CITY OF LEWISTON
PLANNING BOARD MEETING
Monday, January 12, 2015 – 5:30 P.M.
City Council Chambers – First Floor
Lewiston City Building
27 Pine Street, Lewiston

AGENDA

I. **ROLL CALL**

II. **ELECTION OF OFFICERS: Election of Chairman, Vice President and Secretary**

III. **ADOPTION OF PLANNING BOARD RULES AND PROCEDURES**

IV. **ADJUSTMENTS TO THE AGENDA**

V. **CORRESPONDENCE**

VI. **PUBLIC HEARINGS:** None

VII. **OTHER BUSINESS:**

a) Executive session between the Planning Board and the City Attorney concerning the legal rights and duties of the Board pursuant to 1 M.R.S. § 405(6)(E).
b) Any other business Planning Board Members may have relating to the duties of the Lewiston Planning Board.

VIII. **READING OF THE MINUTES**: Motion to adopt the December 22, 2014 draft minutes

IX. **ADJOURNMENT**

The City of Lewiston is an EOE. For more information please visit our website @ www.lewistonmaine.gov and click on the Non-Discrimination Policy.

City of Lewiston Planning Board Meeting Protocol, 2015

(The purpose of this document is to provide guidance to Planning Board members when conducting a meeting)

A. ***Call to Order (by chairman)***

I am, _____, Chairman of the Lewiston Planning Board. I welcome all here this evening and call this meeting to order (gavel). Roll Call please.

B. ***Roll Call (by secretary)***

Planning Board Members:

Bruce Damon
Kevin Morrisette
Michael Marcotte
Pauline Gudas
Sandy Marquis
Paul Madore
Walter Hill
Matthew Mastrogiacomo
Normand Anctil

City Staff:

David Hediger, City Planner
Identify any other Staff or City representative in attendance.

C. ***Planning Board's Procedures (when appropriate, this section may want to be read aloud by the chairman)***

The Planning Board is comprised of seven (7) appointed members. A quorum necessary to conduct an official meeting of the Planning Board shall consist of at least four (4) members.

Agendas for this meeting are available in the wall container at the entrance to this room, should anyone in attendance not have a copy. The agenda for this evening consists of the following items. Is there anyone in attendance present for a matter not on tonight's agenda?

Regarding the agenda items before the Planning Board, I shall first identify the item, and Staff will make a brief presentation followed by Planning Board questions. I will then request a presentation by the applicant/petitioner to explain their proposal followed by board questions. I will then open the meeting for public comment with proponents speaking first followed by anyone in opposition or having questions regarding the proposal. I please ask that everyone who speaks for or against or has a question concerning the subject matter to use the microphone provided by Staff as this meeting is being recorded and to identify themselves by name and address for our record. The applicant/petitioner shall be given the opportunity to make any responses to public comments. The public portion will then be closed and the Planning Board will deliberate and vote on the matter before us. Once the public comment portion of the meeting is closed,

unless there is a specific question from a Board Member to the public, the public portion will remain closed.

The Planning Board must decide on all matters in accordance with the Code of Ordinances of the City of Lewiston along with any other provisions of law within our jurisdiction. Some decisions that this Board makes may also be contrary to public opinion and it is possible that some Board Members may have philosophical differences with some proposals; however, this Board must base its decisions on the law and ordinances rather than on individual sentiments. The concurring vote of at least four (4) members is required to constitute an action on any matter requiring a Public Hearing. All other matters require a simple majority vote.

D. *Correspondence*

The Chairman will request a motion to accept and place on file correspondence (to be identified) and to include Planning Staff memoranda (this will establish the record as Staff memoranda will reference all submittals the Planning Board has received).

E. *Hearings*

Any agenda items requiring a public hearing by ordinance or law (i.e. development review, zoning amendments). .

F. ***Other Business (these items are typically not public hearings, but rather public meetings. Public meetings are not required to be open to the public for comment.)***

1. New Business
2. Old Business

G. *Minutes*

I am proposing to review and accept Minutes at the end of a meeting as a means to address matters of greater public interest first and in addition the Board may take time for Minute modifications without feeling pressured for time.

H. *Adjournment*

PLANNING BOARD HANDBOOK

Adopted: January 2015

PLANNING BOARD HANDBOOK

CONTENTS

I. Article IV, City Charter

II. Rules of Procedure

III. Public Procedures and Freedom of Access Law (Maine Public Right to Know Law)

IV. Ethical Principles in Planning

ALL ORDINANCE PROVISIONS GOVERNING AND REGULATING DEVELOPMENT ACTIVITY IN THE CITY OF LEWISTON, AS REVIEWED BY THE PLANNING AND CODE ENFORCEMENT DEPARTMENT, PLANNING BOARD AND BOARD OF APPEALS ARE CONTAINED IN APPENDIX A OF THE LEWISTON REVISED CODE OF ORDINANCES ENTITLED, "ZONING AND LAND USE CODE".

I. Article IV, City Charter

EXCERPTS FROM
CHARTER OF THE CITY OF LEWISTON
EFFECTIVE JANUARY 1, 2003

Article IV. Administrative Organization

4.05 PLANNING BOARD

(a) APPOINTMENTS. There shall be a Planning Board consisting of seven (7) members, each of whom shall be a qualified voter of the City of Lewiston and who shall be appointed by the Mayor. No more than two (2) members may reside in the same ward. The terms of office of members of the Board, appointed following the adoption of this Charter shall be established by the Mayor who shall appoint one (1) member to serve one (1) year; two (2) members to serve two (2) years; one (1) member to serve three (3) years; two (2) members to serve four (4) years; and one (1) member to serve five (5) years. Thereafter, all members shall be appointed for five (5) year terms.

There shall be, in addition to the seven (7) members of the Board, two (2) associate members of the Board, each of whom shall be a qualified voter of the City of Lewiston, appointed by the mayor. The associate members are subject to the same ward residency requirements as the regular members. They shall serve for five-year staggered terms, with initial terms being one (1) associate member serving for four (4) years and one (1) for five (5) years. An associate member shall serve in the place of a member who is absent, disqualified or otherwise unable to participate when designated by the chair person to do so.

(b) COMPENSATION. Each member shall receive salary at the rate of six hundred ($600.00) dollars per year, payable monthly.

(c) DUTIES. The Planning Board shall carry out those duties assigned to it by general law and by ordinance.

(d) RULES OF PROCEDURE. The Planning Board shall adopt appropriate rules of procedure consistent with the provisions of this Charter to enable it to carry out its functions.

4.07. COMPENSATION. Compensation paid to members of the Personnel Board, Planning Board and Board of Appeals may be changed by ordinance.

4.08 FORFEITURE OF OFFICE. A member of the Personnel Board, Planning Board, or Board of Appeals shall forfeit his office and a vacancy therein shall exist, if he (1) dies; (2) resigns; (3) moves from the City; (4) in the case of the Planning Board and Board of Appeals if he moves from his ward into a ward in which there are currently two (2) members of the same Board; (5) is convicted of a crime or offense involving moral turpitude while in office; (6) is found to be in violation of Section 8.04 of this Charter; or (7) exceeds the tenure authorized for the office. If any vacancy should occur, it shall be filled for the remainder of the unexpired term by appointment of the Mayor.

4.09 LIMITATION OF TERMS. No member of any Board established by this Article shall serve more than a full five (5) year term on the same Board within any ten (10) year period. Said period shall be deemed to commence at the time of their first appointment.

Article VI. Financial Procedures

6.05 CAPITAL PROGRAM.

(a) SUBMISSION TO COUNCIL. The administrator shall each year prepare and submit to the Council a five (5) year capital program, including the capital program proposed for the School Department, at least five and on-half (5½) months prior to the end of the fiscal year. The Administrator shall concurrently refer the Capital Program to the Planning Board for its review.

(b) CONTENTS. The capital program shall include:

(1) A clear general summary of its contents;

(2) A list of all capital improvements which are proposed to be undertaken during the five (5) years next ensuing, with appropriate supporting information as to the necessity f or such improvements;

(3) Cost estimates, method of financing and recommended time schedules for each improvement; and;

(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(c) PLANNING BOARD REVIEW. The Planning Board shall review the proposed capital program each year, and following public hearing thereon, shall forward its

recommendations to the City Council at least four and one-half (4½) months prior to the end of the current fiscal year.

Article VIII. General Provisions

8.01 (b) APPOINTIVE OFFICERS AND EMPLOYEES: TERMS. Except as may otherwise be provided in this Charter, all City officers, employees and appointees shall serve at the pleasure of the appointing power.

8.03 SWEARING IN OFFICERS. All officers provided for in this Charter, whether elective or appointive, shall, before assuming their respective duties, qualify by being sworn to the faithful performance thereof before the City Clerk or some magistrate thereto qualified.

8.04 PERSONAL/ FINANCIAL INTEREST. If any elected or appointed official, officer or employee, or the spouse of any such person has financial interest, direct or indirect, in any contract with the City or in the purchase or sale of any land, material, supplies or services to the City or to a contractor supplying the City, he shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as an elected or appointed official, officer or employee, in the making of such purchase or sale or in the making or performance of such contract. Any such person who willfully conceals the financial interest of himself or his spouse, or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a purchase from or a sale to the City, shall render the contract, purchase or sale voidable by the City.

8.05 PROHIBITIONS.

(a) ACTIVITIES PROHIBITED. No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations, or on any other basis prohibited by Statute of general application.

(b) PENALTIES. Any person convicted of any crime involving falsification in official matters, bribery, corrupt practices, or obstructing governmental administration, as these crimes are defined in the Revised Statutes of Maine, as amended, shall be ineligible for a period of two (2) years following said conviction to hold any City office or employment, except as otherwise provided by law.

II. Rules of Procedure
Lewiston Planning Board

1. Officers.

The first regular meeting in January shall constitute an annual organizational meeting of the Board. A chairman, vice-chairman, and secretary shall then be elected by a majority vote of members present. The officers will serve for one (1) year until their successors are elected at the next organizational meeting.

Officers may be elected for a shorter term at the discretion of the Planning Board with new elections to be held upon that term's expiration. Should an officer cease to serve for whatever reason, the Planning Board may hold new elections.

2. Duties.

A. The chairman shall call regular meetings of the Planning Board as required. The chairman shall also call meetings of the Planning Board when requested to do so by four (4) members of the Planning Board. The chairman shall preside at all meetings and hearings of the Board, decide all points of order and procedure, be the official spokesman for the Board, act as liaison between the Board and other agencies of the City of Lewiston, and perform any duties required by law, ordinance, charter or the Board.

B. In the absence or disqualification of the chairman, the vice-chairman shall assume the duties of the chairman. In the absence and/or disqualification of both the chairman and vice-chairman, a member shall be chosen by a majority vote of all members present and will assume the duties of chairman for that meeting.

C. The secretary, with the assistance of the Planning and Code Enforcement Staff, shall keep a permanent record of all Board Meetings or other official actions of the Board and shall keep all correspondence of the Board on file in the City Planning and Code Enforcement Department's office. The secretary, with the assistance of the Planning and Code Enforcement Department Staff, shall also be responsible for keeping the records of the various proceedings which may be brought before the Board. All records to be prepared or retained by the secretary are deemed public and may be inspected at reasonable times. The secretary, with the direction of the

Planning and Code Enforcement Department Staff, shall conduct, at the direction of the Planning Board, all official correspondence of the Board, send out all required notices, and perform all other duties required by law, ordinance, or the Board.

All correspondence from the City Staff as well as all recommendations presented and actions suggested as necessary shall be incorporated without need for a specific motion into the record and shall be part of the record of the hearing on the specific issue.

D. The Planning Board shall request an advisory opinion from the Historic Preservation Review Board concerning development proposals that may potentially impact significant structures or districts as defined in Appendix A, Article XV, Sec. 3 of the Zoning and Land Use Code.

3. Meetings.

A. Regular meetings of the Planning Board shall be held on the second and fourth Mondays of each month beginning at 5:30 p.m. in the City Building. No new agenda item shall be heard after 9:00 p.m., with meetings adjourning no later than 9:30 p.m. Whenever there are no business matters to be considered at any regular meeting, other than the organizational meeting, the chairman may dispense with such meetings by notifying each member of the Board and each other person who may have been given notice of the meeting at least 24 hours prior to the time set for the meeting, provided that when at least four (4) other members of the Board request that such regular meeting be held, the chairman shall not dispense with it.

Notification by use of electronic mail shall be considered an acceptable means of communication.

B. Special meetings and executive sessions may be held upon call of the Mayor, the chairman, and at such other times as the Planning Board may determine, provided that at least 24 hours notice of the meeting be given to each member.

C. A member who misses three (3) consecutive meetings without just cause, as determined by the chairman, shall be reported to the Mayor for an evaluation of his/her willingness to continue to serve on this Board.

D. Material related to both development and non-development review agenda items which are not included in the Planning Board packet may only be considered if agreed to by a majority vote of the Board.

E. The order of business at all regular meetings of the Planning Board shall be as follows:
1. Roll Call - Planning Board Members, City Staff, and identify other Staff or City representatives in attendance.

2. Adjustments to the Agenda.
3.Correspondence - The Chairman will request a motion to accept and place on file correspondence (to be identified), other submitted material not in the Planning Board packet, and -Staff memoranda (this will establish the record as Staff memoranda will reference all submittals the Planning Board has received.) Pursuant to 2.C. all correspondence from the City Staff is, without need for motion, incorporated into the record. All other correspondence may be adopted by motion at this point or later in the proceedings as decided by the Planning Board by four (4) affirmative votes.
4. Public Hearings.
5. Review of Development Proposals.
6. Other Business - New and Old Business.
7. Reading of Minutes of the previous meeting.
8. Adjournment.

F. Protocol - The Planning Board is comprised of seven (7) appointed members. A quorum necessary to conduct an official meeting of the Planning Board shall consist of at least four (4) members. There shall be, in addition to the seven (7) members of the Board, two (2) associate members. Associate members will sit with the rest of the members and may participate in all Board deliberations, but are not able to vote unless designated by the chair or acting chair to serve in the place of a member who is absent, substantially tardy, recuses themselves, is disqualified or otherwise unable to participate. Such designations should be on a rotating basis between associate members as the opportunity arises during the course of the meeting.

Agendas for meetings shall be made available at the entrance to the meeting room.

Regarding the agenda items before the Planning Board, the chair shall first identify the item, and Staff will make a brief presentation followed by Planning Board questions. The chair will then request a presentation by the applicant/ petitioner to explain their proposal followed by Board questions. The chair will then open the meeting for public comment with proponents speaking first followed by anyone in opposition or having questions regarding the proposal. The chair shall request that everyone who speaks for or against or has a question concerning the subject matter to identify themselves by name and address for our record. The applicant/petitioner shall be given the opportunity to make any responses to public comments. The public portion will then be closed and the Planning Board will deliberate and vote on the matter before us. Once the public comment portion of the meeting is closed, unless there is a specific question from a Board Member to the public, the public portion will remain closed.

The Planning Board must decide on all matters in accordance with the Code of Ordinances of the City of Lewiston along with any other provisions of law within the Board's jurisdiction. Some decisions that this Board makes may also be contrary to public opinion and it is possible that some Board

Members may have philosophical differences with some proposals. However, the Board must base its decisions on the law and ordinances rather than on individual sentiments. The concurring vote of at least four (4) members is required to constitute an action on any matter requiring a Public Hearing. All other matters require a simple majority vote.

G. The Planning Board shall act in accordance with the provisions of Appendix A of the Lewiston Revised Code of Ordinances and shall follow as guidance, the standards of development review outlined in the Site Plan Review and Design Guidelines adopted by the Planning Board on October 22, 1987, and as amended.

H. The secretary, with the assistance of the Planning and Code Enforcement Department staff, shall keep minutes of the proceedings of each meeting of the Planning Board, including workshops, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and the final disposition of matters shall be recorded by resolution indicating the reasons of the Board therefore.

I. All meetings of the Planning Board shall be conducted in accordance with Maine's Public Right to Know Law. A copy of this statute, Title I, M.R.S.A., Sections 401—410 is enclosed in this handbook and deemed a part of these Rules.

J. An applicant or petitioner or their agent must appear at the scheduled meeting at which the subject case is to be heard. Failure to appear may result in the dismissal of the case. The Planning Board may, upon majority vote, continue the matter to a date specific for the hearing. Reinstatement of the case shall be allowed upon the filing of a written request. Reinstatement shall be allowed only upon payment of any required fees incurred from re-advertising the case.

K. A continuance may be granted to an applicant when good cause is shown that they are unable to present their case at the scheduled meeting.

4. Notice.

A. The secretary of the Planning Board, with the assistance of the Planning and Code Enforcement Department staff, will coordinate with the City Clerk of the City of Lewiston to ensure compliance with required legal notice for public meetings. In addition, it will be assumed by implication that notice of public hearings held by the Planning Board is mandatory and legal notice will consist of a notice conspicuously posted in the office of the City Clerk a reasonable time in advance of the meeting which under normal circumstance will be construed to mean at least seven (7) days before the date of each meeting. The Board at its discretion may determine that a given matter is of particular importance or interest to the community and in addition to posting as required above may insert a paid notice of the subject public hearing in the local newspaper.

On all proposals to amend the code, including rezoning proposals, notice shall be provided in accordance with Title 30-A, Chapter 187 §4352, section 8, 9, and 10 of the Maine Revised Statues Annotated._In the case of a proposal for conditional or contract zoning, a copy of the proposed conditions and restrictions must be included. Mailed notices shall be sent first class to the addresses shown on the property tax records of the City of Lewiston and shall be deemed given when mailed.

B. The secretary of the Planning Board, with the assistance of Planning and Code Enforcement Department_Staff, will coordinate with the City Clerk of the City of Lewiston to serve notice of such public hearings detailing subject, time, and place of hearing a reasonable time in advance of the hearing, upon those individuals meriting personal notice because of their relationship to the subject matter at issue. By way of example, the following are parties who because of their relationship to the subject matter at issue shall be given official notice of such public hearing: developer of a proposed development, petitioners of a zoning amendment, all land owners whose property abuts the lot or lots involved, and other property owners potentially affected by the proposed development or zoning amendment as determined by the Planning_and Code Enforcement_Department Staff. Notice shall be by any method of personal service or substituted personal service authorized by the ordinances of the City of Lewiston and the laws of the State of Maine.

C. Notice of Abutters.

Procedure for Notification of Development to Affected Property Owners.

For projects requiring Planning Board review and approval, the Planning and Code_Enforcement Department Staff shall notify abutting and affected property owners, in writing, of the specific nature of the development plans.

The word, "abutting" shall be defined to mean any property which shares a common physical boundary with the area under review and properties located directly across any previously accepted city street.

The word, "affected" shall be defined to mean any property not sharing a common physical boundary but upon whom the proposed development would have impact, as determined by the Planning and Code Enforcement Department Director or designee.

Notification shall be by first-class mail and include a brief description of the project. Notice shall be mailed at least seven (7) days in advance of formal review by the Planning Board and shall include the date(s) and time(s) of review by the reviewing authority.

5. Ad Hoc Committees.

The chairman may from time to time appoint committees necessary to perform special functions of the Board.

6. Parliamentary Procedures.

A. In all cases were parliamentary procedure questions arise in the conduct of the Board's affairs, the current edition of Robert's Rules of Order shall be taken as the source of authority to decide the orderly course of the proceedings except as otherwise provided herein.

B. Reconsideration of Items - When an item is voted on by the Board, it shall be in order for any member who voted on the prevailing side to move a reconsideration thereof, during the same meeting or at the immediate next regularly scheduled Planning Board meeting, but not afterwards. No motion to reconsider a vote taken at a previous meeting shall be in order for consideration at the immediate next regularly scheduled Planning Board meeting unless an item to that effect is scheduled on the agenda for such meeting or unless five of the members consent to such reconsideration.

7. Hearing Procedures for all Planning Board Public Hearings.

I. Staff presentation

II. Applicant presentation

III. Public Comment:

A. Proponents or their representatives

B. Opponents or their representatives.

C. Other interested parties.

D. When all parties or representatives have presented their position, other parties may ask questions through the chair.

E. Testimony or other evidence may be submitted or received in writing when the same shall benefit convenience. This shall not be construed to abridge the right of any person or party to be heard orally by the Board.

IV. After determining all public representatives have been provided opportunity to be heard, the Chair shall close the review to public comment. (The Board shall reserve the right to question through the Chair, any person present).

V. The Board shall deliberate on the evidence and take appropriate action which may include tabling the item to a future meeting.

VI. Within five (5) working days of the meeting, written notification of Board action shall be sent to the applicant.

8. Guide to Ethical Conduct.

The Planning Board adopts for the Board and its staff as a guide to ethical conduct The American Planning Associations (APA) "Ethical Principles in Planning", as applicable, copies of which are enclosed in this handbook and deemed a part of these Rules.

9. Amendment.

These Rules may be suspended, amended, or repealed on an affirmative vote of a majority of all members present.

10. Review and Adoption.

These Rules of Procedure shall be reviewed and adopted annually at the Board's organizational meeting, or during the year should the need arise.

11. Student Members.

Student members are appointed by the Mayor. They will enjoy full honorary Board privileges and should be extended the same courtesy as full Board Members. The only exception is that they have no voting privileges. Student members will have full access to information as regular Board. Members and receive meeting information packets as regular Board Members. Student Members will conduct themselves appropriately.

Student members serve at the pleasure of the Planning Board Chair and/or the Mayor.

III. Public Procedures and Freedom of Access Law (Maine Public Right to Know Law)

Maine Revised Statute Title 1, Chapter 13: PUBLIC RECORDS AND PROCEEDINGS
A portion of which acquired from
http://www.mainelegislature.org/legis/statutes/1/title1ch13sec0.html on December 26, 2013.

Maine Revised Statutes

Title 1: GENERAL PROVISIONS

Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

Subchapter 1: FREEDOM OF ACCESS

§400. SHORT TITLE

This subchapter may be known and cited as "the Freedom of Access Act." [2011, c. 662, §1 (NEW).]

SECTION HISTORY
2011, c. 662, §1 (NEW).

§401. DECLARATION OF PUBLIC POLICY; RULES OF CONSTRUCTION

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [1975, c. 758, (RPR).]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. [2011, c. 320, Pt. B, §1 (NEW).]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [1975, c. 758, (RPR).]

SECTION HISTORY
1975, c. 483, §1 (AMD). 1975, c. 758, (RPR). 2011, c. 320, Pt. B, §1 (AMD).

§402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[1975, c. 758, (NEW) .]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW).]

. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD).]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD).]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD).]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD).]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW).]

[2009, c. 334, §§1-3 (AMD) .]

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW).]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW).]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House paper

or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD).]

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW).]

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD).]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD).]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD).]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD).]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD).]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD).]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD).]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD).]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [2011, c. 662, §2 (AMD).]

N. Social security numbers; [2011, c. 320, Pt. E, §1 (AMD).]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR).]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD).]

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; [2013, c. 339, §1 (AMD).]

R. Social security numbers in the possession of the Secretary of State; and [2013, c. 339, §2 (AMD).]

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications. [2013, c. 339, §3 (NEW).]

[2013, c. 339, §§1-3 (AMD) .]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD).]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD).]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2013, c. 267, Pt. B, §1 (AMD).]

[2013, c. 267, Pt. B, §1 (AMD) .]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[2009, c. 334, §4 (NEW) .]

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

[2011, c. 662, §3 (NEW) .]

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

[2011, c. 662, §3 (NEW) .]

SECTION HISTORY
1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1 (AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c. 334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD). 2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD). 2011, c. 662, §§2, 3 (AMD). 2013, c. 267, Pt. B, §1 (AMD). 2013, c. 339, §§1-3 (AMD).

§402-A. PUBLIC RECORDS DEFINED

(REPEALED)

SECTION HISTORY
1975, c. 483, §3 (NEW). 1975, c. 623, §1 (RPR). 1975, c. 758, (RP).

§403. MEETINGS TO BE OPEN TO PUBLIC; RECORD OF MEETINGS

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[2011, c. 320, Pt. C, §1 (NEW) .]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [2011, c. 320, Pt. C, §1 (NEW).]

B. The members of the body holding the public proceeding recorded as either present or absent; and [2011, c. 320, Pt. C, §1 (NEW).]

C. All motions and votes taken, by individual member, if there is a roll call. [2011, c. 320, Pt. C, §1 (NEW).]

[2011, c. 320, Pt. C, §1 (NEW) .]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[2011, c. 320, Pt. C, §1 (NEW) .]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[2011, c. 320, Pt. C, §1 (NEW) .]

SECTION HISTORY
1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR).
2009, c. 240, §1 (AMD). 2011, c. 320, Pt. C, §1 (RPR).

§404. RECORDED OR LIVE BROADCASTS AUTHORIZED

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or

broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [1975, c. 758, (RPR).]

SECTION HISTORY
1975, c. 422, §2 (RPR). 1975, c. 483, §4 (AMD). 1975, c. 758, (RPR).

§404-A. DECISIONS

(REPEALED)

SECTION HISTORY
1973, c. 433, §2 (NEW). 1973, c. 704, §§1,2 (AMD). 1975, c. 758, (RP).

§405. EXECUTIVE SESSIONS

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW).]

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[2009, c. 240, §2 (AMD) .]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[2009, c. 240, §2 (AMD) .]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[2009, c. 240, §2 (AMD) .]

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[2003, c. 709, §1 (AMD) .]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[2009, c. 240, §2 (AMD) .]

6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [2009, c. 240, §2 (AMD).]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [2009, c. 240, §2 (AMD).]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [1987, c. 477, §3 (AMD).]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR).]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [2009, c. 240, §2 (AMD).]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [1999, c. 180, §1 (AMD).]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [1999, c. 180, §2 (AMD).]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [1999, c. 180, §3 (NEW).]

[2009, c. 240, §2 (AMD) .]

SECTION HISTORY
1975, c. 758, (RPR). 1979, c. 541, §A3 (AMD). 1987, c. 477, §§2,3 (AMD). 1987, c. 769, §A1 (AMD). 1999, c. 40, §§1,2 (AMD). 1999, c. 144, §1 (AMD). 1999, c. 180, §§1-3 (AMD). 2003, c. 709, §1 (AMD). 2009, c. 240, §2 (AMD).

§405-A. RECORDED OR LIVE BROADCASTS AUTHORIZED

(REPEALED)

SECTION HISTORY
1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

§405-B. APPEALS

(REPEALED)

SECTION HISTORY
1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

§405-C. APPEALS FROM ACTIONS

(REPEALED)

SECTION HISTORY
1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

§406. PUBLIC NOTICE

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. [1987, c. 477, §4 (AMD).]

SECTION HISTORY
1975, c. 483, §6 (AMD). 1975, c. 758, (RPR). 1987, c. 477, §4 (AMD).

§407. DECISIONS

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

[1975, c. 758, (NEW) .]

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[2009, c. 240, §3 (AMD) .]

SECTION HISTORY
1975, c. 758, (NEW). 2009, c. 240, §3 (AMD).

§408. PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING

(REPEALED)

SECTION HISTORY
1975, c. 758, (NEW). 2003, c. 709, §2 (RPR). 2007, c. 501, §1 (AMD). 2009, c. 240, §4 (AMD). 2011, c. 662, §4 (RP).

§408-A. PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[2011, c. 662, §5 (NEW) .]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

[2013, c. 350, §1 (AMD) .]

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2013, c. 350, §2 (AMD) .]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or

official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[2011, c. 662, §5 (NEW) .]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

[2011, c. 662, §5 (NEW) .]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [2011, c. 662, §5 (NEW).]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [2011, c. 662, §5 (NEW).]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [2011, c. 662, §5 (NEW).]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [2011, c. 662, §5 (NEW).]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [2011, c. 662, §5 (NEW).]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than $30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 10 applies.

[2011, c. 662, §5 (NEW) .]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds $100; or [2011, c. 662, §5 (NEW).]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

SECTION HISTORY
2011, c. 662, §5 (NEW). 2013, c. 350, §§1, 2 (AMD).

§409. APPEALS

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2013, c. 350, §3 (RPR) .]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2011, c. 559, Pt. A, §2 (AMD) .]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[2009, c. 240, §6 (AMD) .]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action

was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[2009, c. 423, §1 (NEW)

.] SECTION HISTORY
1975, c. 758, (NEW). 1987, c. 477, §5 (AMD). 2007, c. 695, Pt. C, §1 (AMD). 2009, c. 240, §§5, 6 (AMD). 2009, c. 423, §1 (AMD). 2011, c. 559, Pt. A, §§1, 2 (AMD). 2011, c. 662, §6 (AMD). 2013, c. 350, §3 (AMD).

§410. VIOLATIONS

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged. [1987, c. 477, §6 (RPR).]

SECTION HISTORY
1975, c. 758, (NEW). 1987, c. 477, §6 (RPR).

IV. Ethical Principles in Planning

(Adopted May 1992 by the American Planning Association and acquired from http://www.planning.org/ethics/ethicalprinciples.htm on January 28, 2013)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the

minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.

3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.