



PLAN AND ZONING COMMISSION RULES OF PROCEDURE

Proposed Revision: June 25, 2014

RESOLUTION NO. PZC-14-046

A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, IOWA, ADOPTING PROCEDURES FOR THE CONDUCT OF HEARINGS ON LAND USE MATTERS AND OTHER BUSINESS

WHEREAS, the Code of Iowa, Section 21.7 and the City Code enables the Plan and Zoning Commission to develop procedural rules for the conduct of planning and zoning hearings so that all interested parties will have knowledge of the procedures to be followed; and

WHEREAS, the Plan and Zoning Commission serves as an advisory body to the City Council with respect to zoning and land use matters; and

WHEREAS, pursuant to the requirements of the Code of Iowa and the City of West Des Moines Municipal Code, the Plan and Zoning Commission desires to specify procedural rules to govern the conduct of hearings on all land use matters, including but not limited to, Comprehensive Plan amendments, zone changes and zoning text amendments, site plans, plat maps, subdivisions, street and park improvements, certain public buildings and structures, other permit applications or other items that are lawfully referred to it by the City Council; and

WHEREAS, on October 23, 2002, the Plan and Zoning Commission did adopt Resolution 02-52 which established Rules of Procedure for the conduct of the Plan and Zoning Commission and its hearings; and

WHEREAS, certain procedures of the Plan and Zoning Commission have changed over time.

BE IT RESOLVED that the Plan and Zoning Commission does hereby repeal Resolution 02-52 and the following procedural rules are adopted in lieu thereof and shall, insofar as consistent with applicable state laws and City ordinances, govern the conduct of all business, including but not limited to land use hearings before the Plan and Zoning Commission of the City of West Des Moines:

1. MEETINGS, STUDY SESSIONS, AGENDAS AND STAFF REPORTS

1.1 Regular Meetings

Regular meetings of the Plan and Zoning Commission shall be held every other ~~Wednesday~~ ^{Monday} or as established by the Plan and Zoning Commission during the adoption of its annual meeting schedule. If the regular meeting date falls on a City holiday the meeting will be rescheduled. All regular meetings of the Plan and Zoning Commission will be called to order at 5:30 P.M. unless advertised otherwise, cancelled or rescheduled. The recording secretary or designee will post notice of any continued hearing or other unfinished business, as may be required by law.

1.2 Public Hearings

Public hearing meetings of the Plan and Zoning Commission shall generally be held on the Wednesday of the week when a regular meeting is scheduled or as established by the Commission. The public hearing meeting will be in lieu of a regular meeting. If the public hearing meeting date falls on a City holiday the meeting will be rescheduled. All public hearing meetings of the Commission will be called to order at 5:35 P.M. unless otherwise advertised, cancelled or rescheduled. The recording secretary designee will post notice of any continued hearings or other unfinished business as may be required by law.

1.3 Special Meetings

An emergency or special meeting may be called at any time by the Chairperson of the Plan and Zoning Commission, or by a majority of its membership. Written notice shall be delivered personally or by mail at least twenty-four (24) hours before the time of a special or emergency

meeting to each member, and to the news media, which has previously submitted a written request for notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at the meeting. Written notice may be dispensed with as to any member who, at or before the time of the meeting, files an oral or written waiver of notice with the Director of Development Services. The waiver may also be given by telegram. Written notice will also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

1.4 Study Sessions

The Plan and Zoning Commission may hold a study session as part of a regular, adjourned public hearing or special meeting. When a matter is set for a study session public testimony may be prohibited or limited at the discretion of the Chairperson. Public notice for study sessions on specific matters for which public hearings are anticipated in the future will be given in the same manner as that required for public hearings, and a record of the study session shall be made part of the minutes of any such future public hearing so that the hearing record will indicate whether any information received at the study session was considered as evidence at the subsequent public hearing.

1.5 Adjourned Meetings

The Plan and Zoning Commission may adjourn any regular meeting, public hearing or special or adjourned meeting to a time and place specified in the order of adjournment pursuant to the procedures set forth in the Code of Iowa.

1.6 Open and Closed Sessions

Except as otherwise provided in this Resolution, all meetings of the Plan and Zoning Commission shall be open and public, and all persons shall be permitted to attend. The Commission may hold a closed session during a regular, public hearing, study session or special meeting, or at any time otherwise authorized by law, to consider or hear any matter which it is authorized by state law to hear or consider in closed session.

1.7 Notice of Meetings

Public notice shall be given for all meetings of the Plan and Zoning Commission. Said notice shall give the time, date and place of each meeting and its tentative agenda.

1.8 Agendas

At least twenty-four (24) hours before a meeting, copies of the Plan and Zoning Commission's tentative agenda shall be posted and made available at the office of the Director of Development Services. In accordance with the Code of Iowa, the Commission may not take action on any item that did not appear on the posted tentative agenda unless an exception is provided under Iowa law. The Chairperson may rearrange the order of presentation of items appearing on the agenda as he or she may deem necessary or desirable for the conduct of the meeting. No person shall be entitled to rely upon the order in which hearing items appear on the posted agenda, and any hearing on any agenda may commence immediately upon the time the meeting is called to order.

1.9 Staff Reports

When staff reports exist, they shall be made public before or at the beginning of any hearing or meeting following the transmittal to Commission members. Staff reports shall be prepared with recommendations and the basis for recommendations, and included in the hearing record on any application.

2.0 Ex Parte Communications

It is the policy of the Plan and Zoning Commission that any and all written or verbal communication from a property owner, resident, property developer, contractor or consultant regarding an actual or possible future development application, zoning code amendment, comprehensive plan amendment or rezoning be directed to the Development Services Department staff, who will then provide copies of the communication, whether written or transcriptions of any verbal communication, to all Commissioners and make it a part of the official record of the Commission.

2. PRESENTATION OF AGENDA ITEMS

2.1 Minutes and Recording

Hearings on land use matters will generally be recorded by electronic device and preserved so long as is necessary to allow the recording secretary or designee to prepare minutes of the hearing and to have them approved. When a matter is contested and a request is made in writing to the Director of Development Services before the date of the hearing, the contested matter will be recorded by electronic device and duly preserved.

2.2 Order of Presentation

Unless the Chairperson in their discretion shall direct otherwise, the order for presentation shall be as follows:

- (a) Meeting/hearing opened;
- (b) Presentation of the applicant or appellant;
- (c) Questions of the applicant or appellant by members of the Plan and Zoning Commission;
- (d) Presentation of staff report, including any analysis or recommendation (public hearings only);
- (e) Questions of staff by members of the Plan and Zoning Commission;
- (f) Presentations of persons in favor of or in opposition to the requested action;
- (g) Rebuttal comments by the applicant or appellant;
- (h) Closing comments by staff;
- (i) Public discussion/hearing closed.

Public discussion/hearing may be reopened at any time during the meeting at the discretion of the Chairperson to permit additional testimony and evidence, either to permit reconsideration of an action or for any other reason.

2.3 Rules of Evidence

Hearings and meetings before the Plan and Zoning Commission need not be conducted according to formal rules of evidence. Any relevant testimony may be considered if it is the sort of testimony upon which responsible persons are accustomed to rely in the conduct of serious affairs. The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings while ensuring basic fairness and

full consideration of the issues involved. Evidentiary objections shall be deemed waived unless made in a timely fashion before the Plan and Zoning Commission.

2.4 Burden of Proof

The burden of proof of any legal prerequisite to the granting of the relief or action sought shall be upon the party requesting such relief or action.

2.5 Oral Evidence, Time Limits, and Number of Speakers

Any person desiring to speak must first be recognized by the Chairperson. All comments must be made clearly and audibly, and all speakers must first state their full name and address and the names of any persons on whose behalf they are appearing. In order to expedite the conduct of hearings, the Chairperson may reasonably limit the amount of time which a person may use in addressing the Commission. The Chairperson may also limit the number of speakers or amount of testimony upon a particular issue in order to avoid repetitious and cumulative comments. Except when necessary for immediate clarification of a particular point, no person shall be allowed to speak a second time until all others wishing to speak have had an opportunity to do so, and then only at the discretion of the Chairperson.

2.6 Questioning of Speakers

Any person other than a Commission member desiring to direct a question to a speaker or staff member shall submit the question to the Chairperson, who shall determine whether the question is relevant to the subject of the hearing and whether or not it should be answered by the speaker or staff member. Direct questioning of speakers or staff members may be allowed in extraordinary circumstances at the discretion of the Chairperson.

3. MOTIONS

3.1 Motions - Second

Action upon an order, resolution, ordinance or any other action of the Plan and Zoning Commission may be proposed by any member by motion. The Chairperson may make a motion only after all other members of the Commission present have had an opportunity to make a motion on the question. Before a motion can be considered or debated it must be seconded, at which time it shall be on the floor and must be considered. If not seconded, the motion is lost for lack of a second and shall be so declared by the Chairperson.

3.2 Amendment of Motion or Substitute Motion

A motion on the floor may be amended at any time before adoption or rejection. When an amendment is offered, the Commission will debate and take action on the amendment before acting on the original motion. If the amendment is not adopted, the original motion will then be considered. If the amendment is adopted, the original motion as amended will then be considered.

3.3 Withdrawal of Motion or Second

A motion may be withdrawn by the maker at any time before adoption or rejection. A second to a motion may be withdrawn by the seconding member at any time before adoption or rejection of the motion. The motion will then be lost for lack of a second and so declared by the Chairperson unless seconded by another person.

3.4 Tabling a Motion

At any time after a motion has been seconded, any member may move to table a motion. The motion shall contain the date and time at which the tabled motion would be reconsidered by the Commission. If the tabling motion is adopted, the original motion will remain on the floor but may not again be considered at the meeting at which it was made. The original motion will be considered and voted upon at a meeting of the Commission, specified in the motion, unless again tabled at that time. If not considered at such meeting, it will be deemed lost. If the tabling motion is not adopted, consideration of the original motion will continue.

3.5 Discussion, Closure and Question

After a motion has been seconded, any member may discuss or comment on the subject of the motion. The Chairperson will recognize members of the Plan and Zoning Commission with the desire to speak, beginning with the motion's maker, and will protect each speaker from disturbance or interference. When no member wishes to discuss or comment further, the Chairperson will call for a vote on the motion. Any member of the Commission may at any time move to close the debate and "call for the question". Upon a second for the motion to call for the question, the motion to close the debate shall be voted upon. If the vote is affirmative (2/3) the question shall next be voted upon. If the vote is against (less than 2/3), the debate shall continue.

3.6 Motions for Reconsideration

Motions for reconsideration of a matter may be made by any member who voted with the prevailing majority on the matter to be reconsidered. Any member of the Plan and Zoning Commission may second a motion to reconsider. Motions to reconsider shall be made at the same meeting as the original motion. If the matter to be reconsidered was considered at a public hearing, the public hearing will be reopened before additional evidence is received.

4. DECISION-MAKING

4.1 Voting

Approval of any motion brought before the Plan and Zoning Commission shall require the affirmative vote of a majority of the members present, unless otherwise specified by law.

4.1.1 Quorum

A quorum to open a meeting shall be considered a majority of the Plan and Zoning Commission (four (4) members). In circumstances where a quorum to open a meeting has been established, but for reasons which arise such as a conflict of interest on the part of member(s) present, a majority of those members still eligible to vote on the matter shall be required to pass a motion.

4.1.2 Abstentions Due to Conflicts of Interest

If it is determined by any member of the Plan and Zoning Commission that he or she has a conflict of interest on an agenda item, said member shall so declare the nature of their conflict prior to commencement of discussion of the agenda item. Upon declaration of their conflict of interest they shall excuse themselves from the dais. They shall have the right to address the Commission from the floor. Abstentions due to conflicts of interest shall not count as votes for the purpose of determining whether there has been an affirmative vote of a majority of the members present, but shall be counted for the purpose of determining whether a quorum is present. The vote of member(s) who abstain due to conflict of interest shall be registered as an abstention.

4.1.3 Roll Call

Voting upon a motion may, at the discretion of the Chairperson, and shall, upon the request of any member, be by roll call. When voting is not by roll call the Chairperson may, in the absence of objection by any member of the Plan and Zoning Commission, declare an item to be unanimously approved.

4.1.4 Motions Include Staff Recommendations

A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adoption of all proposed findings and execution of all actions recommended in both the written staff report on file on the matter and any oral staff report presented during the hearing.

4.1.5 Absentees

A Plan and Zoning Commission member who is absent from any portion of a hearing conducted by the Commission may vote on the matter at the time the matter is acted upon provided that they have listened to an audio recording or read a transcript of the entire portion of the hearing from which they were absent, provided that an audio recording or transcript exists, and if they have examined all of the exhibits presented during the portion of the hearing from which they were absent. The member must state for the record and before voting that the member deems themselves to be as familiar with the record and with the evidence presented at the hearing as they would have been had they personally attended the entire hearing.

4.1.6 Tie Votes

Any tie vote shall constitute a denial of the motion and may be reconsidered by a motion offered by any member who voted on the matter. If there is no action by an affirmative vote, the result is denial. If the matter involves an appeal and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-maker from which the appeal was taken.

4.1.7 Passing on a Vote/Abstentions Not Due to a Conflict of Interest

Any member of the Plan and Zoning Commission who has not declared a conflict of interest but casts a "pass" vote or abstains from voting shall have that vote registered as a no vote.

4.2 Findings

On any matter for which State law or City ordinance requires the preparation of written findings, the staff report submitted on the matter will contain findings proposed for adoption by the Plan and Zoning Commission. Any motion directly or impliedly rejecting the proposed findings must include a statement of alternative or modified findings or a direction that the matter under consideration be continued for a reasonable period of time in order for staff to prepare a new set of proposed findings consistent with the evidence which has been presented and the decision which is anticipated.

4.3 Consent Items

Items that require little or no discussion by the Plan and Zoning Commission may be considered as consent items. The Planning Commission will act on these items in one motion at the beginning of the meeting. Approval by the Commission of consent items means that the staff recommendation was approved along with the findings and conditions set forth in the staff report.

Any member of the Commission, the applicant, or members of the public may request that consent items be considered in their regular order on the agenda.

4.4 Continuances

Upon a showing of good cause and by request of the applicant, City staff, a member of the public, or a member of the Plan and Zoning Commission, the Chairperson, at the time set for a hearing on a particular item may order the hearing to be continued to a specified date and time. If it is not possible or practical to establish a specific date for the continued hearing, the meeting date and time shall be republished and renoticed in accordance with the City Code. Upon the request of any member of the Commission, motions for a continuance shall be made by roll call vote of all members present.

5. CONSTRUCTION AND EFFECT

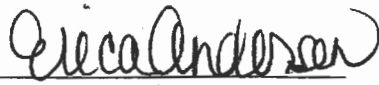
5.1 Construction

These procedural rules shall be construed and applied so as to ensure a full and fair hearing of relevant evidence which is offered on a land use matter and to facilitate an orderly analysis of evidence and issues by the Plan and Zoning Commission. Adoption and implementation of these rules is intended to be consistent with the provisions of the Code of Iowa.

5.2 Chairperson's Rules of Order

When there is no provision of these rules of procedure applicable to the conduct of the meeting or hearing of the Plan and Zoning Commission, the Chairperson shall devise appropriate rules and make final decisions on any points of order which may arise. The Chairperson's final decisions on points of order shall not be appealable.

PASSED AND ADOPTED on June ²⁵ 11, 2014


Erica Andersen, Chair
Plan and Zoning Commission

ATTEST:


Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on June 11, 2014, by the following vote:

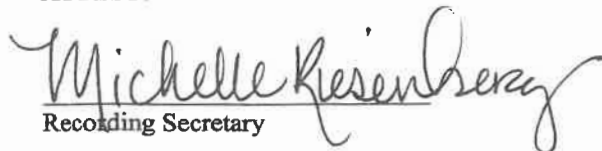
AYES: Costa, Brown, Cownie, Andersen, Erickson

NAYS:

ABSTENTIONS:

ABSENT: Crowley, Hatfield

ATTEST:


Recording Secretary