

Department of Agriculture, Conservation and Forestry

MAINE LAND USE PLANNING COMMISSION

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**Rules for the
Conduct of Public Hearings**

Chapter 5 of the Commission's Rules

Effective Date: May 16, 1975

Amended Effective: November 1, 2021

**CHAPTER 5
RULES FOR THE CONDUCT OF PUBLIC HEARINGS**

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5.01 SCOPE OF RULES

These rules govern all public hearings conducted by the Land Use Planning Commission (“Commission” or “the LUPC”).

5.02 GENERAL PROVISIONS

A. Consolidation of Proceedings.

On motion and for good cause shown, or on its own initiative, the Commission may consolidate two or more proceedings if it finds that such action will be conducive to just and proper dispatch of its business and that opportunities for public participation will not be compromised.

B. Notice.

Notice of all public hearings before the Commission must be in accordance with Chapter 4 of the Commission's rules.

C. Location and Attendance.

1. **Hearing Locations:** All hearings of the Commission must be held in a location or through certain means, and at a time determined by the Commission to be appropriate when considering the needs, costs, safety, and convenience of the interested parties together with those of the Commission. To the extent practicable, hearings must be held at a location in close proximity to, or significantly affected by, the project or projects under review or which are concerned about the issue.

2. **Attendance at Hearings:** Attendance at a hearing must be in accordance with 12 M.R.S. § 684.

D. Presiding Officer.

1. **Designation of Presiding Officer:** The Presiding Officer at any hearing must be either:

- a. The Chair, if present and willing to preside;
- b. A Commissioner selected by those members present at the hearing; or
- c. A qualified employee or representative of the Land Use Planning Commission, as designated by the Chair.

Unless otherwise determined by the Commission on a case by case basis, the Presiding Officer is presumed to be the Chair.

2. **Authority of Presiding Officer:** The Presiding Officer maintains the authority to:

- a. Require and administer oaths or affirmations;
- b. Rule upon issues of procedure and admissibility of evidence;
- c. Regulate the course of the hearing, set the time and place of continued hearings, and fix the time for filing of evidence, briefs and other written submissions;
- d. Certify questions to the Commission for its determination;

- e. Take other actions, on behalf of the Commission consistent with these regulations and applicable statutes, as may be ordered by the Commission or that are necessary for the efficient and orderly conduct of the hearing;
- f. To the extent permitted by law, where good cause appears, the Presiding Officer may permit deviation from the procedural rules of the Commission insofar as compliance therewith is found to be impractical or unnecessary and the change does not prejudice any of the parties; and
- g. Issue conclusions and fact to be considered by the full Commission.

E. Ex parte Communications.

- 1. Limitations of this section:** This Section 5.02(E) applies to those public hearings concerned with applications for zone changes pursuant to 12 M.R.S. § 685-A(7-A); permit applications pursuant to 12 M.R.S. § 685-B; applications for a variance or issuance of special exception permit pursuant to 12 M.R.S. § 685-A(10); and any public hearing in which the legal rights, duties, or privileges of specific persons are to be adjudicated.
- 2. Prohibitions on ex parte communications:** After a decision by the Commission to conduct a public hearing, Commission members, and any Presiding Officer designated by the Commission, must not engage in any ex parte communication in connection with any issue of fact, law or procedure which is the subject of the hearing.
- 3. Allowable communications:** However, Section 5.02(E) does not prohibit any Commission member or Presiding Officer from:
 - a. Communicating in any respect with other members of the Commission or other Presiding Officers; and
 - b. Having the aid and advice of members of the staff, counsel or consultants retained by the Commission; provided that, in adjudicatory proceedings subject to 5 M.R.S. Sections 9051 *et seq.*, this exception extends only to consultation with members of the staff, counsel or consultants who have not participated and will not participate in the proceeding in an advocate capacity.
- 4. Actions considered as ex parte communication:** For purposes of Section 5.02(E), "ex parte communication" includes, but is not limited to, oral communication (other than public communication occurring upon notice to all parties and during a properly scheduled public hearing or meeting of the Commission) or any written communication (other than motions, prefiled testimony or other writings, copies of which are furnished or available, as required herein, to all other parties to the proceeding).
- 5. Disclosure of ex parte communication:** In the case of an ex parte communication prohibited by this Section 5.02(E), the Commission member or Presiding Officer involved therein must disclose the nature and substance of the communication to the Commission members and parties to the proceeding, but will not be disqualified from voting in connection with the proceeding. The Commission may provide an opportunity to the other parties to the proceeding to respond to the matter communicated.

Such disclosure will be made part of the public record, but the substance of the ex parte communication will not form a basis for the decision of the Commission or Presiding Officer unless other parties to the proceeding have been given an opportunity to respond.

5.03 PARTIES AND GOVERNMENTAL AGENCIES

A. Intervention.

- 1. Petition for Intervention:** Prior to the commencement of any public hearing of the type described in Section 5.08(A) of these regulations, the Commission or Presiding Officer may require or allow any person who desires to participate as a party, offer testimony and evidence, and participate in oral cross-examination, to file a petition under oath or affirmation for leave to intervene. Notice of the requirement of filing a petition for intervention will be given in a manner consistent with Section 4.04 of the Commission's rules or in such other manner as the Presiding Officer deems appropriate. A petition to intervene must be granted if it demonstrates that the petitioner is or may be substantially and directly affected by the proceeding.

The Commission or Presiding Officer may further allow any other interested person to intervene as a party or to participate in more limited manner as the Commission or its Presiding Officer may designate.

A petition for leave to intervene must be filed by the date specified by the Commission or the Presiding Officer or, if an earlier date is not specified, before the public hearing. A petition to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to timely file. A person permitted to intervene will become a party to the proceeding and will be permitted to participate in all phases of the hearing, subject, however, to such limitations as the Commission or Presiding Officer may direct. Petitioners for intervention may be required to consolidate or join their appearances in part or in whole if their interests or contentions are found to be substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party or petitioner. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding or with respect to any one or more issues or purposes thereof.

- 2. Duration of Intervenor Status:** Unless otherwise specified by the Commission or Presiding Officer, intervenor status will be deemed to have been granted for the duration of the proceeding. Any applicant whose proposal is approved will be required to provide notice to any intervenors of the filing of any documents presented to the Commission indicating actions taken to comply with the conditions attached to the approval or of proposals to vary or amend approved activities, provided, however, that the applicant's responsibility under this subsection will be deemed fulfilled when such notice has been mailed to the person designated to represent an intervenor in the petition for intervention.
- 3. Denial of Intervenor Status:** When a petition to intervene is denied, the Commission must include in the record of the hearing an entry to that effect and the reasons therefore.
- 4. Legal Counsel:** Nothing in this regulation will be construed to require or prevent representation by legal counsel in order for a person to be granted intervenor status or otherwise participate before the Commission.
- 5. Copies:** The applicant must provide each person granted intervenor status pursuant to this section with a copy of the application or petition and any amendments thereto.

B. Participation by Interested Persons.

Any person may, in the discretion of the Commission or Presiding Officer, be permitted to make oral or written statements on the issues, introduce documentary, photographic and real evidence, attend and participate in conferences and submit written or oral questions of other participants, within such limits and on such terms and conditions as may be fixed by the Commission or the Presiding Officer.

C. Governmental Agencies.

Governmental agencies may notify the Commission of their anticipated participation in any hearing in the form and manner required by Section 5.03(A)(1). Such governmental agencies must, upon having filed such notice, be entitled to all rights of an intervenor in such proceedings.

Representatives of governmental agencies may participate in their official capacity only if representing the views of the agency on whose behalf they appear, and not personal views and opinions. Government agencies may provide testimony at the hearing without filing a notice under this section.

5.04 SERVICE AND FILING OF DOCUMENTS

A. Service.

Unless the Presiding Officer otherwise provides, any person submitting any notices, motions, petitions, briefs, written testimony or testimony pursuant to Section 5.10, permitted or required to be filed with the Commission pursuant to these regulations (except briefs or proposed findings prepared by the staff, its consultants or counsel), must serve such documents upon all applicants and intervenors in the proceeding or their representatives.

B. Filing.

Unless the Presiding Officer otherwise provides, all motions, petitions, briefs and prefiled testimony shall be filed in digital form. The Commission or Presiding Officer, may require one or more paper copies be filed.

C. Forms.

All motions, proposed findings, petitions, briefs, and, to the extent practicable, written testimony filed within the Commission (except for documents not susceptible of reproduction in the manner herein provided or for other good cause shown) shall be typewritten or printed on white opaque paper 8 1/2 x 11 inches in size. Typed materials must be double spaced. The first page of each such document must be headed by the title:

STATE OF MAINE
LAND USE PLANNING COMMISSION

and must have a caption with:

1. The title of the matter, giving the name of the applicant, the action in issue and the location;
2. The Commission's application number; and
3. The title of the document (*e.g.*, Petition to Intervene).

The final page must be dated and signed.

D. Representatives.

The first document filed by any person in a proceeding must designate the name and address of a person on whom service should be made and to whom all correspondence from the Commission and staff will be sent.

5.05 CONFERENCES

A. Prehearing Conferences without Intervenors.

At the request of an applicant, the staff may confer with the applicant concerning the nature and types of information and testimony which the applicant will be expected to present at the hearing. Any conference is held for the benefit of the applicant and does not bind the Commission or Presiding Officer to matters discussed therein, nor limit the ability of the Commission or Presiding Officer to raise further issues at the hearing.

B. Prehearing Conferences with Intervenors or Petitions for Intervention.

The Presiding Officer or the staff may, upon notice to the applicant, to any parties intervening pursuant to Section 5.03(A) of these regulations and to any other persons the Commission or the Presiding Officer deems appropriate, hold conferences and issue procedural orders for the purpose of formulating or simplifying the issues, obtaining admissions of fact, arranging for the submission of proposed exhibits or written testimony, limiting the numbers of witnesses, consolidating the examination of witnesses, consolidating parties or specifying procedures in connection with the hearing, and such other matters which may expedite the orderly conduct and disposition of the proceedings.

C. Recording of Conferences.

The actions taken at or following any such conference and any agreements or orders arising therefrom must be stated on the record by the Presiding Officer, or detailed in a procedural order, and any person may ask questions about or raise objections to such actions at the time they are stated.

5.06 SUBPOENAS

A. Who May Request Subpoenas.

At the request of any party, or at the request of the Commission, or any member thereof, or on the Presiding Officer's own motion, the Presiding Officer may issue subpoenas for the attendance of witnesses or for the production of documents.

B. Content.

Every subpoena so issued must bear the name of the Commission, bear the name of the issuing officer, and must command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena requires the approval of the Attorney General or their designee. The subpoena must also advise of the quashing procedure provided by Section 5.06(E).

C. Service.

Unless receipt of the subpoena is acknowledged by the witness, it must be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service must be made by delivering a copy of the subpoena to the person named in it and tendering to them the fees and mileage paid to witnesses in the Superior Courts of this State.

D. Proof of Service.

The person serving the subpoena must make proof of service, by filing the subpoena and affidavit or acknowledgment of service with the Presiding Officer. Failure to make such proof of service will not affect the validity of such subpoena and service.

E. Quashing.

On motion made promptly, and before the time specified in the subpoena, and on notice to the party at whose instance the subpoena was issued, the Presiding Officer may:

1. Quash or modify the subpoena if the Presiding Officer finds that it is unreasonable or requires evidence not relevant to any matter in issue; or
2. Deny the motion to quash.

F. Confidentiality.

If any person served with such subpoena claims, at or before the hearing, that the production of books, records or other data under such person's control may disclose secret processes, formulae or methods used by or under the direction of such person, which are entitled to protection as trade secrets or as to which the confidentiality is otherwise entitled to protection by law, and the Presiding Officer determines that such claim is valid after consultation with a representative of the Attorney General, such information from such books, records, or other data must be disclosed at a nonpublic portion of the hearing and the record thereof must be confidential.

G. Court Orders.

Failure to comply with a subpoena lawfully issued under Section 5.06 will be punishable as for contempt of court. (5 M.R.S. § 9060(1)(D))

H. Costs.

Any costs incident to complying with a subpoena must be borne by the party requesting the subpoena.

5.07 EVIDENCE

A. Admissible Evidence.

Evidence will be admissible if it is relevant and material to the subject matter of the hearing and is of a type customarily relied upon by reasonable persons in the conduct of serious affairs. Evidence which is irrelevant, immaterial, or unduly repetitious may be excluded. Notwithstanding Section 5.07(B), the experience, technical competence and specialized knowledge of the Commission or Presiding Officer may be utilized in the evaluation of all evidence submitted.

B. Official Notice.

The Commission or Presiding Officer may, at its discretion and at any time, take official notice of any facts of which judicial notice could be taken, including relevant statutes, regulations, transcripts of other hearings, non-confidential agency records, generally recognized facts of common knowledge to the general public, and physical, technical or scientific facts.

In a hearing of the type described in Section 5.08(A) of these regulations, the Commission must include in its final decision those facts of which it took official notice, unless those facts are included in the recording of the proceedings.

C. Documentary and Real Evidence.

1. All documents, materials and objects offered in evidence as exhibits must, if accepted, be numbered or otherwise identified.
2. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
3. The Presiding Officer may require that any person offering documentary or photographic evidence must provide the Commission with a specified number of copies or provide the materials in digital form.
4. Any documentary or real evidence must:
 - a. be produced, compiled and submitted by the person offering the same, who must not request the Commission or its staff to produce or compile the same on his behalf; and
 - b. be clearly labeled indicating date and source, and indicating whether the evidence is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Presiding Officer, and electronic links to documents will not be accepted.
5. In a hearing of the type described in Section 5.08(A) of these regulations, the applicant, intervening parties, and state, federal or municipal agencies must provide each other with copies of any exhibit offered in evidence unless otherwise ordered by the Presiding Officer.
6. All documents, materials and objects admitted into evidence must be made available during the course of the hearing for public examination. All such evidence will also be available for public examination at the Commission's primary office during normal business hours.

D. Objections.

All objections to rulings of the Presiding Officer and the grounds therefore must be timely stated. If, during the course of or after the close of the hearing and during its deliberations, the Commission determines that the ruling of the Presiding Officer was in error, the Commission may reopen the hearing or take such other action as it deems appropriate to correct such error.

E. Offer of Proof.

An offer of proof may be made in connection with an objection to a ruling of the Presiding Officer excluding or rejecting any testimony, evidence, or questions on cross-examination. Such offer of proof must consist of a statement of the substance of the proffered evidence which is expected to be shown.

5.08 TESTIMONY AND QUESTIONS

A. Hearings on applications.

In those hearings concerned with a permit application pursuant to 12 M.R.S. § 685-B(4) or with an application for variance or special exception pursuant to 12 M.R.S. § 685-A(10) or with an application for zone change pursuant to 12 M.R.S. § 685-A(7-A), testimony must be offered as follows:

1. Direct Testimony:

Direct Testimony will be offered in the following order:

- a. The applicant and such representatives and witnesses as the applicant selects;
- b. Governmental agencies and representatives thereof;
- c. Intervenors; and
- d. Other interested persons.

The staff of the Commission and its representatives and consultants may offer testimony at any time, at the discretion of the Presiding Officer.

2. Cross-Examination and Questions:

At the conclusion of the testimony of each witness, the Commissioners, staff and consultants, Federal and State and other governmental representatives, the applicant, and intervenors must have the right of oral cross-examination. Cross-examination will be conducted in the following order:

- a. Commissioners, counsel, staff members and consultants may be permitted, by the Presiding Officer, to ask questions at any time;
- b. The applicant or petitioner;
- c. Intervenors; and
- d. Federal, State, and other governmental representatives.

3. Redirect and Rebuttal Evidence:

- a. A person who has concluded their presentation cannot thereafter introduce further evidence except in rebuttal, unless by leave of the Presiding Officer. Rebuttal evidence must be directed only to contradict or respond to evidence presented by another party, except by leave of the Presiding Officer.
- b. All parties must have the right to redirect and re-cross-examination of any witness, unless otherwise directed by the Presiding Officer. Such re-examination must be limited to evidence or issues presented by another party, except by leave of the Presiding Officer.

4. Varying Order of Appearance:

When circumstances warrant, the Presiding Officer may vary the order in which witnesses appear and the order or manner in which testimony is given or witnesses cross-examined.

B. All Other Hearings.

In all other hearings, testimony may be offered first by the staff and then by any interested persons in such order and on such conditions as the Presiding Officer may designate.

C. Oral Argument.

For hearings conducted under Section 5.08(A), oral argument may be permitted before the Commission at the conclusion of the evidence or at a time and place fixed by the Presiding Officer, at their discretion.

5.09 CONDUCT OF THE HEARING

A. Opening Statement.

The Presiding Officer, or their designee, must open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

B. Recording of Testimony; Report to Commission.

All testimony at hearings before the Commission must be recorded and may, as necessary, be transcribed.

If the hearing is conducted by a single commissioner or qualified employee or representative, the commissioner, employee, or representative must report the findings of fact and conclusions to the Commission together with a transcript of the hearing and all exhibits. The findings of fact and conclusions become part of the record. The Commission is not bound by the findings or conclusions when acting upon the record, but will take action, issue orders, and make decisions as if it had held and conducted the hearing itself.

C. Oral Testimony.

1. Hearings on Applications:

Witnesses must be sworn. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Commission. Witnesses will state for the record their name, place of residence, business or professional affiliation, if any, and whether or not they represent another individual, firm, association, organization, partnership, trust company, corporation, state agency, or other legal entity for the purpose of the hearing.

2. All Other Hearings:

Persons testifying are not required to be sworn, but must state for the record their name and place of residence. If the person testifying represents another individual, firm, association, organization, partnership, trust company, corporation, state agency or other legal entity for the purpose of the hearing, the person testifying must identify the business or professional affiliation.

D. Written Testimony.

At any time prior to or during the course of the hearing, the Presiding Officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form. Any written testimony must be submitted and be in such form and at such time as the Presiding Officer may specify. All persons offering testimony in written form must be available for cross-examination as provided in Section 5.08(A) of these rules. Testimony offered in written form must be available for public inspection. The person submitting the written testimony may be required within a specified time to serve a copy thereof on the applicant or petitioner, on all intervenors and on any other person whom the Presiding Officer deems appropriate.

This rule must not be construed to prevent oral testimony at a scheduled hearing by a member of the public who is not affiliated with a party required to file testimony in writing and who requests and is granted time to testify at a hearing.

E. Continuance; Multiple Hearings on Matter.

All hearings conducted pursuant to these rules may be continued and reconvened from time to time and from place to place by the Presiding Officer as circumstances require. Any hearing may also be convened in multiple hearing sessions, on multiple dates and in multiple locations, in the interest of providing the public with an opportunity to be heard across the Commission's jurisdiction. When the Commission elects to hold multiple public hearings on any matter, either by continuance of a hearing or by holding multiple scheduled hearing sessions, all hearings within a 45-day period are considered one hearing for administrative purposes. All orders for continuance must specify the time and place at which such hearing will be reconvened, or must set forth the manner in which such information may be later publicized by the Commission and obtained by interested persons. The Presiding Officer, or the staff under the direction of the Presiding Officer, must give notice to interested persons and the public in such a manner as is appropriate to ensure that reasonable notice will be given of the time and place of such reconvened hearing.

F. Regulation of Certain Devices and Signage.

The placement and use of signage or devices for recording of audio or video at Commission hearings may be regulated by the Presiding Officer in a manner consistent with the provisions of 1 M.R.S. §§ 401 *et seq.*

5.10 CLOSURE OF THE HEARING

A. Closure of the Hearing Record.

Except as provided in Sections 5.07(B) and 5.10(D), of these rules, after final closure of the public hearing, including any period when the record remains open as provided in this section or as directed by the Presiding Officer, no further evidence will be allowed into the record.

B. Time Periods for Written Comments After the Conclusion of a Hearing.

After the conclusion of a hearing the record will remain open for:

1. A period of 10 days for the purpose of allowing interested persons to file written statements with the Commission; and
2. A period of seven additional days for the purpose of allowing interested persons to file statements in rebuttal of those filed pursuant to Section 5.10(B)(1) above.

C. Reopening a Hearing Prior to a Decision.

Prior to issuance of a final order or decision, the Commission or Presiding Officer may elect to reopen a hearing and extend the time period for public comment in compliance with Chapter 4 of the Commission's rules.

D. Reopening the Hearing after Decision on Applications for Permit or Zone Change.

Within 30 days after the Commission has rendered a decision on an application following a hearing, any person aggrieved by such decision or order may petition the Commission to reopen the hearing for the purpose of introducing new evidence with regard to any provision of such order or decision. The petitioner must deliver or mail a copy of any such petition simultaneously to any other party to the proceeding. Upon receipt of such petition, the Commission will consider the offer of evidence contained therein and determine whether to dismiss the petition as offering no material evidence not already before the Commission or to reopen the hearing. Upon reopening the hearing, the Commission will amend its original order only if new evidence is presented to support such amendment. Failure to invoke the provisions of this section shall have no effect upon an aggrieved party's right of appeal to a court of law.

Within seven days of the filing of a petition to reopen hereunder, any other interested person may file an answer in opposition to the petition.

E. Final Closure.

The date of final closure of the hearing record, including any extension of the open record or reopening of the hearing or record, constitutes final closure of the public hearing and the final date by which data, views or arguments may be submitted to the Commission for consideration in acting upon an application or in adopting the rule.

5.11 HEARING RECORD

- A.** The record of the hearing must consist of all applications, petitions, motions, preliminary and introductory rulings and orders, the recording of the hearing or the transcript, all exhibits or written testimony submitted at the hearing or pursuant to Section 5.10 of these regulations, any other evidence received or considered, all briefs and proposed findings and comments thereon, the findings of fact and conclusions of the Presiding Officer, any facts officially noticed, any offers of proof, objections and rulings thereon, and all staff memoranda to the Commission together with the decision or order of the Commission.
- B.** Copies of the record must be available in accordance with Chapter 4 of the Commission's rules. Where available, a transcript of the testimony of any hearing and copies of evidentiary materials may be purchased directly from the independent official Commission reporter or from the person having submitted such materials, if any, or if necessary, through the Commission, provided that no undue burden is placed upon the Commission in responding to such request, and further provided that such materials are in a form or size possible to reproduce by photocopying or similar means.

STATUTORY AUTHORITY:

12 M.R.S. §§ 684, 685-C(5)

EFFECTIVE DATE:

May 16, 1975

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December 8, 1978 – filing 78-378

AMENDED:

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AMENDED:

October 12, 2000 – filing 2000-449

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(APA Office Note dated November 6, 2013: due to a legislatively-mandated reorganization, the Land Use Regulation Commission was renamed as Land Use Planning Commission, with its umbrella-unit number changed from 04-061 to 01-672.)

REPEALED AND REPLACED:

November 1, 2021 – filing