

CITY OF BURLINGTON DESIGN ADVISORY BOARD

Rules of Procedure and Conflict of Interest Policy

New language underlined.

Section I: Authority and Purpose.

The Design Advisory Board of the City of Burlington hereby adopts the following rules of procedure (hereinafter referred to as “Rules”) in accordance with 24 V.S.A. § 4464(d), 1 V.S.A. Chapter 5 Subchapter 2 (Common Law, General Rights, Public Information), and Section 2.5.1 of the Burlington Comprehensive Development Ordinance.

Legal Requirements

The DAB is required to adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct under Sec. 2.4.3 Rules of Procedure of the *Burlington Comprehensive Development Ordinance* and 24 VSA §4464 (d), and must conduct its proceedings in accordance with Vermont’s Open Meeting Law.

The Role of the Chair

Much like the moderator at town meeting, the job of the chairperson is to effectively manage participation by the participants. Most importantly, the chair’s role is to make an effort that those who have a right to participate realize that right, and to allow for those in attendance to be heard. However, it is important to remember that the chair is more than a neutral facilitator. The chair of a small advisory board, such as a local zoning board, has the right to vote, the right to make and second motions, and the right to question participants, just as any other member of the board.

Finally, while many boards elect the most senior member as chair, the most important attributes for a chairperson are the ability to facilitate a meeting or hearing and knowledge of the Design Review, planning and zoning process. These attributes may or may not be linked to the length of one’s tenure on the board. Moreover, a long-serving member may be more effective as a regular member where he or she can focus on analyzing the matter at hand instead of running the meeting.

Section II: Policy.

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 board member will gain a personal or financial advantage from his or her service on the DAB, so that the public trust in municipal government will be preserved. Anything not explicitly conveyed in these bylaws shall be governed by Robert’s Rules of Order.

Section III: Definitions.

- A. “DAB” means the Design Advisory Board.
- B. “Board member” means a regular or alternate member of the DAB.
- C. “Conflict of interest” means any one of the following:
 - 1. A direct personal interest of a board member, 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, an individual with a close personal relationship to a board member in the outcome of a cause, proceeding, application or any other matter pending before the DAB.
 - 2. A direct or indirect financial interest of a board member, 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, an individual with a close personal relationship to a board member in the outcome of a cause, proceeding, application or any other matter pending before the DAB.
 - 3. A situation where a board member has publicly displayed or expressed a prejudgment of the merits of a particular proceeding before the DAB. This shall not apply to a member’s particular political views or general opinion on a given issue.
 - 4. A situation where a board member has not disclosed ex parte communications with a party in a proceeding before the DAB, pursuant to Section XII of these Rules.
- D. “Ex parte communication” means direct or indirect communication between a member of the DAB and any party, party’s representative, party’s counsel or any person regarding any proposal before the panel that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- E. “Official act or action” means any administrative act performed by any board member relative to decisions.
- F. “Recuse” means to remove oneself from a particular DAB proceeding because of a real or perceived conflict of interest.

Section IV: Appointment, Attendance and Removal of members

Pursuant to Article 2, Part 5 of the Burlington Comprehensive Development Ordinance, the DAB shall consist of five regular and two alternate members appointed by City Council. Appointment to the DAB shall be for a term of three consecutive years. Members may be appointed to successive

terms without limitation. Any member desiring reappointment, or city resident desiring an appointment to the DAB, must apply to the City Clerk's office and obtain a nomination form from a member of the City Council.

At a meeting in July of each year, the DAB shall hold an organizational meeting and elect by majority vote, a Chair and Vice Chair from its members, and shall also elect a Clerk who may or may not be a DAB member or a municipal employee. One member shall be appointed to the Planning Commission Ordinance Committee. Vacancies in these offices may be filled for the unexpired terms only by the City Council.

- A. The Chair shall preside at all meetings and decide all points of order or procedure, The Chair may request the production of material germane to any issue under consideration.
- B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, recused or at the Chair's request. In the event that both the Chair and Vice Chair are absent or recused, the remaining longest serving member of the board shall assume the duties of Chair.
- C. It shall be the duty of all members to review the minutes and other official records of DAB meetings and actions, and correct and ratify these when appropriate and necessary.
- D. Planning & Zoning Department staff shall record decisions of all meetings.

Alternate members are appointed to temporarily serve as board members in the event of a recusal or absence of one or more regular members.

Whenever a regular member is recused or is expected to be absent from the DAB, the chairperson of the DAB, or his or her designee, may request that an alternate serve as an active member of the DAB by selecting an individual from the roster.

Members unable to attend a meeting shall notify the Planning Office staff no later than the morning of the scheduled meeting.

Absence of any member from more than three (3) consecutive or eight (8) total meetings over a period of one fiscal year will be cause for consideration for removal from the board. At the discretion of the chair and voted by a majority of the board, such affirmative vote for removal shall be advanced to the City Council immediately, requesting the appropriate measures be taken. Board members may be removed for cause by the City Council upon written charges and after public hearing. 24 V.S.A. § 4460(c).

Members will be advised by staff when two (2) consecutive or a total of four (4) absences have accumulated. This measure shall not be applicable to alternates, where their attendance is required only by absence or recusal of a regular member.

Section V: Committees

- A. **Standing Committees.** The Board shall appoint at least one (1) member to the Planning Commission Ordinance Committee.
- B. **Ad hoc Committees and Commission Liaisons:** From time to time ad hoc committees and board liaisons to other ad hoc committees may be established by the DAB for special assignments that do not fall within the general purview of standing committees.

Section VI: Regular and Special Meetings.

Regular meetings shall be held in the City Hall, or other publicly accessible location, as warranted based on the number of projects pending. Meeting length shall be at the discretion of the Chair in concurrence with the majority of members present, but should generally not exceed 2 hours. The Chair may cancel meetings at any time.

- A. Special meetings may be called by the Chair, provided at least 24 hours' notice is given to each member, and the time and place of each special meeting is publicly announced at least 24 hours before the meeting.
- B. A quorum shall consist of three participating members of the board.
- C. Board members may participate by telephone or other communication device as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the board member.
- D. All meetings shall be open to the public.
- E. All business shall be conducted in the same order as it appears on the agenda, except the Chair may alter the order of items to be considered as needed, such as to accommodate a late or missing project applicant.

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

- G. At each meeting, speakers may participate on an agenda item but only when recognized by the Chair. Such comment may be limited to three minutes per speaker, unless the Chair sets a different time limit.

Section VII: Proceedings and Order of Business.

All meetings shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a) (1), (2), as amended.

E. ¹ At an open meeting, the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson.

The Chair shall conduct the proceeding in substantially the following manner:

- A. Open the proceeding by reading the warning of the proceeding.
- B. Ask all who are interested in an agenda item to identify themselves at the time of proceeding on the item of interest.
- C. Accept written information presented to the DAB, including but not limited to staff recommendations.
- D. Invite the applicant or applicant's representative to present such application or proposal.
- E. Invite DAB members to ask questions of the applicant, applicant's representative, or of City staff.
- F. Invite the public to present information regarding the application or proposal.
- G. Invite the applicant, applicant's representative, city staff or members of the public to respond to information presented.
- H. Invite DAB members to ask any additional questions or provide comments.
- I. Allow final comments or questions from the applicant or applicant's representative.
- J. The Chair shall either adjourn the proceeding to a time certain, continue the proceeding without a time certain subject to additional public notice being provided as to the time and place of any future proceeding, or close the proceedings.
- K. If the DAB finds it needs more information to render its decision, then the DAB may table and re-open the proceeding at a later scheduled hearing date. Once a decision or recommendation has been rendered, the proceeding is closed and review continues administratively or referred to other advisory committees or the Development Review Board (as appropriate.)
- L. The proceeding for any application shall be deemed to start the first time it appears on the DAB's agenda. In no event shall a proceeding extend for a period of more than six (6) months. In case of extenuating circumstances, the DAB may grant up to two (2) extensions of up to three (3) months each. If an initial extension is granted and the application lies dormant (no revised plans, information submitted) for the three (3) month duration of the extension, the DAB shall not grant another extension. The administrative officer may act on an incomplete application.

Section VIII: Site Visits.

Board members are encouraged to visit each site individually, however, no testimony shall be taken and no ex parte communication shall occur. Site visits by a quorum (3 members) of the DAB shall be held pursuant to the following conditions:

- A. If, the Chair determines that a site visit by a quorum of the DAB will be necessary, the site visit shall be scheduled and the date, time and place shall be announced during the meeting.
- B. If necessary, the DAB may recess a hearing and conduct a site visit at a property which is the subject of an application before the DAB.
- C. If necessary, the DAB 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 DAB.
- D. 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 IX: Decisions.

The DRB may make decisions at the close of the proceedings. Members of the DAB who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in the vote.

The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The chair has the same voting rights as other members and can make motions.
- C. A second shall be required for a motion to have the floor.
- D. All members present are expected to vote unless they have recused themselves.
- E. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- F. For a motion to succeed, it must receive the concurrence of three participating members of the DAB, regardless of how many members are present. 1 V.S.A. § 172².

² Title 1 : General Provisions
Chapter 003 : Construction Of Statutes
Subchapter 003 : Rules Of Construction
(Cite as: 1 V.S.A. § 172)

§ 172. Joint authority

When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.

The quorum requirement as interpreted by the Vermont Supreme Court will apply regardless of whether members abstain, recuse themselves or if there are vacancies on the board. *In re Appeal of Reynolds*, 170 Vt 352 (2000). In other words, it's not a majority of those present, it's the majority of the seats at the table regardless of whether anyone is sitting in them or not, unless State law explicitly provides for otherwise.

Section X: Conflicts of Interest.

A. **Procedures.** Participation, disclosure of conflicts, and recusal shall be governed by the following procedures:

1. **Participation.** A board member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration.
2. **Disclosure.** Board members with a conflict of interest shall state so prior to commencement of the proceeding. (Refer to Section III of these bylaws for details on how to recognize a conflict of interest.)

When recognized by the Chair, any 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 state on the record 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 part of the minutes of the proceeding pertaining to the matter under consideration.

3. **Recusal.** A board member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
 - a. 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.
 - b. The DAB may, by majority vote, (exclude or recuse) one of its members if there is reasonable public perception that a conflict of interest exists.
 - c. A board member who has recused him or herself from a proceeding shall not sit with the DAB or participate in that proceeding as a board member in any capacity.
 - d. If a previously unknown conflict is discovered, the DAB may take evidence pertaining to the conflict, and if appropriate, adjourn to address the conflict.
 - e. The DAB 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 DAB. The DAB may then resume the proceeding with sufficient members present.

B. Ex Parte Communications. Ex parte communication is prohibited. Any DAB member who inadvertently conducts ex parte communication must disclose such communication as required below.

1. **Disclosure.** At each hearing, Board members 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 or state the substance of any and all oral communications received, all responses made and the identity of each person making the ex parte communication.

C. Progressive Consequences for Failure to Follow the Conflict of Interest Procedures. In cases where the conflict of interest procedures in Section X have not been followed, the DAB may take progressive action to discipline an offending board member. In the discipline of a member, the DAB shall follow these steps in order:

1. The Chair shall meet informally, in private, with the board member to discuss possible conflict of interest violation.
2. The DAB may meet to discuss the conduct of the board member. The board member may request that this meeting occur in public. If appropriate, the DAB may admonish the offending board member in private.
3. If the DAB decides that further action is warranted, the DAB may admonish the offending board member at an open meeting and reflect this action in the minutes of the meeting. The board member shall be given the opportunity to respond to the admonishment.
4. Upon majority vote, the DAB may request that the offending board member resign from the DAB. The Chair of the DAB shall then notify the City Council of this majority vote.

Section XI: Amendments.

These rules may be amended at any regular or special meeting by a two-third vote of the number of regular board members, provided that each DAB member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken. Only those amendments which are presented to the members prior to the meeting may be amended at that meeting.