

PLANNING BOARD RULES & REGULATIONS

LOCAL LAW NO. 4 OF THE YEAR 1995

A Local Law of the Town of Kirkwood Adopting Planning Board Rules and Regulations for the Town of Kirkwood

Adopted May 14, 1990 by Kirkwood Planning Board
Adopted August 1, 1995 by Kirkwood Town Board

Be it enacted by the Town Board of the Town of Kirkwood as follows:

Section 1. Authority

This Local Law is enacted pursuant to the provisions of paragraph 13 of Section 271 of the Town Law of the State of New York.

Section 2. Purpose

The purpose of this Local Law is to adopt the recommendations of the Town of Kirkwood Planning Board approved at the June 12, 1995 regular meeting of said Board to establish rules and regulations pursuant to which the Town of Kirkwood Planning Board shall conduct its business, as follows:

SECTION 1. General Governing Rules.

1.1.1 The Planning Board of the Town of Kirkwood shall be governed by the provisions of all applicable state statutes, local laws, ordinances and these rules.

1.1.2 The term "board" as used in these rules shall mean the duly appointed Planning Board of the Town of Kirkwood.

1.2.1 The board shall become familiar with all the duly enacted ordinances and laws of the town under which it may be expected to act as well as with the applicable state statutes.

1.2.2 The board shall become familiar with the community goals, desires and policies as expressed in the "Town comprehensive plan," and in rendering approvals, recommendations and reports shall be guided by such plan.

SECTION 2. Officers and Duties.

2.1.1 The officers of the board shall consist of a chairperson, acting chairperson and secretary.

2.2.1 Chairperson. The chairperson shall be designated by the town board or on failure to do so, shall be elected by the board from its own members. He shall perform all duties required by law, ordinance and these rules. He shall preside at all meetings of the board. The chairperson shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the board. The chairperson shall appoint any committees found necessary to carry out the business of the board. The chairperson may administer oaths and compel the attendance of witnesses as necessary to carry the business of the board. The chairperson's signature shall be the official signature of the board and shall appear on all decisions as directed by the board.

2.3.1 Acting Chairperson. An acting chairperson shall be designated by the board to serve in the absence of the chairperson. He shall have all the powers of the chairperson during his absence, disability or disqualification.

2.4.1 Secretary. A secretary shall be designated by the board. The secretary, subject to the direction of the board and the chairperson, shall keep minutes of all board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of all board official actions.

2.5.1 Vacancies. Should any vacancy on the board occur for any reason, the secretary shall give immediate notice thereof to the town clerk for the town board for the designation of a replacement.

2.5.2 Should such a vacancy occur among the officers of the board subject to election by the board, such office shall be filled by election, for the unexpired term, at the next meeting of the board.

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2.5.3 Should the office of chairperson become vacant, the secretary shall add such fact to the notice required in section 2.5.1 of these rules. The acting chairperson shall handle the duties of the chairperson until such time as the town board shall appoint a new chairperson.

SECTION 3. Meetings.

3.1.1 Regular Meetings. The regular meetings of the board shall be held on the second Monday of each month at 7:00 p.m. in the Kirkwood Town Hall.

3.1.2 Annual Meeting. The annual organizational meeting of the board shall be the first regular meeting of the year.

3.2.1 Special Meetings. Special meetings of the board may be called by the chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the board.

3.2.2 The chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the board, which request shall specify the matters to be considered at such special meetings.

3.3.1 Cancellations of Meetings. Whenever there is no business to be conducted at a regular meeting, the chairperson may dispense with such meeting by written notice to all members not less than forty-eight (48) hours prior to the time set for such meeting.

3.4.1 Proceeding. The order of business at regular meetings shall be as follows: (A) roll call; (B) reading and approval of minutes of preceding meeting; (C) public hearing (when scheduled); (D) action on held over matters; (E) new business; (F) adjournment.

3.5.1 New business. No new matter will be considered unless the completed appropriate application for said matter is received by the Enforcement Officer on behalf of the Planning Board on the form provided for that purpose:

1. At least 35 days prior to the meeting at which any complete application for site plan review by the Broome County Planning board pursuant to General Municipal Law section 239, **which time period can be waived by the Chairperson if the Broome County review recommendation is received at least 14 days prior to the next monthly meeting, or**

2. At least 14 days prior to the meeting at which any other matter is to be considered.
(Amended Dec. 30, 2003 by LL No. 17-2003)

3.6.1 Meeting Agenda. The Enforcement Officer shall be responsible, at the direction of the board, for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing said forms. All information required thereon shall be complete before an application is considered filed. The Chairperson or his designee shall review all applications so received by the Enforcement Officer for completeness. If the application is in proper form for consideration, he shall place it upon the next meeting agenda which he shall mail to all Planning Board members and temporary ad hoc members at least seven (7) days prior to the meeting. He shall also notify the applicant that the matter has been placed on said agenda. If said application is incomplete, he shall return it to the applicant within five(5) days of receipt with instructions as to remedying the same. The Chairperson or his designee shall then report to the board, at the next meeting, as to all incomplete applications not on the agenda. (Amended Dec. 30, 2003 by LL No. 17-2003)

3.7.1 Enforcement Officer. At each meeting of the Planning Board, the Enforcement Officer shall be present to report, if the chairperson deems necessary, on the nature of any matter on the agenda.

3.8.1 Fees. The applicant shall pay the charge for the publication of the notice of public hearing in the official newspaper of the Town for any application requiring a public hearing.

3.9.1 Executive Meetings. All meetings will comply with the requirements of the Open Meetings Law, Section 105 of the Public Officers Law.

SECTION 4. Voting.

4.1.1 Quorum. A quorum shall consist of a majority of the members of the board.

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4.1.2 No hearing or meeting of the board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date. All subsequent hearings shall be republished in accordance with the requirements of the applicable law.

4.2.1 Voting. All matters shall be decided by roll call vote. Decisions on any matter before the board shall require the affirmative vote of a majority of the board unless otherwise specified herein.

4.2.2 A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

4.2.3 No member of the board shall sit in hearing or vote on any matter in which he is personally or financially interested. Said member shall not be counted by the board in establishing the quorum for such matter.

4.2.4 No member shall vote on the determination of any matter requiring public hearing unless he has attended the public hearing thereon; however, where such member has familiarized himself with such matter by reading the record, he shall be qualified to vote.

SECTION 5. Referrals

5.1.1 Zoning Referrals. All matters requiring referral as specified by an ordinance or local law shall be so referred to the Planning Board for its recommendations. Within a reasonable time as specified by the Town Board or other party making the referral after receipt of a full statement of such referred matter, the Planning Board shall report its recommendations thereon, with a full statement of the reasons for such recommendations. If the Planning Board fails to respond within the prescribed time the referring board or agency may act without such report.

5.2.1 County Zoning Referrals. Prior to taking action on any matter which would cause change in the regulations or use of land or buildings on real property as specified in Section 239-n of the General Municipal Law, the board shall make referrals to the Broome County Department of Planning having jurisdiction in accordance with Sections 239-1, m and n of the General Municipal Law.

Within thirty (30) days after receipt of a full statement of such referred matter, the Broome County Department of Planning to which referral is made, shall report its recommendations thereon to the board, accompanied by a full statement of the reasons for such recommendations. If such planning agency disapproves the proposal, or recommends modification thereof, the board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. The chairperson shall read the report of the county planning agency at the public hearing on the matter under review.

If such planning agency fails to report within such period of thirty (30) days or such longer period as may have been agreed upon by it and the referring agency, the board may act without such report. However, if the Board receives the report of the county planning agency after thirty (30) days, but prior to the final action by the Board, then the Board shall not act contrary to the recommendation by the county planning agency, except by a vote of a majority plus one of all of the members thereof.

SECTION 6. Site Plan Review

6.1.1 The Planning Board has been delegated by the Town Board in Article V Section 502 of the Town of Kirkwood, New York Zoning Ordinance the authority to conduct site plan reviews.

Pursuant to the provisions of said Article V Section 502 and Section 274-a of the Town Law the rules and regulations set forth herein are hereby adopted to establish a procedure to review the same.

SECTION 7. Land Subdivision Regulations

7.1.1 The Planning Board has been delegated by the Town Board on March 5, 1963 to approve subdivision plats in the Town of Kirkwood. Pursuant to the resolution of delegation and Section 276 of the Town Law the rules and regulations set forth herein are hereby adopted to establish a procedure to review the same.

SECTION 8. Mobile Home Parks and Trailer Campgrounds

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8.1.1 The Town Board in Section 401.4 of a local law governing the occupancy and maintenance of mobile home parks and travel trailer campgrounds adopted September 4, 1973 delegated to the Planning Board the power to recommend to the Town Board approval, disapproval or conditional approval of any application filed for a license thereunder. Pursuant to the provisions of said local law and Section 271 (14) of the Town Law, the rules and regulations set forth herein are hereby adopted to establish a procedure to review the same.

SECTION 9. Planned Unit Development District

9.1.1 The Town Board pursuant to Article VI Section 602 of the Town of Kirkwood, New York Zoning Ordinance delegated to the Planning Board the power to recommend to the Town Board approval, disapproval or conditional approval of any application filed to obtain a change in zone to permit development as a Planned Unit Development District.

Pursuant to the provisions of said Article VI Section 602 and Section 271 (14) of the Town Law, the rules and regulations set forth herein are hereby adopted to establish a procedure to review and recommend relative to the same.

SECTION 10. Aquifer Protection District

10.1.1 The Town Board in Article VIII Section 809 of the Town of Kirkwood, New York Zoning Ordinance delegated to the Planning Board the power to recommend to the Town Board approval, disapproval or conditional approval of any application filed to obtain a special permit pursuant to said Article.

Pursuant to the provisions of said Article VIII Section 809 and Section 271 (14) of the Town Law, the rules and regulations set forth herein are hereby adopted to establish a procedure to review and recommend relative to the same.

SECTION 11. Coordination with Agricultural Districts Program.

11.1.1 Agricultural data statement; submission, evaluation. Any application for a site plan approval requiring municipal review and approval by the planning board pursuant to this article, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of the application form.

11.2.1 Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

11.3.1 Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

11.4.1 Notice to county planning agency. The clerk of the planning board shall refer all applications requiring an agricultural data statement to the county planning agency as required by Section 239m of the General Municipal Law.

(Amended March 6, 2001 by LL No. 3-2001)

SECTION 12. Hearings

12.1.1 Time of Hearing. If a public hearing is required, the board shall schedule a hearing of all applications within the time permitted by the applicable ordinance, law or regulation giving jurisdiction to the Planning Board in the matter but not later than sixty-two (62) days of the filing of the completed application.

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12.2.1 Notice of Hearing. The board shall give notice of the hearing at least five (5) business days prior to the date thereof by publication in the official paper. The board shall mail notices of the hearing to the parties and to the members of the Town Board and, if required by §239-l, 239-rn, and 239-n of the General Municipal Law, to the Broome County Planning Board.

12.3.1 Form of Notice. Such notice shall state the name of the applicant, the location of the property involved, the general nature of the application involved, and the date, time and place of the hearing sought.

12.4.1 Proceedings. The order of business at a hearing shall be as follows: (A) roll call; (B) the chairperson shall give a statement of the case; (C) the chairperson shall read all correspondence and reports received thereon; (D) the applicant shall present his case; (E) those in favor shall present their arguments; (F) those opposed shall present their arguments; (G) rebuttal by both sides; (H) adjournment of hearings.

12.5.1 General Rules. Any party may appear in person or by agent or by attorney.

12.6.1 The chairperson, or in his absence, the acting chairperson, may administer oaths.

SECTION 13. Determinations

13.1.1 Time of Determinations. Determinations by the board shall be made within the time permitted by the applicable ordinance, law or regulation giving jurisdiction to the Planning Board on the matter but not later than sixty-two (62) days from the date of receipt of the completed application, unless such time be further extended by the applicant.

13.2.1 Form of Determination. The final determination on any matter before the board shall be made by written order signed by the chairperson.

13.3.1 Basis for Determination. The board in reaching said determination shall be guided by standards specified in the applicable ordinance, law or regulation as well as by the community goals and policies as specified in the Town comprehensive plan.

13.4.1 Findings. The findings of the board may be based on evidence submitted or on the personal knowledge of the board to show that:

1. It has made an intelligent review of the question.
2. It has considered all of the information or evidence.
3. It has heard all parties in question.
4. Any intimate knowledge it has of the subject under question has been taken into account.
5. It has made a personal inspection of the parcel in question and from this

examination certain findings were ascertained.

13.5.1 Compliance with State Environmental Quality Review Act. The Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617.

13.6.1 Conflicts with Other Laws or Regulations. In reviewing any application on any matter, the standards in any applicable local law or ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

13.7.1 Filing of Determinations. Determinations of the board shall be immediately filed in the office of the Town Clerk and shall be a public record. The date of filing of each decision shall be entered in the official records and minutes of the board.

Section 14. Ad hoc temporary members.

(Added March 6, 2001 by LL No. 3-2001)

14.1 Pursuant to the provisions of Local Law 1 –2001 authorizing the Town Board of the Town of Kirkwood to appoint temporary ad hoc members to the Planning Board to be assigned by the Chairperson to serve when absence or the conflict of interest of regular members of the Planning Board would otherwise prevent five (5) members of said Board from considering any pending matter, which temporary ad hoc members shall be designated on a rotating basis in the manner provided in these rules, the following procedure shall prevail:

- a. After the Town Board at its annual organizational meeting shall designate the temporary

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ad hoc members to serve that year, the names of such temporary ad hoc members shall be placed in alphabetical order by the Secretary of the Planning Board.

b. Thereafter should a situation arise when less than five (5) members are present at any meeting of the Planning Board, the Chairperson of the Planning Board shall assign in alphabetic order one or more temporary ad hoc members present at said meeting (but not more than two such temporary ad hoc members) when absence or conflict of regular members of the Planning Board shall occur.

c. Should such situation arise at any further meeting of the Planning board, the Chairperson shall assign in alphabetic order commencing with the next name of such members in said such alphabetic order (but not more than two such members) who is present at said meeting when absence or conflict of regular members of the Planning Board shall occur. (Section 14.1 and 14.1b amended September 6, 2016 by LL #6-2016)

Section 3. Separability Clause

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances and the Town Board of the Town of Kirkwood hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 4. Repeal

All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 5. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State.