



**TOWNSHIP OF MONTCLAIR, NEW JERSEY
HISTORIC PRESERVATION COMMISSION**

OFFICIAL RULES OF PROCEDURE / BYLAWS

Adopted May 30, 2019

Preamble: It is the purpose of these Bylaws to establish the rules of procedure, requirements and formalities that guide the work undertaken by the Historic Preservation Commission of the Township of Montclair (the "Commission"). These Bylaws are supplementary to the provisions of the Municipal Land Use Law (MLUL) Article 14A Historic Preservation Commission, N.J.S.A. 40.55D-107, and Article XXIII of the Township of Montclair Historic Preservation Ordinance, §347-132, which state the Historic Preservation Commission shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of Township of Montclair Zoning Ordinance §347-126 et. seq.

The Montclair Historic Preservation Commission shall have all the powers and duties as outlined in §347-134 of the Township of Montclair Historic Preservation Ordinance. The following Rules of the Historic Preservation Commission of the Township of Montclair ("Rules") are intended to supplement – but not supplant or otherwise contradict – State law and the Ordinances. Wherever a conflict occurs between the Rules and State law/Township of Montclair Ordinance, the latter shall control.

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PART I: RULES GOVERNING HPC INTERNAL AFFAIRS

Rule 1:1. Officers, Employees, Annual Meeting

1:1-1. Annual Meeting; Election of Officers. At the Commission's first meeting following January 1st of each year, the Commission shall elect from its members a Chairperson and Vice-Chairperson. The Chairperson and Vice-Chairperson shall be elected from the members of Class A, B, or C but shall not be an alternate member. These officers shall serve for the calendar year and until their successors have been duly elected.

1:1-2. Appointment of Recording Secretary. At the Commission's first meeting following January 1st of each year or at any other time deemed by the Commission to be appropriate, the Commission shall select and appoint a Recording Secretary. The Recording Secretary may be a municipal employee, but may not be a member of the Commission or alternate member of the Commission. The Recording Secretary shall serve for the calendar year and until a successor has been appointed.

1:1-3. Appointment of Commission Attorney. At the Commission's first meeting following January 1st of each year or at any other time deemed by the Commission to be appropriate, the Commission shall select and appoint a member of the New Jersey bar, who is familiar with zoning and planning matters, as Attorney for the Commission and shall fix compensation for the Attorney (within the amount prescribed by the Governing Body). The Commission Attorney shall serve for the calendar year and until a successor has been appointed.

1:1-4. Appointment of Other Experts and Staff. At the Commission's first meeting following January 1st of each year or at any other time deemed by the Commission to be appropriate, the Commission may appoint and fix compensation (within the amount prescribed by the Governing Body) for experts, other staff and services.

1:1-5. [Reserved]

Rule 1:2. Duties

1:2-1. Chairperson. The Chairperson shall preside at all meetings and hearings of the Commission, decide all points of order and matters of procedure governing meetings or hearings, and perform all the duties normally appertaining to the office as required by the Ordinance, these Rules or by the Commission. The Chairperson shall be an *ex officio* member of all committees and subcommittees of the Commission. A vote by a majority of the Members present may overturn the decision of the Chairperson. Where required by statute, ordinance or rule to do so, the Chair along with the Secretary shall sign all documents.

1:2-2. Vice-Chairperson. The Vice-Chairperson shall preside at all Commission meetings and hearings in the absence, disability, or disqualification of the Chairperson and shall have all of the powers of the Chairperson under such circumstances.

1:2-3. Recording Secretary. The Recording Secretary, under the direction of the Chairperson, shall be the Commission's designee for the declaration of the completeness of an application for a Certificate of Appropriateness and generally perform the administrative work of the Board, including, but not limited to the following:

- (a) Conduct all official correspondence; compile and maintain the Commission's records; and give all notice of meetings required to be given by the Open Public Meetings Act, the MLUL or any other applicable law or ordinance.
- (b) Attend all meetings of the Commission, and take roll call votes and note on the official record the yea, nay or abstention of each member as they vote.
- (c) Record the proceedings of each meeting of the Commission in accordance with the MLUL and these Rules and prepare minutes of the proceedings of each meeting and hearing held by the Commission and provide same to the Commission for review and approval.
- (d) Provide each member of the Commission, to his/her residence or electronic address, and to the Commission Attorney, with copies of all submissions made by applicants at least one-week prior to the hearing date and a true copy of the minutes of meetings at least one week prior to adoption.
- (e) Undertake any additional duties necessary to perform the functions of Commission Recording Secretary.

1:2-4. Commission Attorney. The Commission Attorney, or the Commission Attorney's designee, shall be the legal counsel of the Historic Preservation Commission. The Commission Attorney shall provide for the oath to be administered to all witnesses in cases before the Commission, shall provide legal advise on all matters before the HPC in accordance with N.J.S.A. §40-55D-107 Municipal Land Use Law (MLUL), and shall provide for the issuance of subpoenas to compel the attendance of witnesses and the production of relevant evidence.

1:2-5. [Reserved]

Rule 1:3. Meetings

1:3-1. Regular Meetings. All meetings shall be open to the public, except as otherwise provided in the Open Public Meetings Act, P.L. 1975, Section 10:4-6 et. seq. Regular meetings and work sessions of the Commission are to be held in the Council Chambers of the Municipal Building on the fourth Thursday of each month at 7:30 p.m., unless otherwise designated in the annual schedule. The first regular meeting after January 1st of each year will constitute the annual reorganization meeting of the Commission. At the reorganization meeting, the Commission shall consider and vote upon a meeting schedule for the year which

- (a) shall be published in accordance with the Open Public Meetings Act as soon thereafter as is practicable and
- (b) shall state that formal action may be taken at any or all such meetings. The time and place of any or all meetings may be changed, if necessary, subject to the Open Public Meetings Act requirements, by direction of the Chairperson or by vote of the Commission.
- (c) Notice of meetings that cannot be held due to lack of a quorum may be convened for the limited purpose of being rescheduled by the members present. The new date, time and place shall be publicly announced by the Presiding Commissioner, which shall constitute adequate notice pursuant to the MLUL. Notice that a scheduled meeting was not held due to exigent circumstances shall be published by the Commission Secretary (or designee) in a conspicuous place stating the reason for the cancellation, the fact that all pending matters will be heard at the Commission's next scheduled meeting, and providing the next meeting's date, time and place.
- (d) The Commission generally will not hear a new application nor conduct new business or begin any new witness's testimony after 10:30 p.m.
- (e) Unless otherwise provided in these Rules and Bylaws, motions and related parliamentary procedures in Commission meetings shall be governed by "Robert's Rules of Order Newly Revised, 11th Edition."
- (f) The Commission shall conclude all meetings 11:30pm, unless the Commission resolves to extend the meeting an additional 30 minutes by a majority vote of the present members.

1:3-2. Special Meetings. Special meetings, as permitted by law, may be called by the Chairperson at any time, or upon the written request of a member, whose request is joined by at least three other members, provided that notice of the special meeting shall be subject to the Open Public Meetings Act requirements and be given to the public as required by the MLUL and the Ordinances.

1:3-3. Quorum. At all meetings of the Commission, a quorum for the conduct of any business shall consist of four (4) members. In the absence of a quorum, the members present shall adjourn the meeting, the hearing on any application, motion or all other Board business requiring a quorum, to the next date in the Commission's schedule.

1:3-4. Voting. All official action undertaken by the Commission must be approved by a vote of the members. A call to vote on an official action shall be made either by the Chair, or by motion by any member upon a second. When voting on matters (except in the case of a motion for adjournment when a quorum is not present), the following number of votes is required, so long as a quorum is present:

- (a) A motion to approve an application for a Certificate of Appropriateness requires the affirmative votes of at least four (4) members for approval; otherwise, the application is denied.
- (b) amendments to the Bylaws shall require an affirmative vote of the majority of the total membership of the Commission, at large

- (c) In all other matters, actions may be authorized by a majority of the members voting on the action.
- (d) where the terms of a report of the Commission has been duly authorized by the vote of the Commission members, the final memorialization of the report may be approved by a majority vote of the members who voted to approve that report, or upon transmission of the final draft to all of the members, written approval of the form of written memorialization by all of the members who voted to approve that report.

Abstentions shall not be counted as a vote.

1:3-5. Absent Members. When any hearing on an application to approve a Certificate of Appropriateness or any matter not advisory in nature shall carry over more than one meeting, a member of the Commission who was absent for one or more of the meetings or who was not a Commission member when the hearing began shall be eligible to vote on the matter provided that the Commission member certifies, in writing, to the Commission, that he/she has read the transcript or listened to a recording of the portion of the meeting pertaining to the application for which he/she was absent. This Rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Commission is present.

1:3-6. Absent Members; Unexcused. A Commission member who has missed four regularly scheduled meetings in the preceding twelve (12) months, in the absence of a reasonable excuse for the last such absence, shall be notified that the Commission may consider and recommend termination of the member from the Commission at its next regularly scheduled meeting.

The determination of the acceptance of any excuse for absence shall be made by the Chairperson. If a recommendation of termination from the Commission is warranted, the Chairperson shall direct the Commission Attorney to submit a complaint to the Governing Body which shall then determine the matter.

With the exception of an exigent circumstance that prevents it, a member has the affirmative obligation to notify the Chairperson and Recording Secretary by email of an anticipated absence at the earliest practicable time. The determination of the reasonableness for any excuse for absence shall be made by sole discretion of the Chairperson.

1:3-7. Rules Violations. Where the Commission determines that a violation(s) of these Rules is of sufficient magnitude, it may admonish a member, suspend a member from Commission functions/duties, and/or recommend termination from the Commission employing the procedure discussed in 1:3-7(b)

- (a) The Chair shall regulate the conduct of the meeting, and shall have the authority to take whatever actions needed to maintain and preserve order, including the expulsion of any disorderly or disruptive person.
- (b) Discipline or Termination of Membership: Upon the initiative of the Chair, or upon written complaint to the Chair by a Commission member or a member of the

public, the Chair shall refer the matter to the Commission Attorney who will notify the offending member of the complaint. The offending member will have an opportunity to respond to the complaint in writing to the Chair. Upon advice from the Commission Attorney, the Chair will determine whether the complaint warrants review by the Commission at large. Review by Commission at Large: upon determination by the Chair, the matter of the complaint shall be brought before the Commission at large, upon notice to the offending member and the complainant. The complainant and the offending member shall be afforded the opportunity to give testimony prior to a vote by the Commission. The Commissioners, by affirmative vote of two thirds majority of all of the Commission members in attendance, may recommend to the Council suspension or removal of a member. (Adopted by MHPC 1999)

1:3-8. Potential Conflicts. Members are subject to the ethics provisions of the New Jersey Local Government Ethics Law, the Municipal Land Use Law and the Township Zoning Ordinance. No member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest per Ordinance §347-132.

A member has the affirmative duty and obligation to notify the Chairperson and the Commission Attorney of the potential for a conflict before the application or a potentially conflicting matter is heard by the Commission. Conflict of interest determinations will be made in accordance with the MLUL, the common law, the Local Government Ethics Law (N.J.S.A. 40A:9-22.1, *et seq.*), the Montclair Ethics Ordinance. Whenever reasonably possible, the reason for a disqualification shall be stated.

Upon motion, with second, the Commission may undertake an inquiry into a potential conflict of interest of a member by testimony and examination of that member. At the Chair's discretion, the inquiry will conclude and the matter called to a vote. Upon a majority vote of the members present, a member may be disqualified from participation in a particular application or matter.

1.3-9. Order of Business. The order of business of all regular meetings of the Board will be as follows:

- (a) Call to order
- (b) Statement of compliance with Open Public Meetings Act
- (c) Roll call
- (d) Approval of minutes of previous meetings
- (e) Public Comment
- (f) Reports/updates from committees/ subcommittees
- (g) Action on other business
- (h) Old business
 - (i) Memorialization of resolutions
 - (ii) Cases begun at a previous meeting(s)

- (i) New business
- (j) Hearing of new cases
- (k) Comments/correspondence.

The Chairperson may alter this sequence by public announcement at the beginning of a meeting.

1:3-10. Continuances. Continuances may be granted at the discretion of the Commission in any case for good cause, shown and to any interested party who has entered his/her appearance as follows:

- (a) New Cases: First time on Agenda, continuances may be granted upon request.
- (b) Continued Cases: All cases which have previously appeared on an Agenda of the Commission constitute cases. A request for a further continuance will be considered upon application therefor by the applicant or his representative at the time the case is called, for good cause, and upon a showing that the applicant will be unable to proceed with his/her evidence at that hearing

1:3-11. Open Meetings.

A. All regular meetings, special meetings, and hearings of the Commission shall be open to the public. The public shall be afforded an opportunity to comment on:

- (a) Certificates of Appropriateness that are before the Commission proposing work on any landmark, or any building, structure, site or object located within a landmark district, and,
- (b) Applications for Development and Redevelopment Plans referred to the Commission by the Planning Board and Board of Adjustment.
- (c) On all other matters, the public may be afforded the opportunity to comment at the discretion of the Chairperson.

B. Executive sessions of the Commission, authorized by the MLUL and the Open Public Meetings Act for the purpose of discussing and studying any appropriate matters to come before the Commission, may be closed to the public.

- (a) Email communications. All internal written or electronic communications directed to a quorum of the Commissioners, that pertains to “public business”, as defined by the Open Public Meetings Act, shall be distributed by the Recording Secretary or the Chairperson. All requests, directives, or materials that a member of the Commission wishes to distribute to the Commission at large shall be transmitted to the Chairperson, who, upon review, shall timely provide direction to the Recording Secretary for distribution. Upon receipt of a written or electronic communication from the Recording Secretary, members shall not respond to the Commission at large with comments regarding the substance of the communication. However, communications regarding administrative, grammatical/typographical, and/or scheduling issues, in addition to transmissions from subcommittee chairs regarding business of the subcommittee are not subject to the requirements of this provision.

1:3-12. Procedures on Hearings.

- (a) At the time of the hearing, the applicant may appear on his or her own behalf or be represented by his or her counsel.
- (b) All witnesses shall testify under oath.
- (c) The applicant or his representative shall make an initial statement outlining the nature of the application and of the evidence to be presented prior to calling witnesses and to the introduction of evidence.
- (d) Evidence shall be presented in the following order:
 - (i) Chair may give restatement of case if applicant's or his representatives initial statement needs clarification;
 - (ii) Applicant presents evidence;
 - (iii) Commission examines applicant's witnesses;
 - (iv) Objectors and/or Public cross-examine applicant's witnesses;
 - (v) Objectors present evidence;
 - (vi) Commission examines objectors' witnesses;
 - (vii) Applicant and/or Public cross-examines objectors' witnesses;
 - (viii) Rebuttal by objectors;
 - (ix) Rebuttal by applicant; and,
 - (x) Evidence by Commission, Commission's Consultant, or Town Attorney, if any.
 - (xi) Public comments
 - (xii) Deliberation and voting by Commission
- (e) The Commission shall not be bound by the strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent or unduly argumentative or repetitious testimony or evidence.
- (f) The Chair shall rule on all questions relating to the admissibility of evidence, limitation of testimony, etc. Said rulings may be overruled by a majority of the Commission present, upon motion with second.

1:3-13. Referral of Applications for Development

- A. Pursuant to Montclair Code 347-142, the Historic Preservation Commission shall review Applications for Development and provide advice to the Board of Adjustment or Planning Board through a written report.
- B. The Commission shall designate a Commissioner to appear at the Board of Adjustment hearing for the referred application and the Commissioner will read the written report to the Board and explain details of the report upon request.
- C. The Commissioner who is also appointed as a member of the Planning Board shall be designated to read the written report in to the record during the hearing for the referred application and explain details of the report upon request; as permitted by the Chair of the Planning Board.
- D. In the event there is no Commissioner who is also appointed as a member of the Planning Board, the Commission shall designate a Commissioner to appear at the Planning Board hearing for the referred application and the Commissioner

will read the written report to the Board and explain details of the report upon request.

Rule 1:4. Committees

1:4-1. Standing Committees. The Montclair Historic Preservation Commission maintains the following Committees to help fulfill the powers and duties of the Commission as described in Montclair Code §347-134:

- (a) Design Review & Redevelopment Committee: The Design Review & Redevelopment Committee is responsible for advising and assisting the Development Review Committee, Planning Board and Board of Adjustment, when requested, on all matters, including pending Applications for Development and the development of redevelopment plans, which have potential impact on the historic buildings, structures, objects, sites or districts in the Township or on the physical character and ambience of any portion of the Township or region, (Ref: Montclair Code §347-134 (G).
- (b) Education / Outreach Committee: The Education and Outreach Committee is responsible for increasing public awareness of the value of historic, architectural and cultural preservation by developing and participating in public information programs (Ref: Montclair Code §347-134 (M). The Committee also ensures information is available to residents of historic buildings or districts concerning guidelines for rehabilitation and design criteria for new construction (Ref: §347-134 (O).
- (c) Nominations Committee: The Nominations Committee is responsible for proposing to the Commission those buildings, structures, objects, sites and districts located within the Township which it has found to worthy of landmark of designation. The Committee also assists in the preparation of nomination reports for buildings, structures, objects, sites and districts located within the Township and research/evaluation of them for significance in accordance with the criteria established as set forth in Montclair Code §347-135 (Ref: Montclair Code §347-134 (A).
- (d) Minor Applications Review Committee: The Minor Application Committee conducts reviews of Minor Applications for a Certificate of Appropriateness. Minor are those requests for approval of fences, signs, awnings, lighting, paving or streetscape work which will not substantially affect the characteristics of the historic landmark or the historic district and do not involve an addition, demolition, new construction, relocation or removal of an historic landmark or property in an historic landmark district (Ref: Montclair Code §347-128 Definitions - Minor Application). If the Minor Application Subcommittee finds the application appropriate, the Subcommittee may act in place of the full Commission without the necessity of a public hearing, and is authorized to issue a Certificate of Appropriateness. If the Minor Applications Subcommittee does not find the application appropriate, the application shall be scheduled for a public hearing before the full Commission (Ref: Montclair Code §347-136.1 Minor Applications).

Revisions Committee: The Commission provides advice on Applications for Development submitted by either the Planning Board or Board of Adjustment for development in historic zoning districts or on historic sites designated on the Zoning or Official Map or identified in any component element of the Master Plan (Ref: Montclair Code §347-142). As a condition of approved Certificates of Appropriateness and requested conditions advised by the Commission to either the Planning Board or Board of Adjustment, pursuant to Montclair Code §347-142, the Commission may task the Revisions Committee with the following responsibilities:

(1) The Committee is responsible for on-site review and final selection of materials and finishes consistent with the approved Certificates of Appropriateness or conditions of approval as stipulated by the Planning Board or Board of Adjustment.

(2) The Committee is responsible for review of historic building elements and fabric proposed for modification, rehabilitation or removal consistent with the approved Certificates of Appropriateness or conditions of approval as stipulated by the Planning Board or Board of Adjustment.

1:4-2. Committee Composition. The standing committees shall not comprise more than an effective majority of the **Commission**. The Commission shall annually appoint the members of each committee for a one (1) year term, not to be more than three members. Vacancies shall be filled at or by the next regular session of the Board. Not more than one alternate member may serve on any standing committee.

1:4-3. Special Committees. Special committees may be established by a vote of the majority of the full membership of the Commission. The Chairperson shall appoint the members of such committee, who shall serve for a term to be determined by the Commission when it acts to establish such committee.

1:4-4 [Reserved]

PART II: MISCELLANEOUS

Rule 2:1. Fees, Record of Proceeding and Miscellaneous Matters

2:1-1. Transcript of Proceedings. In accordance with N.J.S.A. 40:55D-10[f], the Commission shall provide for the verbatim recording of its proceedings. A duplicate recording shall be furnished to any interested party upon request and payment of the actual cost of preparing it. Requests for copies of the verbatim record should be made to the Recording Secretary within a reasonable time after the date on which the hearing was held.

2:1-2. Costs for Special Meetings. Should an applicant request that the Commission consider his/her/its application at other than a regular meeting of the Commission, the applicant, in addition to any fees required to be paid, shall pay the fee as specified by the Ordinance fee schedule for a special meeting.

2:1-3. Subpoena. Pursuant to N.J.S.A. 40:55D-10[c] and the Ordinance, the Chairperson or designee presiding at a hearing may issue subpoenas to compel the attendance of witnesses and the production of relevant evidence. Upon failure of a person or entity under such subpoena to comply with its requirements, in accordance with N.J.S.A. 2A:67A-3 (the County and Municipal Investigations Law), the Commission may apply to the Superior Court for an order to compel him/her/it to do so.

2:1-4. Perjury. The Commission is authorized and required by law to conduct hearings, take testimony and make determinations affecting the rights, property or obligations of persons; and as such it has the power to administer oaths and to examine witnesses subject to the penalties, provisions and limitations of the County and Municipal Investigations Law. Accordingly, any person who shall willfully give false testimony under oath in the course of such examination shall be guilty of perjury as provided in N.J.S.A. 2A:67A-2 of the County and Municipal Investigations Law.

2:1-6 [Reserved]

Rule 2:2. Amendments

2:2-1. Amendments. The Commission may, from time to time, amend any part or parts of these Rules at any meeting, provided notice of such amendment has been given in writing to each member of the Commission at least three days prior to such meeting. In no case, however, shall any Rule, as amended, be applicable to any action commenced prior to the adoption of such amendment, where the application thereof would result in surprise, hardship or injustice to the applicant, member(s) of the Commission, or any other interested persons.

2:2-2. Annual Report. In accordance with Certified Local Government requirements, the Recording Secretary of the Historic Preservation shall prepare an Annual Report. The Report shall include the following:

- (a) Cases Reviewed: Certificates of Appropriateness and Section 106
- (b) Local Designations: Local Landmarks and Local Historic Districts
- (c) Historic Resource Surveys
- (d) National Register Nominations
- (e) Historic Property Monitoring
- (f) Historic Preservation Commission Activities
- (g) Commissioner Attendance Record
- (h) Meeting Minutes

2:2-3. Severability. If any section, subsection, sentence, clause or phrase of these rules and regulations is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portion of these rules and regulations.

2:2-4 [Reserved]

