of that member, or non-performance of duty. To make subparagraph consistent with the prior paragraph.
- c) A member who is absent from three (3) consecutive regular meetings without an excuse as approved by the Commission and fails to notify the Planning Commission President during said period, is presumed to be in non-performance of duty and the City Council shall remove that member and shall declare the position vacant unless finding otherwise following the hearing. Added to make clear that the declaration of vacancy includes removal of the incumbent.
- d) All membership duties will be consistent with Oregon Planning Commission membership requirements in ORS 227.030, a copy of which current version shall be attached hereto as Attachment #1. Added to make it easier for members to know what their membership requirements are.
- e) Each elected commissioner shall hold office for 4 years. Any vacancy shall be filled by the City Council for the unexpired term of the predecessor in office. Added to bring to members attention the requirement set forth in Rockaway Beach Ordinance #31.01(1).

Section 4. The President may appoint committees subject to approval of a majority of the members of the Commission.

Article III
DUTIES AND POWERS

The powers and duties of the Commission shall be as follows. Except as otherwise provided by law, the Commission may:

a) Recommend and make suggestions to the City Council and to all other public authorities concerning laying out, widening, extending, parking and locating of streets, sidewalks and boulevards, relief of traffic congestion, betterment of housing and sanitation conditions and establishment of zones of districts limiting the use, height, area and bulk of buildings and structures;

b) Recommend to the City Council and all other public authorities plans for regulations of the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots; and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of all public utilities, harbor, shipping and transportation facilities;

c) Recommend to the City Council and all other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to private and public enterprises engaged in industrial pursuits;

d) Advertise the industrial advantages and opportunities of the municipality and availability of real estate within the municipality for industrial settlement;

e) Encourage industrial settlement within the municipality;

f) Make an economic survey of present and potential possibilities of the municipality with a view to ascertaining its industrial needs;

g) Study needs of existing local industries with a view to strengthen and develop local industries and stabilizing employment conditions; and

h) Study and propose in general the measures as may be advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area 6 miles adjacent thereto. Added to notify members of their duties and powers as set forth in Rockaway Beach Ordinance #31.01F.

Article IV
REPORTING, SUBMISSIONS AND APPROVALS

The following section is added to notify members of the content of Rockaway Beach Ordinance #31.01G. The title was changed from Reporting to Time of Reporting to clarify the content of the section. Section 1. Time of Reporting. The time within which the City Planning Commission shall

report on any matter or class of matters referred to it in accordance with the provisions of the Rockaway Beach Zoning Code shall be in accordance with the Code; and in default of the report within the period, the Planning Commission shall forfeit the right further to suspend action with regard to the particular matter on which it has so defaulted. However, in any specific case, the City Council may grant the longer period as it may deem proper within which the Commission may make its report. The following paragraph is in Rockaway Beach Ordinance #31.30(A)(2)(B). The Commission shall, on October 1 of each year, make and file a report of all its transactions with the City Council.

Section 2. Subdivision, Streets and Public Buildings. All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets, or plans for public buildings, shall first be submitted to the Commission by the applicant or other proper municipal officer, and a report thereon from the Commission secured in writing before approval is given by the proper municipal official. Added to notify members of their duties and powers as set forth in Rockaway Beach Ordinance #31.01(H).

Section 3. Recommendations and Approvals. Whenever a copy of a plan, plat or description is filed with the City Planning Commission, the Commission shall, within 60 days, report to the City Council its recommendations in relation thereto. The City Council shall then consider the same and direct the City Planning Commission either to certify its approval thereof or to refuse to approve of the same; and the Commission shall act at once in accordance with the directions. Added to notify members of their duties and powers as set forth in Rockaway Beach Ordinance #31.01(I).

Article III-V OFFICERS

Section 1. ~~The officers of this Commission shall consist of a President and a Vice-President, which will be elected at the first regular Planning Commission meeting after July 1.~~

The Commission, at its June meeting, shall elect a President and Vice-President who shall be voting members and who shall assume office on July 1. The Commission shall elect a Secretary, who need not be a member of the Commission. The Secretary shall keep an accurate record of all Commission proceedings. Elected officers shall hold office for one year. Rockaway Beach Ordinance #31.01(B) states that elections and end terms shall be held on July 1st. Since the Commission does not necessarily hold a meeting on July 1st, and confusion can arise if the President's and VP terms end on the day of election and not after the election (causing a potential several hour vacancy), the Ordinance was not copied verbatim.

Section 2. In the event a vacancy occurs in the office of President, Vice-President, or Secretary, the vacancy shall be filled by election at the first regular Planning Commission meeting following the vacancy or as soon thereafter as a majority of the Commission shall determine practical.

Article ~~IV~~. VI
OFFICER'S DUTIES

Section 1. It shall be the duty of the President to preside at all meetings of the Commission; to enforce observance of the rules of procedure; to decide all questions of order; offer for consideration all motions regularly made; apportion duties of the members of the Commission and advisory members; to call all special meetings with approval of the majority of the Planning Commission; ~~to cancel meetings or appoint an assignee to do so~~, appoint all necessary committees and advisory committees, with approval of the Commission; and perform such other duties as the office may require. *Since the Ordinances require us to meet monthly, cancellations should not occur. Postponements can occur as necessary, as provided in section VII(2) as follows.*

Section 2. In the absence of the President, the Vice-President shall perform the duties of the President.

Article ~~V~~. VII
MEETINGS

Section 1. This Commission shall hold its regular meeting on the ~~fourth~~ *third* Thursday of each month at 6:00 P.M. at the Rockaway Beach City Hall. The ~~fourth~~ *third* Thursday shall be for the conduct of public hearings, if all other public notice requirements are met. *The date was changed to reflect current practice.* The Commission may hold a workshop/study session on an alternative date on an as-needed basis unless timing conflicts arise with Ordinance #143. *(There is no #143. If a superceding ordinance exists, the number should be changed.) When a regular meeting day falls on a legal holiday, the Planning Commission shall convene on the next regular business day. Provided, however, that the regular meeting shall be scheduled in the week prior to or immediately following the Thanksgiving and Christmas/New Year holidays. This last portion was added because meetings that fall on holidays weren't addressed, to avoid confusion.*

Section 2. The place, hour and date of any meeting may *only* be changed by affirmative act of the Commission if adequate notice can be given to the public and all interested parties, in accordance with Public Meeting Law. *In the event of an emergency as determined by the President and Vice-President, a meeting may be postponed, but not canceled, to a date no less than 10 days prior to the next scheduled meeting. Consistent with Rockaway Beach City Ordinance #31.01(2)(c), the Commission shall meet at least once a month. Since we are required to meet monthly, this change gives us flexibility.*

Section 3. All meetings shall be adjourned not later than 9:00 P.M., unless extended past that hour by quorum.

Section 4. The President may call a designated recess of the meeting. This may be done whenever it appears that a meeting will be unusually long or that a recess would be beneficial for other reasons.

Section 5. Robert's Rules of Order will be used for conduct of the meetings.

Section 6. Quorum. Four members of the Commission shall constitute a quorum. The Commission may make and alter rules and regulations for its government and procedure consistent with the laws of Oregon and with the city charter and ordinances. Added to notify members of content of Rockaway Beach Ordinance #31.01(A)(2)(C).

Section 7. Expenses and disbursements. The Commission may employ consulting advice on municipal problems, a Secretary and the Clerks as may be necessary and pay for their services and for the other expenses as the Commission may lawfully incur, including the necessary disbursements incurred by its members in the performance of their duties as members of the Commission, out of funds at the disposal of the Commission, as authorized by the City Council. Added to notify members of content of Rockaway Beach Ordinance #31.01(A)(2)(D).

Section 8. Compensation. The Commissioners shall receive no compensation for their services as the Commissioners but shall be reimbursed for duly authorized expenses. Added to notify members of content of Rockaway Beach Ordinance #31.01(A)(2)(E).

Article VI. VIII
PUBLIC HEARINGS

Section 1. All public hearings before the Commission shall be conducted by the President, except as provided by Article VI., Section 2. In the absence of the President and Vice President the remaining members will select a temporary chair for that meeting.

Section 2. Public hearings shall be held in accordance with regulations adopted in Ordinance No. 143 (There is no 143. A new number should be added if there an ordinance that superseded 143) and ORS 197.763.

Section 3. Individuals wishing to speak must first be recognized by the President, identify themselves by name and address, and if appearing in a representative capacity, identify the person being represented.

DURING THE PUBLIC HEARING PORTION OF THE MEETING ALL INDIVIDUALS WISHING TO SPEAK SHALL ADDRESS THE SUBJECT CRITERIA; AND NOTE WHICH CRITERIA THEY ARE ADDRESSING. (Added for clarification that this requirement applies only during the Public Hearing and not closed session.)

ARTICLE ~~VII~~.IX
COMMISSION IMPARTIALITY
COMMISSION IMPARTIALITY Change to correct spelling error.

Section 1. Conflict of Interest And/Or Personal Bias Members shall be required to vote on all matters that require a decision unless a member has direct personal or pecuniary interest in said matter. Matters on conflict of interest and personal bias shall be considered according to Section 11.060 of the Zoning Ordinance, **a copy of which current version shall be attached hereto as Attachment #2.** Added to easily notify members of content of Rockaway Beach Ordinance #11.060, which is very important for all to be aware of.

ARTICLE ~~VIII~~.X
CONDUCT OF BUSINESS

Section 1. Meeting: Order of Business

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes
- D. Citizen Concerns / Correspondence
- E. Public Hearings (if scheduled)
- F. **New Business**
- G. ~~F.~~ Workshop/Study Session (if scheduled)
- H. ~~G.~~ Planning Commission Concerns
- I. ~~H.~~ Staff Comments/Concerns
- J. ~~I.~~Adjournment **Changes to reflect current practice.**

ARTICLE IX.XI
AMENDMENTS

Section 1. The Rules and Procedures may be amended by a two-thirds vote of the Planning Commissioners ~~V~~oting, a quorum being present.

ARTICLE X.XII
SPECIAL RECORDS

Section 1. Planning Commission Interpretations. When the Planning Commission is required or requested to make an interpretation of any ordinance, either text or map, such interpretations shall be reduced to writing and placed in a special file entitled "Ordinance Text and Map Interpretations" and shall be made available upon request from files kept at City Hall. In the case of map interpretations, the official zoning maps shall be changed to reflect such interpretations.

Section 2. Annual Workshop. An annual workshop shall be established and held at the first meeting held after July 1st to discuss and determine the goals for the Planning Commission for the upcoming year and to review the Planning Commission Rules and Procedures.

Adopted by the Planning Commission this 29th day of October 2020.

Adopted by the Planning Commission this ___ day of _____, 2022.

Janet McIntire,
Planning Commission
President

Luke Shepard,
City Manager

JOHNSON DRAFT

ATTACHMENT #1
ORS 227.030
MEMBERSHIP

(1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

ATTACHMENT #2
ROCKAWAY BEACH ZONING ORDINANCE
Section 11.060. Public Hearing Procedure and Requirements.

Section 11.060. Public Hearing Procedure and Requirements.

(1) Public hearings conducted under this ordinance shall follow the procedures and requirements of this section.

(2) The following Procedural Entitlements shall be provided at the public hearing: 77

(a) An impartial review as free from conflicts of interest, personal bias, and pre-hearing ex-parte contact as is reasonably possible.

(b) No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist: (i)..... Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the last two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. (ii)..... The member owns property within the area entitled to receive notice of the public hearing. (iii)..... The member has a direct private interest in the proposal. (iv)..... For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

(c) Hearing body members shall reveal any pre-hearing or ex-parte contacts with regard to any matter at the commencement of the first public hearing following the pre-hearing or ex-parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations. Disqualifications due to ex-parte contact may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motion.

(d) A party to a hearing, or a member of a hearing body, may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state the facts relied upon by the challenger relating to a person's bias, pre-judgment, personal interest, ex-parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and vote on such a challenge. The person who is the subject of the challenge may not vote on the motion.

(e) A party to a hearing may rebut the substance of the communication that formed the basis for an ex-parte contact declared by a member of the hearing body.

(f) No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest.

(g) A reasonable opportunity for those persons potentially affected by the proposal to present evidence.

(h) A reasonable opportunity for rebuttal of new material.

(3) Rights of Disqualified Member of the Hearing Body.

(a) An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

(b) A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

(4) Burden and Nature of Proof. The burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this ordinance, especially the specific criteria set forth for the particular type of decision under consideration.

(5) Nature of Proceedings. An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

(a) Before receiving information on the issue, the following shall be addressed: 78 (i)..... Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate. (ii)..... Any abstentions or disqualifications shall be determined, based on conflict of interest, personal bias, or ex-parte contacts. (iii)..... A statement by the person presiding that: (a)..... Describes the applicable substantive criteria against which the application will be reviewed. (b)..... Testimony and evidence must be directed toward the criteria which will be used to review the land use action, or other criteria in the Plan or land use regulation which a party believes to apply to the land use action; and (c)..... Failure to raise an issue or address a criteria with sufficient specificity to afford the decision makers and parties to the hearing an opportunity to respond to the issues during the hearing precludes an appeal based on that issue or criteria. (d)..... Describes the review and appeal process provided for by this ordinance.

(b) Presentation. (i)..... The presiding officer shall preserve order at the public hearing and shall decide questions of order subject to a majority vote. (ii)..... The presiding officer may set reasonable time limits for oral presentations. The presiding officer may determine not to receive cumulative, repetitive, immaterial or derogatory testimony.

(c) Evidence shall be received from the staff and from proponents and opponents. (i)..... Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Erroneous evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party to the hearing. (ii)..... Members of the hearing body may take official notice of judicially cognizable facts of a general or technical nature within their specialized knowledge. Such notice shall be stated and may be rebutted. (iii)..... The presiding officer may approve or deny a request from a person attending

the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony. (d) The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposal being considered. The time and date when the hearing is to resume shall be announced. (e) The hearing body may view the area in dispute with notification to the parties, of the time, manner and circumstances of such a visit. (f) At the conclusion of the public hearing, a participant in the public hearing may request that the record remain open for at least seven days for the purpose of submitting additional evidence. Such a request may only be made at the first de novo hearing held in conjunction with a permit application or Zoning Ordinance text or map amendment. Whenever the record is supplemented in this manner, any person may raise new issues which relate to the new evidence, testimony or criteria for decision making which apply to the matter at issue. This extension of time shall not be counted as part of the 120 day limit in Section 11.060. (g) When the hearing has been closed, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff, if opportunity for rebuttal is provided. (i)..... No testimony shall be accepted after the close of the public hearing unless the hearing body provides an opportunity for review and rebuttal of that testimony. 79

(6) Decision. Following the procedure described in Section 11.060(1)-(5), the hearing body shall approve, approve with conditions, or deny the application. If the hearing is in the nature of an appeal, the hearing body may affirm, affirm with modifications, or additional conditions, reverse, or remand the decision that is on appeal. (a) The decision of the hearing body shall be by a written order signed by the chair or his/her designee. (b) The order shall incorporate findings of fact and conclusions that include: (i)..... A statement of the applicable criteria and standards against which the proposal was tested. (ii)..... A statement of the facts which the hearing body relied upon in establishing compliance or noncompliance with each applicable criteria or standard, briefly state how those facts support the decision. (iii)..... In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial. (c) The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed.

(7) Record of Proceedings. The secretary to the hearing body shall be present at each hearing and shall cause the proceedings to be recorded stenographically or electronically. (a) Testimony shall be transcribed if required for judicial review or if ordered by the hearing body. (b) The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of. (c) The findings shall be included in the record. (d) A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

(8) Notice of Decision. Notice of a decision of a hearing body shall be provided to all parties to the hearing within five working days of the date that the final order was signed. The notice of the decision shall include: (a) A brief description of the decision reached. (b) A statement that the decision may be appealed by filing, with the City, an appeal within 15 calendar days of the date the final order was signed. (c) A description of the requirements for an appeal, including the type of appeal that may be requested. (d) A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing. (e) A statement that the complete case, including the final order, is available for review at the City. [Amended by Ordinance #277, August 28, 1990]

JOHNSON DRAFT