LAND DEVELOPMENT BOARDS

JOINT RULES OF PROCEDURE

City of Lenoir, North Carolina

I. PURPOSE

To establish procedures for organizing the business of the boards staffed by the Lenoir Planning Department. These rules are adopted pursuant to N.C.G.S. Chapter 160D for the following Lenoir Boards: Planning Board, Historic Preservation Commission, and Board of Adjustment. The first seven sections of these rules apply generally to all of the boards, with specific rules applicable only to one board found in Sections VIII, IX, and X. References to the "board," "board members," "chairperson," or "vice-chairperson" shall be interpreted to include all three aforementioned boards.

II. GENERAL RULES

The Planning Board, Board of Adjustment, and the Historic Preservation Commission shall be governed by the terms of N.C.G.S. Chapter 160D and general standards for appointed boards in Chapter 2, Article V, Division 1 of the Lenoir Code of Ordinances. The boards shall follow any other general or special state and local laws relating to planning, zoning, and land development in the City of Lenoir. For procedures not covered in these rules or elsewhere in the state statutes or local code of ordinances, parliamentary procedure in accordance with Robert's Rules of Order shall govern the conduct of the meeting.

III. OFFICERS AND DUTIES

A. **Chairperson:** The Chairperson shall be elected by the majority of the regular board members for a two (2) year term, or until such time as an election for the Chairperson is held by the Board. It shall be the Chairperson's duty to decide all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session. The Chairperson shall appoint committees as deemed necessary to investigate matters before the Board and shall administer all required oaths and affirmations for the board.

B. **Vice-Chairperson:** The Vice-Chairperson shall be elected by the majority of the regular board members for a two (2) year term, or until such time as an election for the Chairperson is held by the Board. It shall be the Vice-Chairperson's duty to serve as acting Chairperson in the absence of the Chairperson and at such absence shall have the same powers and duties as the Chairperson. In the absence of both the chairperson and vice-chairperson, the highest-ranking immediate-past officer shall serve as acting chairperson. In the event that there are no prior officials in attendance, the Planning Director shall act as chairperson, for the purposes of calling the meeting to order, determining a quorum, and then requesting a motion from the board to appoint an acting Chairperson from the members of the board in attendance.

C. Secretary: A secretary shall be provided by the Planning Department. The Secretary, subject to the direction of the Chairperson and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all mailed, published, and/or posted notices

required to be given, shall notify members of pending meetings and their agenda, and shall generally supervise the clerical work of the Board. The Secretary shall keep minutes of every meeting of the Board. Following each meeting, the secretary shall prepare final orders, provide notice of decisions to applicable parties, and arrange for notice and scheduling of hearings at the City Council following recommendations of the board, as specified in the Lenoir Code of Ordinances for each type of application.

IV. ELECTIONS

The election of the Chairperson and Vice-Chairperson shall be held on the first regularly scheduled meeting in January of each odd-numbered year, with nominations occurring on or before that meeting, unless agreed upon and deferred by the majority of the Board.

V. MEETINGS

A. **Regular Meetings:** Regular meetings of the Board shall be held on the fourth Monday of each month at 5:30 p.m., in the City/County Council Chambers, provided that as the Chairperson so directs, meetings may be held at any other place within the City. Regular meetings may be rescheduled at the direction of the Board. Whenever there is business scheduled for more than one board, the meeting of the Planning Board will be held first, followed by the Historic Preservation Commission, and then Board of Adjustment, unless the respective chairpersons for each board determine an alternative order.

B. **Special Meetings:** Special meetings of the Board may be called at any time by the Chairperson. At least a seventy-two (72) hour notice shall be given of the time and place of the special meeting, by the secretary or Chairperson, to each member of the Board; provided, that this requirement may be waived by action of a majority of all the members.

C. **Cancellation of Meetings:** Whenever there is no business for the Board, the Chairperson may dispense with a regular meeting by giving notice to all members not less than forty-eight (48) hours prior to the time set for the meeting.

   In the event of severe inclement weather or other emergency situation, either forecast or existent, which is so severe as to create unsafe conditions for travel (snow, severe rain/wind storm, flash flooding, tornadoes, etc.), the Chairperson may cancel or postpone a regular or special meeting by giving notice to the Planning Director prior to the meeting. The Planning Director will attempt to provide notice to all members, applicants with business before the board, and other attendees expected to attend. When possible, notice of the canceled meeting and any rescheduled meeting date shall be posted on the City website, as well as in the location where the meeting was to be held. When business is before the Board, the meeting will be rescheduled to provide for notice requirements to be met; or business will be postponed until the next regular meeting.

D. **Quorum:** A quorum shall consist of a majority (more than half) of the current appointed membership of the Board. Vacant seats do not count towards the calculation of the quorum. A member who was counted present at the beginning of the meeting, who has withdrawn without being excused by a majority vote of the remaining members present, shall continue to be counted as present for the purposes of determining a quorum. A member who is present, but

has a conflict of interest under Section VI., "Rules of Conduct," shall be considered present for purposes of determining a quorum, except when an alternate member is present to step in and act in the member's place on the Board of Adjustment. The only business that can be transacted in the absence of a quorum is to take measures to obtain a quorum, to fix the time to which to-adjourn, and to adjourn, or to take a recess.

E. Conduct of Meetings: The order of business at regular meetings generally shall be as follows: (a) call to order/determination of a quorum; (b) approval of minutes of previous meetings; (c) unfinished business; (d) new business; (e) reports and presentations by committees and/or staff.

F. Conduct of Evidentiary Hearings: All quasi-judicial requests before the Board (appeals, variances, and certificates of appropriateness) require an evidentiary hearing. All hearings must follow the quasi-judicial procedures outlined in N.C.G.S. 160D-406 and Secs. 1309-1318 in the Lenoir Zoning Ordinance. The order of proceedings in conducting each hearing before the board shall generally be as follows:

1. Disclosure of conflicts of interest
2. Swearing in of applicant, staff, and all others who wish to provide testimony
3. Staff summary of the request, opportunity for cross-examination
4. Testimony by applicant, opportunity for cross-examination
5. Testimony by others, opportunity for cross-examination
6. Rebuttal/Surrebuttal
7. Closing of the evidentiary hearing; board deliberation
8. Entertainment of motions related to findings of fact; conditions
9. Entertainment of motions for final action by the board, based on the established findings of fact

G. Vote: All board members present and voting may vote on any issue unless they have disqualified themselves from voting on a particular application for one or more of the reasons listed in Section VI., "Rules of Conduct." All board actions require a motion, a second, and a concurring vote of the majority of the members present, except that a four-fifths majority is required to approve a variance (see Part IX of these rules for clarification about variance majorities). Calculation of the requisite required majorities shall not be reduced by disqualification. Each member of the Board including the Chairperson shall have an equal vote. A tie vote shall cause the motion to fail. A failure to vote by a member who is present at the meeting and has not been excused from voting or who has withdrawn from the meeting without being excused by a majority vote of the remaining members present shall be counted as a vote in favor of approving the application.

H. Public Participation: All meetings of the Board shall be open to the public. When acting on advisory or legislative items, the Board may hear public comments as well as presentations from the applicant and staff. Public comment includes oral or written statements submitted to the Board during a pending proceeding. Public comment does not include a presentation available to planning staff or the applicant. The Board may ask questions of any participant to gather information. Large groups may be asked to designate a spokesperson, and the chairperson may limit public comments to those that are not repetitive.

During evidentiary hearings, only the applicant, the City, and any person with that standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive. The chairperson shall make a determination on standing, which may be appealed to the full board.

I. Objections: Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or application or the standing of a party, made be made to the Board. The Chairperson shall rule on any objections, and the chairperson's ruling may be appealed to the full board.

J. **Minutes:** Minutes shall be prepared by the Secretary following each meeting, and submitted to the Board for consideration and approval at the following meeting. Once approved, the minutes shall be signed by the Chairperson (or acting Chairperson) and the Planning Director, then filed in the official minute book for the applicable board. The minutes shall include the names of members and staff in attendance, members absent, the important facts of the meeting, all motions acted on including the vote of each member or indicating members failing to vote. For evidentiary hearings, the minutes should include the name and address of all sworn witnesses, the findings of facts, and any conditions required by the board. For amendments requiring consistency statements or statements of reasonableness, the minutes shall include the Board's recommendations on such statements.

VI. RULES OF CONDUCT FOR MEMBERS

A. All board members shall act in accordance with their sworn oath of office.

B. Faithful attendance at board meetings and conscientious performance of the duties required of board members is expected.

C. Each board member shall be thoroughly familiar with all statutes, laws, ordinances, and rules of procedure relating to the functions of the board(s) they serve on, as time and circumstances permit.

D. Board members may speak freely with the citizens, property owners, and business owners of Lenoir about issues related to planning, zoning, historic preservation, community development, and other issues relevant to their role as a member of a land development board, except that no board member shall discuss any quasi-judicial case with any parties thereto before the evidentiary hearing. Board members should refrain from offering specific interpretations of the adopted ordinances to the public. Board members are not authorized to perform administrative functions – interpretation of ordinances, permitting, and enforcement shall be done by planning department staff.

E. No board member shall take part in the hearing, consideration, or determination of any case, whether in an advisory or in a decision-making capacity, when the applicant, land owner, or affected party is a person with whom the member has a close familial, business, or other associational relationship. (Familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships.)

F. No board member shall take part in the hearing, consideration, or determination of any case, whether in an advisory or in a decision-making capacity, where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

G. No board member shall take part in the hearing, consideration, or determination of any quasi-judicial case (appeal, variance, or certificate of appropriateness) in which he or she has a fixed opinion of that is not susceptible to change, undisclosed ex parte communications, or any financial interest in the outcome of the matter.

H. Board members may receive and/or seek information pertaining to a quasi-judicial case from the Planning Department staff, but shall not discuss the case with any other parties prior to the evidentiary hearing. Any information requested from staff by one member will be provided to all members, as well as to the applicant and other interested parties.

I. Board members shall not express individual opinions on the proper judgement of any quasi-judicial case with any parties thereto, including planning department staff, before that case is determined.

VII. AMENDMENTS

Parts I-VIII of these rules may, within the limits allowed by law, be amended at any time by an affirmative vote of the majority of the members of the Planning Board, and to this end in adopting these joint Rules of Procedure the Board of Adjustment and the Historic Preservation Commission agree to defer to the Planning Board to manage the generally applicable parts of these Rules. Amendments to Part IX, Board of Adjustment, or Part X, Historic Preservation Commission may be amended at any time by an affirmative vote of the majority of the members of the impacted board.

Any proposed amendment must be presented in writing at a regular or special meeting of the board prior to the meeting at which the vote is taken, and following the action of any board to amend any part of these rules, an amended copy shall be provided to each Board as an item of information at its next regularly scheduled meeting.

VIII. PLANNING BOARD

In addition to the general rules for all boards referenced in Parts I-VII above, Planning Board shall be governed by the terms of the Lenoir Code of Ordinances, Chapter 2, Article V, Division 2 “Planning Board” and by the terms of N.C.G.S. 160D-301, as they be amended or revised. Additional considerations for specific types of cases are as follows:

A. **Development of Plans** – Comprehensive Plans and other planning recommendations should be made consistent with the Lenoir Code of Ordinances Secs. 2-205-8 and N.C.G.S. Chapter 160D, Article 5., “Planning,” as they may be amended or revised.

B. **Development Regulations** – When considering amendments to the text of the Zoning ordinance or any other development regulation that requires review by the Board, recommendations should be consistent with the Lenoir Code of Ordinances, Appendix A,

Article XIV "Amendments" as well relevant provisions in N.C.G.S. Chapter 160D Article 6., "Development Regulation," Article 7., "Zoning Regulation," Article 8., "Subdivision Regulation," and Article 9., "Regulation of Particular Uses and Areas."

C. **Amending the Zoning Map** – When considering amendments to the Official Zoning Map, the Board shall draft and recommend to the Council a statement that addresses consistency of the amendment with the Comprehensive Plan and the reasonableness of the proposal, consistent with Appendix A, Article XIV of the Lenoir Code of Ordinances and N.C.G.S. 160D-601-160D-605.

D. **Special Use Permits** – When serving as a preliminary forum for the review of Special Use Permits, the Board shall follow procedures relevant to such a review found in Sec. 900.3 "Application for Special Use; Planning Board Review" in the Lenoir Code of Ordinances and N.C.G.S. 160D-705(c).

IX. BOARD OF ADJUSTMENT

In addition to the general rules for all boards referenced in Parts I-VII above, the Board of Adjustment shall be governed by the terms of the Lenoir Code of Ordinances, Chapter 2, Article 5, Division 5 "Board of Adjustment," Sec. 1308 "Appeals," Secs. 1331-1333 relating to variances, N.C.G.S. 160D-405, 160D-406, and 160D-705(b) and (d), as they may be amended or revised, and the following provisions:

A. **Alternate Members** – When a regular member of the Board is unable to be present for a hearing or is unable to participate in a case due to a conflict of interest, the Board secretary will call on one or more alternate members to fill the spots of the regular board members. Every effort to have a full board of six members present and voting shall be made, and at any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. For the purposes of these Rules, rules pertaining generally to all regular members shall be interpreted to also apply to alternate members. In the context of the conduct of meetings, references to regular members shall be interpreted to include any alternate member participating in the meeting in the place of a regular member.

B. **Meetings with Less Than Six Members Present** – If, after attempting to fill the spots of regular board members with alternative members, less than six members will be present for a regular or special meeting, the meeting may proceed provided a quorum is present as determined under Part V, Subsection (D) of these rules. However, at least four members must be present and voting to decide any administrative appeal or variance request, even if a quorum is present. For example, a quorum might be achieved with only four members, but if one of those members has a conflict of interest, there would not be enough voting members present for the board to take action on that particular case.

C. **Four-Fifths Majority Required for Variances** – No variance shall be granted except on affirmative vote of four-fifths of the appointed membership of the Board. For purposes of determining this majority, vacant regular positions shall be excluded only when alternate members are not available to fill the seats. The votes necessary for a four-fifths majority shall not be reduced by any disqualification. Evidentiary hearings for variance cases should be rescheduled if it becomes apparent that the number of votes necessary to achieve a four-

fifths majority is greater than the number of members present and eligible to vote on the matter.

X. HISTORIC PRESERVATION COMMISSION

In addition to the general rules for all boards referenced in Parts I-VII above, the Historic Preservation Commission shall be governed by the terms of the Lenoir Code of Ordinances, Appendix A, Article XVII "Historic Preservation" and N.C.G.S. Chapter 160D, Article IX, Part 4 (160D-940 through 160D-951), as they may be amended or revised, and the following provisions:

A. **Members and Officers** – The Commission shall be composed of the members of the Lenoir Planning Board, and at least three members shall have demonstrated special interest, experience or education in history, architecture, archaeology, historic preservation, or related fields. Officers of the Lenoir Planning Board shall serve in their respective roles when the Planning Board is acting in its capacity as the Historic Preservation Commission, unless a majority of the Commission call for an election of separate officers.

B. **Staff Historic Preservation Officer** – The Planning Director or designee shall serve as the Staff Historic Preservation Officer and provide staff support to the Commission. The Staff Historic Preservation Officer shall not be eligible to vote on any matter. The duties of the Staff Historic Preservation Officer include but are not limited to:

1. Carry out the day-to-day operations of the Commission;
2. Review all applications for Certificates of Appropriateness
3. Coordinate review of applications for new local districts and local landmarks with the State Historic Preservation Office
4. Make a recommendation of approval or disapproval of each major Certificate of Appropriateness application to the Commission.
5. Prepare and send written Certificates of Appropriateness to appropriate parties following approval of an application.

C. **Modification of Applications** – The Staff Historic Preservation Officer may approve a minor modification to a previously approved Certificate of Appropriateness which clearly meets the requirements of the Design Review Standards. Such a request shall include illustrative materials deemed necessary by the Staff Historic Preservation Officer. If the Staff Historic Preservation Officer finds that the modification constitutes a significant change in a previously approved project, a rehearing shall be made in the same manner as for an original hearing.

D. **Design Review Standards** – The Commission shall use the U.S. Secretary of Interior's Standards for Historic Preservation as the Committee's adopted Design Review Standards. The Design Review Standards apply to locally designated landmarks and historic districts and illustrate the methods and techniques a property owner may use to plan improvements in a manner that will preserve the character of the historic property. Amendments to the Design Review Standards shall be made according to the same process that is used for amending these Rules of Procedure.

Signature of Planning Board Chair: _____

Planning Board date of adoption: January 25, 2021

Signature of Board of Adjustment Chair: _____

Board of Adjustment date of adoption: January 25, 2021

Signature of Historic Preservation Commission Chair: _____

Historic Preservation Commission date of adoption: January 25, 2021

Note: These Rules of Procedure incorporate elements from previously adopted Rules of Procedure for the Planning Board (most recently updated June 25, 2018), the Board of Adjustment (most recently updated in 2009), and the Historic Preservation Commission (adopted February 25, 2019), but have updated for consistency, clarity, and compliance with the City's Code of Ordinances and N.C.G.S. Chapter 160D. These rules replace the previous rules for each board in their entirety.