

Adopted July 10, 2009

## RULES OF PROCEDURE FOR THE ASHEVILLE DOWNTOWN COMMISSION

### ART. I. NAME AND ENABLING AUTHORITY

- A. The name of this commission shall be the Asheville Downtown Commission (herein "Commission").
- B. The Asheville Downtown Commission was established by City of Asheville Ordinance No. 1567, adopted February 9, 1986, which Ordinance, as amended, is codified beginning at Sec. 2-76 of the Asheville City Code. The statutory authority is N.C.G.S. 160A-146.

ART. II PURPOSE. The purpose of the Asheville Downtown Commission is to carry out the duties and responsibilities prescribed by the Asheville City Council by ordinance as set out in City Code Sec. 2-77, and includes: developing and recommending plans and policies for downtown, conducting design review of development projects in downtown, and cooperating with other organizations and members of the downtown community.

### ART. III. MEMBERSHIP AND APPOINTMENT

- A. The Downtown Commission shall consist of eleven members, as provided in City Code Sec. 2-76.
- B. Eligibility for appointment, manner of appointment and removal, and term of appointment, are as provided in City Code Sec. 2-76.

### ART. IV. OFFICERS AND DUTIES

- A. Chair. A chair and vice chair shall be selected annually by the Commission from among its members.
  - 1. The chair shall preside over meetings of the Commission, shall call the meetings to order, shall declare a quorum, shall carry out the agenda for meetings, and shall state and put to a vote all motions properly before the Commission, and shall perform and carry out other duties as necessary and pertinent to the office.
  - 2. Subject to these rules and applicable law, the chair shall rule on all points of order.
  - 3. The chair may declare a recess, and may adjourn meetings (unless a member objects in which case the question of adjournment shall be put to a vote of the Commission).

4. The chair may sign any resolutions or other documents adopted or approved by the Commission.
- B. Vice Chair. The vice chair shall serve as the chair in the absence of the chair, during which time he or she shall have the same powers and duties as the chair.
- C. Temporary Chair. Whenever the chair and vice chair are absent or otherwise unable to serve, the Commission may elect a temporary chair from among its members to serve until the chair or vice chair are able to resume their duties.
- D. Secretary. The City Manager shall designate an employee of the City to serve as Secretary to the Commission, and shall otherwise provide staff support for the Commission. The secretary shall prepare agendas for and coordinate all meetings of the Commission, shall keep the minutes of the meetings, and shall perform such other ministerial duties as may be required by the Commission, City Manager or supervising City department head. Subject to the direction of the City Clerk, the secretary shall keep and maintain the records for the Commission.

#### ART. V. MEETINGS

- A. Regular Meetings. The Commission shall establish its regular meeting schedule annually by resolution adopted at the first meeting of every calendar year. In the absence of such a resolution, the regular meetings of the Commission shall be held on the second Friday of every month beginning at 8:30 a.m. in the north conference room of the Asheville City Building, 70 Court Plaza, Asheville, N.C.
- B. Special / Emergency Meetings. Subject to the provisions of Article 33C of N.C.G.S. Chapter 143 (the Open Meetings Law), special or emergency meetings may be called at any time by the chair or vice chair, or by any two Commission members. Written notice of special meetings (which may be provided by electronic means) shall be delivered to the other members of the Commission at least 48 hours prior to the time set for the special meeting. Delivery shall be deemed complete upon leaving the notice at an address provided by the member. Compliance with this notice provision may be waived by the person to whom notice is due.
- C. Quorum. A quorum shall consist of a majority of the membership of the Commission, excluding vacant seats. Recusal of members from participation with respect to certain items due to a conflict of interest or (in the case of City Council members) other official duties, shall not destroy a

quorum; provided, that in no case shall action be taken (other than continuation or adjournment of the meeting) by less than five members.

- D. Conflicts of Interest. Recognizing that members of the Downtown Commission are appointed to said commission because of their interest in downtown, members of the Commission shall in all cases be governed by N.C.G.S. 160A-381(d) as to non-*quasi*-judicial matters. In those matters in which the Downtown Commission is performing the functions of a board of adjustment, members shall be governed by N.C.G.S. 160A-388(e1).

In cases where an application is before the Commission and a Commission member has an interest in the matter within the meaning of N.C.G.S. 160A-381(d), the member shall be excused from the Commission for that item, shall remove him or herself from the Commission dais or table, and may not participate as a Commission member in the deliberation or vote on that item. The excused member may participate in the presentation of the item in his or her capacity as applicant or applicant's representative, or as a member of the public.

Members of City Council who are also members of the Commission shall not participate in the Commission's consideration of any matter that will be considered by the City Council pursuant to a quasi-judicial process.

- E. Agenda. The agenda for regular meetings of the Commission shall be as follows:

Call to order  
Call of roll  
Old business  
New business  
Other business  
Informal discussion and public comment  
Adjournment.

The order of the agenda may be changed at any time by the Commission by general consent.

- F. Hearings.

1. General. The Commission shall conduct hearings on such matters as the City Code provides, or as the Council may direct. The Commission may, on its own motion, schedule and conduct hearings on matters of interest or concern to it.
2. Notice. The Commission shall cause notice of its hearings to be provided in the manner required by the City Code and State law.

For hearings required by City Code or State law, the Secretary shall provide a written certification that notice has been provided as required.

3. Types of hearings.

a. Informal. Consistent with its duty to review and make recommendations on the design of projects in the downtown area, the Commission may meet with applicants to review applications as often as needed or desired in order to provide advice and guidance in the design phase of a project such as preliminary design review. Informal meetings are intended to be a dialog between the applicant and the members of the Commission; public comment will be allowed at informal meetings only at the direction of the Commission.

b. Formal. Formal meetings are those at which final action by the Commission with respect to a particular project is contemplated. In general, formal hearings will follow the following format:

- (1) introduction by staff
- (2) presentation by applicant
- (3) questions by Commission
- (4) public comment
- (5) Commission discussion / action on application

The Commission may take no final action on an application without having complied with applicable requirements as to notice and hearing.

c. Other hearings. The Commission may schedule and conduct hearings or presentations on other matters, and may prescribe the format for such hearings and presentations.

d. Quasi-judicial hearings. In those cases where the Commission is designated to perform the functions of a board of adjustment, it shall follow the rules for such case adopted by the City of Asheville Planning Commission, attached hereto as Appendix A (as modified).

4. Actions by the Commission.

- a. Actions on Applications. For those applications with respect to which action by the Commission is required by ordinance, the Commission may (1) approve an application, (2) approve an application with conditions, or (3) deny an application. If the Commission denies the application, the reasons shall be stated in writing (which may take the form of approved minutes from the meeting where the action occurred). Written decisions (where required) shall be issued within 35 days of the action.
- b. Continuation of items; time limits. The Commission may continue its consideration of an application in order to (1) allow for submission of more complete or additional information by the applicant or staff; (2) in order to provide additional time for completion of a public hearing; (3) for other reasons not constituting an unreasonable delay.

In no case may the Commission's formal action on an application be delayed more than 120 days after the first date on which formal action was scheduled, without the consent of City Council. This period shall not include delays caused or consented to by the applicant.

If the Commission fails to act on an application within the time periods (or extensions thereof) prescribed in this subsection, the Commission's consideration of such application (where such consideration is required) shall be deemed complete, and the action shall proceed as if it had received a favorable recommendation, but with a report of "no recommendation."

- c. Voting. A majority vote of a quorum of the Commission (as defined above) shall be required in order to approve any application or take any other action; provided, that a meeting may be continued or adjourned, or the consideration of an agenda item continued, by a majority of members present.

A tie vote shall cause the motion in question to fail. If a motion is stated in the negative (i.e., "I move to deny approval to XYZ project"), a tie vote shall be considered the same as if the motion had been stated in the affirmative.

## ART. VI. COMMITTEES

### A. Standing Committees

1. Design Review Committee. This committee shall consist of four members; its functions include meeting with applicants on particular projects to provide informal review and make suggestions as to design, and as to consistency with the Downtown Development Guidelines and City Code. Membership on this committee may vary according to the nature of the project and the area of expertise of the members.
  2. Rules Committee. The rules committee shall consist of not more than three members of the Commission, appointed by the chair, and shall meet as necessary to review the operation of these rules, and recommend changes, when appropriate.
- B. Ad Hoc Committees. The chair may appoint ad hoc committees of the Commission, and shall charge said committees with the performance of certain functions or duties.

ART. VII. PARLIAMENTARY AUTHORITY. Unless provided otherwise by these rules, City ordinance or State law, the parliamentary authority for the Commission shall be *Robert's Rules of Order (Newly Revised)*.

ART. VIII. AMENDMENT. These rules may be amended at any time by a majority vote of the entire Commission, including vacant seats.

RULES OF PROCEDURE FOR THE ASHEVILLE DOWNTOWN COMMISSION  
APPENDIX A

Performing functions of the Board of Adjustment.

- A. In situations where the Commission is designated by the City Council to perform the functions of a board of adjustment pursuant to N.C.G.S. 160A-388(a), the following rules will apply:
1. The board will consist of five members and two alternates. The members and alternates shall be designated by the chair.
  2. In conducting hearings as a board of adjustment, the Commission shall be governed by and shall have the powers and responsibilities of boards of adjustment under N.C.G.S. 160A-388, and shall follow procedures appropriate to quasi-judicial proceedings, including:
    - a. Testimony shall be taken under oath or affirmation, which the chair may administer;
    - b. Parties may present evidence, inspect documents, and make arguments;
    - c. Parties may examine and cross-examine witnesses;
    - d. Findings and decisions shall be based on material, competent, and substantial evidence of record;
    - e. Decisions shall be in writing, signed by the chair, and filed with the Commission secretary.
  3. In cases where the Commission considers a variance request in connection with an application for a project or proposal that is under consideration by the Commission for a review or recommendation to the City Council, the Commission shall first vote on its recommendation as to the project or proposal, and shall then vote on the variance request.
  4. The concurring vote of four-fifths of the members of the board shall be required in order to grant any variance, or take any other action that it is authorized to perform as a board of adjustment, except that as to matters of a procedural nature, a simple majority shall be sufficient.
  5. Appeals from decisions of the Commission while performing the functions of a board of adjustment may be taken by filing a petition for writ of certiorari in Buncombe County Superior Court within 30 days after the decision is filed.

6. In case of a conflict between these rules and applicable statutes, including N.C.G.S. 160A-388, the statute shall control.